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Crime and Crime Control in an Integrating Europe

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Foreword

The Third Annual Conference of the European Society of Criminology was organised in Helsinki 27–30 August 2003. The conference had three co-organisers: the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), the Scandinavian Research Council for Criminology, and the Department of Criminal Law, Procedural Law and General Jurisprudential Studies of the University of Helsinki.

The first contribution to this volume is the Opening address of the conference by Mr. Johannes Koskinen, the Finnish Minister of Justice, followed by eight invited plenary presentations. As to the ninth (Neil Walker: Constitutionalizing European Criminal Justice), invited at short notice, only the abstract was available.

The theme of the conference was “Crime and Crime Control in an Integrating Europe”. Relating to this, the plenary presentations cover topical issues of European integration, crime, and criminal policy, including the enlargement process of the European Union.

Some of these texts have been revised by the authors after the event. They have thus had the opportunity to comment some of the eventual discussions, rendering the outcome more dynamic a flavour.

HEUNI has considered the creation of a truly European forum for scientific criminological exchanges as a very important step towards a better integration of the European criminological communities. This volume intends to provide evidence of the potential of this positive development.

Helsinki, 19 April 2004

Kauko Aromaa
Director

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Opening Address

Johannes Koskinen
Minister of Justice, Finland

Ladies and Gentlemen,

On behalf of the Finnish Ministry of Justice I have the great pleasure to open this, the third, annual Congress of the European Society of Criminology. The theme of the Congress is “Crime and Crime Control in an Integrating Europe”. First I would like to present some perspectives of the Finnish Ministry of Justice relating to this theme.

1. Basic Rights and the EU Constitution

One of the central issues in the debate on the future of the EU is the status of fundamental rights and in particular how the protection of these rights can be strengthened. One of the means through which the Union aims at reinforcing the citizens’ confidence in the Union’s work is by developing the EU Charter on Basic Rights into a legally binding system of norms. In case the EU adopts the Convention on Human Rights, and this is something particularly Finland has been working for, the EU will be covered by the same external Human Rights control as the member states now are.

The Charter on Basic Rights was adopted as a solemn proclamation in 2002. At that time, there were several persons feeling sceptical about the suitability of creating a legally binding norm system on basic rights within the EU. And thus the Charter remained a political declaration. In Finland, too, there were suspicions relating to the circumstance that a legally binding charter might reinforce the authority of the Union. And in addition to that, the question of the relation between the Charter and the basic rights provisions in the Finnish Constitution, and the question of the relationship between the Charter and the European Convention on Human Rights, was raised.

Since the Charter was adopted, these issues were further discussed in Europe. A conference on issues relating to enlarging the scope of basic rights within the EU was organized in Helsinki in 2002. This seminar and other similar subsequent discussions have in my opinion considerably contributed to overcoming scepticism about reinforcing the legal position of the Charter and about EU support to the Human Rights Convention. The thought according to which the Charter and its adoption were competing or somehow excluding each other was gradually abandoned. The Convention working group on basic rights was surprisingly unanimous on these issues and wanted the Convention to proceed in both areas.

In Finland, too, it was concluded that the goals of the EU Charter on Basic Rights and the adoption of the Convention on Human Rights by the EU are in part two different things. The Charter aims at reinforcing the position of basic rights in the legislative work and other activities of the Union and at clarifying the fundamental rights recognized by the Union. This is connected to the development of the Union as a political system that ever more extensively takes care of tasks previously falling within the scope of the member states and ever more extensively affecting citizens' everyday life. The comprehensive task of the Charter is to reinforce the civil dimension and democratic legitimacy of the Union and to guarantee that civil rights be protected in Community law as well.

The adoption of the European Convention on Human Rights by the EU will also promote the scope of the Union as far as Human Rights are concerned, as the Union and its bodies will be affected by the external supervisory system of the Convention after adoption. The purpose of adoption, however, partly differs from the goals of the Charter. Firstly, adoption serves as a signal to the outside world, declaring that the Union will commit itself to general European and universal Human Rights norms. Secondly, the external supervisory system of the Convention will ultimately guarantee the protection of Human Rights in the application of Community law as well. In this respect the Charter and its adoption perform partly different functions. They shall thus be considered two different methods of reinforcing the protection of Basic Rights, rather complementing than excluding each other.

In this respect I consider we can be satisfied with the final result of the Convention. I consider it particularly important that the Union will adopt the Convention on Human Rights, as this is necessary in order to guarantee that a uniform interpretation of Human Rights be secured.

2. The Integration of Criminal Legislation in Europe

Another important theme in the debate on the future of the EU, from the point of view of the Ministry of Justice, is of course the development of co-operation in questions of legislation and domestic policy.

The transition to supranational co-operation, however, is not taking place without problems. As the member states transfer certain authorities in police affairs and penal co-operation to the Union, the definition of Union powers becomes a crucial question. Questions of competence are pertinent to penal issues, since these are closely linked to the sovereignty of the member states. We must have a clear conception of the powers the member states transfer to the Union and the powers that remain within the member states.

These fundamental questions play a crucial role particularly when speaking of the unification of substantive criminal law. Considering the goals of the Union, there is a certain need for harmonizing penal provisions. However, since we are dealing with the essence of the penal system in the member states, it is necessary to restrict harmonization to those questions where it can be virtually useful. Generally speaking, more ambitious harmonization may be considered justified

mainly dealing with serious crime, crossing borders. A list of such offences was proposed in the conclusions from the 1999 European Council Meeting at Tampere.

There are also other tendencies in the Convention. The Commission in particular promotes a definition of Union powers enabling the Union to harmonize penal regulations in all policy areas within the Union, in case this is considered necessary in order to achieve Government goals. The problem in this proposal is that the penal authority of the Union is intended to be covering the whole scope of application of the Constitutional Treaty. The powers are not merely intended to cover serious transnational crime. Instead, harmonization might include insignificant criminal acts as well. According to the Finnish opinion, such an unclear definition of powers should not be adopted. Why is it not sufficient to the execution of Union legislation that the member states in accordance with the principle of fidelity are obliged to guarantee effective sanctions? If the purpose is to guarantee that serious international offences, as for instance environmental offences, are to be included in penal harmonization in some particular policy areas, the Union powers relating to these offences are to be confirmed in the Constitutional Treaty.

3. In Conclusion

A crucial matter for penal policy decision-making is that decisions shall be based on facts, reliable research, and that decision-makers shall be constantly interacting with experts and practical workers in the field. The fruitful interaction between the Finnish Ministry of Justice and the scientific community is, among other things, reflected in the fact that about half of the Finnish lecturers at this Congress are working in scientific research or other fields of the Ministry of Justice. I hope the debates at the seminar will be productive and rewarding. However, they hardly will be unanimous, as scientific debate and politics never are.

Re-integrative Shaming of National States

Nils Christie
Professor, Faculty of Law, University of Oslo, Norway

Dear participants,

Most of us here in this room are from other countries than Finland. Therefore; we need to know where we are. Not from a tourist's point of view. Not about the thousand lakes and the deep forests. But maybe about the deep souls of the Finns, and their bloody history. At least about their history. Far back in time, this country was a part of Sweden, then from 1809 a part of Russia, then, in 1918, divided in a bloody civil war, after that a sprinkle of fascism, then two fierce wars against Russia, a small one against Germany, and then a long, tense period under the eyes of Stalin. The best political protection in this period was to become fully integrated in the Nordic block. And so they did—also when it came to penal matters.

Traditionally, their penal system was a Russian one. They sent many prisoners to Siberia, but had also a great prison population at home. Up to the 1960s they had several hundred prisoners per 100,000 inhabitants. They were Eastern European in their penal policy. But then, by political and moral reasons, they changed their system and got their number of prisoners down to one fourth of the level it had been most of the time since the civil war in 1918. Today, Finland is solidly placed among Scandinavian countries with 66 prisoners per 100,000 inhabitants. The leading troika behind this ethically and politically based action consisted of Inkeri Anttila, Patrik Törnudd and K. J. Lång. They proved that prison figures are not a result of destiny, but of choice. We are free. Free to choose and change.

But are we not forced, by the crime situation?

In my view, crime is an unsuitable point of departure when we discuss penal matters. Crime is all, and nothing. Acts with the potentiality of being seen as crimes are like an unlimited natural resource. We can take out a little amount in the form of crime—or a lot. Crime is in endless supply. Acts are not, they become, their meanings are created as they occur to us. With this view, it is probably clear that I am not particularly fond of comparative studies of crime figures and victim figures.

This opens for a rarely discussed problem: How much of the unwanted acts in a society should we take out in the form of crime? What is a suitable amount of crime, both when it comes to the occurrence of unwanted acts, and when it comes to the amount of these unwanted acts to be designated as crimes and therefore belonging to the institution of penal law? And related to this: What is a suitable size of the penal sector? I discuss criteria for this in a book soon to be published, but

can not use my 30 minutes here to a discussion of these criteria. It must be sufficient to say, that sometimes, intuitively, we feel that some countries let their penal apparatus expand much too much. It is simply ethically wrong to deliver so much pain. And it hurts the civil character of these societies. Some states are so punitive that it hurts both them and us.

My problem in what follows is therefore: What to say in such cases, can we shame states out of it? I will mention three cases.

To visit the first case, we can just leave this room and go to the main railway station of Helsinki, take a beer in the beautiful railway restaurant—Bertolt Brecht did some of his writing here—and then, some hours in the train bound eastwards and you are in a country with close to 600 prisoners per 100,000 inhabitants—nine to ten times the Scandinavian level. Russia is the major incarcerator in Europe, with Belarus as the next in line. *Russia* today is a country completely out of line with Europe when it comes to the number of prisoners.

But important parts of the Russian intelligentsia want their country to be part of Western Europe. Visitors are invited to observe and to reveal their observations. The Russian prison administration is exceptionally open and self critical. As one of these visitors, I get some of the same feeling as when visiting Finland in the former days, in meeting a culture where it is uncomfortable to experience oneself as in too great a distance to common European standards. It is with considerable embarrassment, from the very top and down, that Russians reveal the total size of their prison population and also the conditions in their remand prisons. My own theme while lecturing at universities or colleges in Russia is to emphasise the urgent need for reduction of the number of prisoners. There is, I say, no point in talks about psychological treatment or education in a system so desperately overcrowded as the Russian one. It is just a cover-up. If Russia wants to be an ordinary part of Europe, it must also be so when it comes to their prison population.

Estonia, Latvia and Lithuania are in the same situation. They want to come close to Scandinavia, there is just some water that divides us, and much in the culture is similar. But the proximity builds on an illusion if they preserve a penal apparatus belonging to another time and another culture. They all have more than 300 prisoners per 100,000 inhabitants. Can the general culture in a country remain uninfluenced by being that punitive? One might also expect that countries with such a huge number of prisoners will create perfect growth conditions for highly unwanted subcultures. People trained in this type of subcultures, and I have here both prison guards and prisoners in mind, will not be the most welcome ambassadors for their countries when they visit the Scandinavia they are supposed to stand so close to.

The embarrassment among many officials in Eastern Europe, particularly in Russia, has another side: It is today with considerable pride some of them report on the *reduction* of their prison population, particularly in their remand prisons. This development is a manifestation of that part of Europe coming closer to Europe. In this reduction is once again illustrated that prison figures are not shaped by crime, but by the general culture.

But these reductions are far from stabilised. Two wars threaten prison reductions in Russia. First, the war in Chechnya and all the violence directly and indi-

rectly connected to this war. Secondly the war against drugs. Penal reformers are not the only visitors to Russia. Drug experts also go there. I have spent depressing hours in the Duma, listening to a parliamentarian with much power who described the importance of protecting the Russian youth against drugs. It will develop into an epidemic, he said. One user drags ten newcomers into the habit, and so it will continue. Severe punishment becomes a necessity to stop this epidemic spreading. I had heard it before. The lost war against drugs in the West is now dangerously close to be repeated in the East, with predictable results.

Nonetheless, the situation in the greatest incarcerator in Europe is not without hope. The increase in the number of prisoners has come to a stop, a considerable reduction can be observed, there exists a willingness to discuss the problems, and the atmosphere makes an open discussion of these matters possible.

* * *

Cuba is my next case. Last term, I spent some days lecturing there; we have an agreement of co-operation between Cuba and our institute in Oslo. Usually, I get to know a country through its penal system, but that was not particularly easy in this case. I did not get access to any of their prisons. And their prison figures are state secrets, just as in the Soviet Union back in time. But of course, the USSR figures were not impossible to estimate. I have described the basis for my estimates in *Crime Control as Industry* (Christie 2000). When it comes to the Cuban situation, I used the same methods, but there are miserable holes in my knowledge. I can offer only rough estimates.

Even so, I feel pretty sure that Cuba belongs to the category of countries with a very high rate of incarceration. My estimate is that they now, in 2003, probably have between 454 and 545 prisoners per 100,000 inhabitants. These are large numbers in a Caribbean connection. The figures have probably tripled since 1987. Cuba also has, this spring, executed three prisoners. For many years they have had a moratorium on capital punishment.

Compared to most states close to them, Cuba has a highly developed welfare system for the most vulnerable part of the population. No illiteracy, no children sleeping in the streets. And they have a hospital system so well developed that the most conservative among Norwegian parliamentarians come home after visits and tell that we have much to learn from Cuba. Nonetheless, external pressure and internal differentiation take their toll. A vulnerable state bites, and a frustrated population tolerates these bites.

In addition comes the rigidity created by secrecy. With prison figures as state secrets, it is not easy to initiate any discussion there on these matters. Secrecy also makes difficult any criticism of the inner working of the system.

How to approach this problem?

My attempt was the old one, to compare ideals with practice.

Cuba has *ideals* of creating an egalitarian society. It has ideals close to those in Scandinavian welfare states. It has a tradition of close contact between trade unions in Cuba and Scandinavia. But what happens with these ideals, when a state acquires an exceptionally large prison population?

I was not invited into any Cuban prison. But based on observation from large prisons in countries with some similarities to Cuba, I could at least suggest how such prisons usually develop: With such a large number of prisoners, and with a system growing so quickly, prisons will obviously be large and overpopulated. They will have relatively few prison guards. This means that the prisoners themselves will rule the inner life of the prisons. This will lead to the development of a hierarchical system among the inmates. At the top will be a king, surrounded by his court. At their service will stand a group of thugs, controlling prisoners of lower ranks. At the bottom will be the untouchables, those relegated to menial tasks, eventually functioning as prostitutes for the better off. A caste system—in extreme contrast to what Cuba strives to create for the society as a whole.

To preserve an egalitarian welfare state, this state has developed a system that is a negation of the ideals that the authorities strive to attain. It cannot in the long run be useful. It will become a danger to the fundamental values of that society.

* * *

I have conveyed this view to those in Cuba willing to listen. But I come from Norway, a small nation with considerable freedom of expression. With this background, am I not then obliged to confront Cuba with their limitations on these same freedoms, particularly these last months? Would it not be right first and foremost to scold them for their imprisonment of political opponents?

My preference is to start at the other end, with ordinary prisoners. Imprisonment of political opponents is part of a political culture. That political culture is connected to the penal culture. States with large prison populations are in the habit of using that measure. The best way to reduce the use of imprisonment against political opponents is to minimise the use of imprisonment in general. The barriers against using imprisonment against political opponents become less solid where imprisonment is exceptionally frequently used. The barrier against using capital punishment against political opponents is likewise less solid in countries where killing is used extensively against those seen as “ordinary criminals”. So also with torture. I respect that some might be of the opinion that I ought to talk loudly and confront the one-party states with all their deviations from human rights in general and Norwegian standards in particular. But I will not. That is to start at the wrong end.

* * *

Compared to the old USSR and now Cuba, the USA is like an open book. Prison figures are easily available and clearly presented. There were big headlines in the US newspapers when their prison figures in June 2002 passed the two million mark and also in 2003 when one hundred thousand more were added. Perhaps this openness reflects some of the problem?

Basically, it seems as if their enormous prison population is *not* a source of shame. It is seen as a sort of inevitable answer to crime, if anything, a sign of strength and efficiency.

To me, the US penal system is a system that negates the fundamental values they claim as their own. It is an open society. Nobody censures my speech. I can move freely. I am even invited back. But what goes on in their penal system for

2.1 million prisoners, and for the additional 4.7 million on probation and parole, has long since passed the level of what can be understood as reflecting their values. It is materially the wealthiest country in the world. Nonetheless, it is a country that uses prisons instead of welfare. It is a country that continuously talks about freedom. Nonetheless, it has the largest prison population in the world, both in absolute and relative figures. It is a country that fought a fierce civil war in which the abolition of slavery was at least some of the motivation. Nonetheless, it has an abnormal proportion of black people within its prison walls. It is a country with great emphasis on sociability. Nonetheless, an exceptional number of their prisoners live under conditions of such an amount of isolation that nothing compares (King 1999). It is a country that emphasises limits to state power. Nonetheless, it has an enormous number of employees to keep that state power at a maximum, both at a federal and state level. In sum, it is a country that uses exclusion instead of inclusion, and in addition executes a portion of the most unwanted. Or, in the title of a forthcoming book by Johathan Simon, it is a country that is *Governing through Crime*.

Their penal policy represents a threat against human values in their own country. But also abroad this penal policy is a danger, through its model power. Parliamentarians from my country go to N.Y. to learn about zero tolerance. They are not alone in going. The danger is that it is we, the critical ones, who will be shamed into conformity with US standards.

* * *

How to behave in this situation? Should one, with some knowledge of prison matters, keep away from professional visits to a nation with this extensive penal apparatus? This is not my opinion. Of course, we should never cut off contact with those with whom we disagree.

On the contrary, we should go more often. But an absolute condition for professional visits to an open society as the US, must be a clear exposure of disagreement with their penal policy. It is necessary to expose that, seen from abroad, it is difficult to understand that the abnormal size of the US penal system does not become the completely dominant theme for colleagues in the US. It is difficult to understand why the very existence of this system does not become the dominant theme at their various professional meetings—and remain so until the US penal system is normalised. And the huge research foundations—The Rockefeller Foundation, The Ford Foundation—where are they when they do not see the challenge of bringing the inner workings of their state in order? How is it that nearly all professional groups within the universities and within the prisons do not convert to activist groups to change the US system into normality?

I would not necessarily be so open in my criticism when visiting totalitarian states. Clear talk, particularly clear public talk, might lead to immediate loss of contact. And it might bring our opposite numbers in such countries into serious trouble, sometimes danger. In prison research or in research on various forms of unacceptable behaviour, we all know well that we have an obligation to protect our sources. But so is also the case when our sources are persons who work in states where they might be severely punished. Visiting such states demands more self-censorship than visiting the US. I believe this difference is to the pride of the US.

I know, of course I know, that a great number of US colleagues, perhaps the majority, share many of these views on the US penal system. Many speak out, but feel at the same time completely powerless. Their critical potential is weakened by the fact that they live in a society that is not particularly interested in listening to other nations, to come closer to their standards. They *are* the standards. It is for that reason they can make their prison figures public. With pride. It is not difficult to understand that many US colleagues give in, shy away from blaming their system for its horrors.

So, I will not shame my US colleagues, I think they need more comfort than pain. But I will use them as a sign of warning. For Western Europe. It seems clear to me: We might soon follow. There are more criminologists in the US. But Europe is on the same track.

Two developments are clear. First, Europe is adapting to modern times in developments inside the system of punishment. The number of prisoners is on the increase. England and Wales have reached the Eastern European level when it comes to prisoners, with 129 per 100,000. France has increased to 99. The Netherlands is a lost case. Even Finland has begun climbing, from 60 in 2001 to 66 in 2002.

And then to my second point which has to do with the possibilities for academic criticism of this development. It sounds so impractical what criminologists can say on the political arena, so much against the spirit of our time. We censor ourselves so as not to feel completely out of tune. And then, of particular importance, we have students in need of work. More theoretical knowledge about crime and crime control is not of obvious importance for the jobs our students will apply for and will not necessarily be received with enthusiasm by those who are to recruit them.

Criminology, also in Europe, is at present trapped in its own success. Jobs for researchers are dependent on jobs for students, which depend on the type of training that makes them useful for jobs in the very institutions we are professionally equipped to raise questions about. Stan Cohen was right in his warnings in "*Against Criminology*".

The particular danger in this situation is that it all happens at the very same time when the universities are converting to market institutions. When we need them most, the protective shields are taken away. From a theoretical point of view, the whole development is a fascinating confirmation of the power of the one-dimensional market oriented society. From the perspective among those of us with a strong wish for preserving room for free criticism, it is a most alarming development.

Come out of the ivory tower, say so many. But we are out. Let us come in again, would be my answer. At a minimum, let us also have the ivory tower. We cannot only be out. Distance is a necessity to see the whole perspective and to become useful to our societies in a more fundamental way.

I thank you for your attention.

Crime Control and Integration

Paul Wiles

Director, Research, Development & Statistics,
Home Office, UK

Nils and I have known each other for a long time. Once—and since he still appears so young and vigorous I won't embarrass him by revealing how many years ago, but let's just say we were both young men—I was driving Nils through London. At one point Nils gazed round the great metropolis and said "I wonder how they deal with the sewerage?". Well, we've spent much of our lives worrying about policies that tried to label some human behaviour as "sewerage", and resisting policies that regarded them as just as easy to get rid of. We did so because we shared a set of ideals about what was possible from human association and how it could be best achieved. Let us just call them "enlightenment ideals". They were important to us because they represented the good side of European culture, stood in opposition to its dark side, and underlay much of the corpus of what we now think of classical European criminology. One of the founding fathers of British criminology—Professor Sir Leon Radzinowicz—in his last speech to the British Society of Criminology just before he died—berated us for having forgotten that those ideals should be at the heart of our work. And Nils Christie has just pointed to the same danger.

I do not believe that we have abandoned these ideals. I think that in spite of our differences they still lie at the heart of common European culture. I want to take a slightly different look at the problem than Nils—the practical politics of future reform in Europe—in which figures about crime do play a part, and will do so whether we like it or not.

In the past the enlightenment ideals were owned by a governing liberal elite. In Britain, for example, up until the mid-1980's, penal policy was driven by such a liberal elite consensus—all the more surprising because ministers often faced outright hostility from their own political supporters for maintaining this consensus. We can not ignore the fact that some policies were only sustained in contradiction to mass opinion and not because they had widespread public support. I doubt, for example, that in the UK we would have abolished the use of capital punishment if it had been left to the popular will—or, at the very least, it would have been much more difficult to do so. But things have changed. Most European countries now have democracies governed by rotating political groups whose claim to power increasingly rests on their ability to represent and mobilise mass public opinion.

Of course, none of us have direct democracy—we all have some form of representative democracy. The job of our elected politicians is not simply to reflect mass opinion, but to lead and persuade their electorates of the policies that should be pursued. Nevertheless, political groups can not totally deny public opinion without risking being excluded from exercising power. A key element is

that politicians have to convince the public that they are in touch with and understand their experience—or for reasons I want to explore in a moment—that they are not ignoring the public’s perceptions of the nature of the crime problem. The present governing political party in Britain spent many years out of power, in part it is sometimes argued because they seemed to espouse a romanticised view of criminality at odds with public perceptions and feelings. The consequence is that whilst the basic principle of the enlightenment ideal might remain, how they are to be interpreted and applied to current problems is now a matter of complex and on-going dialogue with the public. Both principles and penal policies in democratic societies will develop in response to changes both in the nature of crime and the perceived threat it presents to the public. One of the commonest complaints against the European Union is that neither the Commission nor the Parliament have this kind of direct democratic responsiveness. The result is that we can no longer rely simply on the opinion of an educated, liberal political elite to deliver the kind of policies that Nils desires—even if they represent our views and even if we believe our expertise ought to carry a special standing in this regard.

In modern mass democracies we have to be prepared to contemplate changes in our penal policies and that in the debates about such changes we will have to engage a broader public. Enlightenment ideals do not prescribe a particular penal policy but rather a set of general principles from which policies can be derived. How those principles are interpreted as the basis for policy can be the subject of legitimate debate as can the relevance of empirical evidence for such decisions. In trying to inform such debates we will have to be able to demonstrate the relevance of our ideas and evidence to the experience of crime of our fellow citizens. If criminology in Europe can not speak outside of the academy then we will fail to influence the future direction of European penal policy.

The general theme for this third conference of the European Society of Criminology is “Crime and Crime Control in an Integrating Europe”. Nils has already set out some philosophical benchmarks for us. Other plenary speakers will be looking closely at the detailed evidence for how far our experience of crime is a common one, at recent trends in the politics of crime and penal policy and at the implications of the emerging, new constitutional framework for the European Union.

I want to address a slightly different issue to Nils—namely, how penal policies might develop in a Europe in which mass democratic engagement will be a dominant theme in each of our separate countries—and in which there is increasing pressure for such engagement at the level of the European Union.

The current position as regards penal policies across Europe does show variations in crime and the response to crime. I suspect that if Nils wished to use statistics to produce a catalogue of infamy then my own country would come out, in his eyes, as in need of a dose of re-integrative shaming. (Figure 1) For example, if we look at the size of the prison populations in Europe then England & Wales presently has the highest imprisonment rate per head of population of any EU country and higher than many other European countries.

However, we may need to look beyond this particular statistic. I suspect, for example, that my Ministers might want to look not just at the imprisonment rate per head of population but also the imprisonment rate per recorded crime. (Fig-

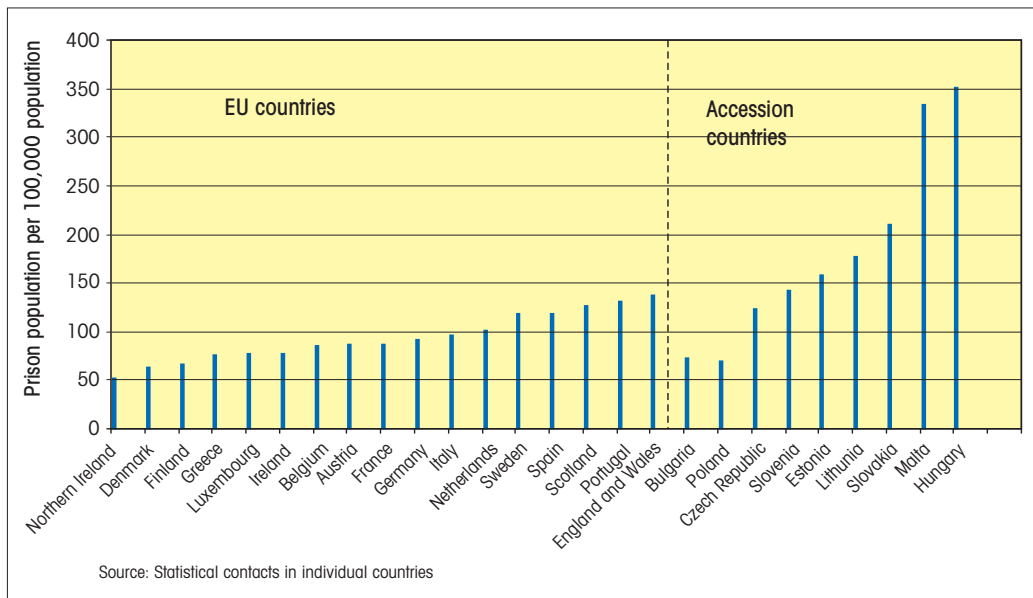


Figure 1. Rate of prison population per 100,000 population in 2002

ure 2). They might argue that their penal policies have to respond to the crime problem they are facing. After all the recorded crime figures inevitably frame the debate on penal policy in each country. As you can see looked at this way the picture does change somewhat. Since the recorded crime rates vary significantly between European countries (Figure 3) then one could argue that different countries might reasonably develop different penal strategies. The recorded crime data shows very significant variations in both level and mix of crime between different European countries and some support for these variations is provided by the ICVS. But we don't really know how far the differences are an artefact of recording practices between different countries, which in turn could culturally affect responses to a victim survey.

We do know that the ratio of the rate of household and personal crimes reported through the ICVS and recorded crime rate varies very significantly between European countries (Figure 3). On the face of it it seems that some countries simply record more crime than others.

The ICVS suggests that people in different countries have broadly similar views about what constitutes a crime and their relative seriousness. This, in principle, ought to lead to a communality of desire to report to the police. However, the same survey also shows that trust in the police and confidence that it is worth reporting a crime to them also varies between countries (Figure 4). Furthermore, such differences can themselves also vary over time. To take the specific English experience we know, from the British Crime Survey, that the willingness to report crime to the police has varied over the last 20 years' from a low point of 36% to a high point of 44%. We also know that the police recording of the crimes reported to them over the same period has varied from 50% to 70%. Broadly the

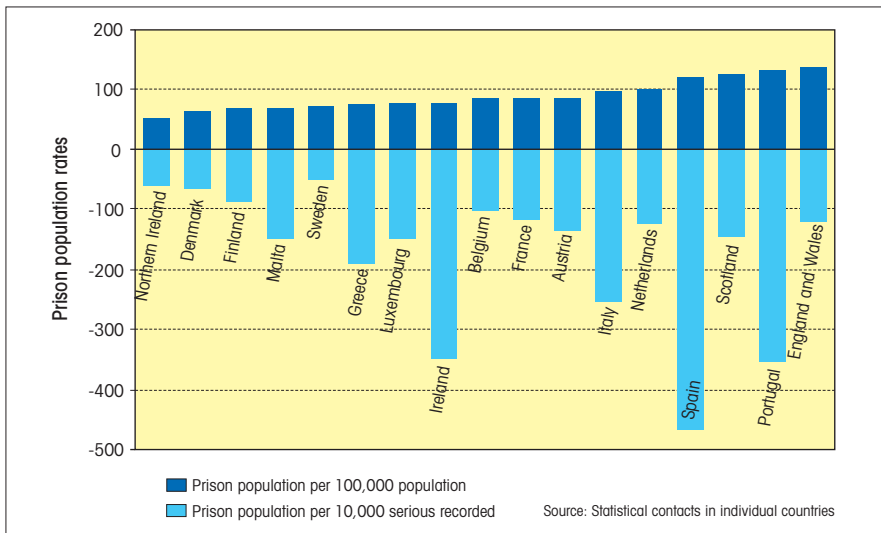


Figure 2. Prison population per head of population and recorded crime levels 2002

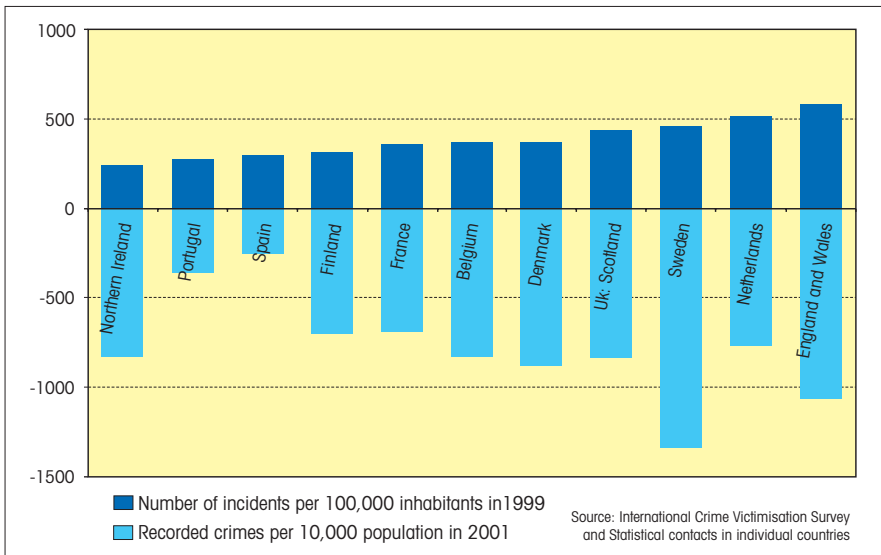


Figure 3. Comparison of incident victimisation rate in 1989 and recorded crime levels for serious offences in 2001

rates of both reporting and recording have been increasing in England over the last twenty years. In other words, regardless of what is happening to actual crimes the rates of both reporting and recording have been adding an artificial inflationary element to the recorded crime figures in England and Wales.

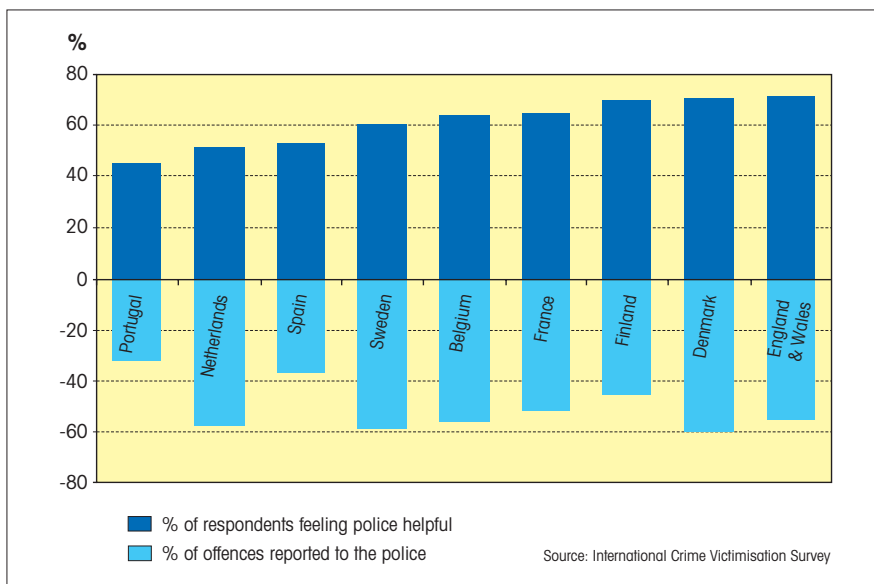


Figure 4. Comparison of respondents feeling police are helpful to percentage of offences reported to the police 1999

We also know that there are differences in the way in which crime is recorded in different countries. For example, in some countries a crime is recorded at the point when a victim reports a crime to the police but in others at the point of arrest or charge. And there is also considerable variation in the range of things which the police routinely record. In my own country we have recently significantly increased the range of events recorded as crimes. First, in 1998, we changed the counting rules the police have to follow when they decide whether to record an event reported to them by the public as a crime. The new rules, for example, meant that the police were instructed to record all minor violence to the extent that now about half of all our recorded violent crime actually involved no physical injury to anyone! The effect of these changes in the counting rules was to inflate the overall crime count by 14%. Then in 2001 we additionally introduced a new National Crime Recording Standard. This was done because we knew that not all police forces were recording crime in the same way—in simple terms some police were recording a crime as long as someone claimed to be a victim, whilst others only did so if there was evidence to support the claim. The new Standard requires all police forces to record a crime as long as there is no evidence to contradict what is being reported to them. The effect of this new Standard, together with the previous change in the counting rules, has been to inflate the overall crime count by just over 25%. Such changes have been driven by the best of public policy considerations. First, by a desire that all crimes—no matter how trivial—should be recorded so that the government is clear about the total scale of the problem. Second, by a desire for a more victim-focused criminal justice system driven by victim-led recording. Third, by a desire for greater uniformity in recording practices as the basis for managing the relative performance of

different police forces: you can't performance manage the police if they are all recording crime differently. Finally, so that all of this will make the police more visibly accountable for how well they deal with crime. All of these reasons are quite laudable in themselves but the effect has been to inflate recording of crime by a quarter and, as I have explained, this was on top of an increasing trend for the public to report incidents to the police.

Once we adjust statistically for these inflationary recording changes then crime in England and Wales has been falling for the last six or seven years. This fall is also confirmed by the British Crime Survey, which is now one of the largest victim surveys in the world and conducted on a rolling continuous basis. We now have the lowest risk of victimisation in England and Wales for twenty years. The trend is, of course, broadly similar to the trends in many European countries and in North America.

Nevertheless, counting more crime has political implications. In spite of the fact that the risk of victimisation is at its lowest level for twenty years 73% of the public in England and Wales believe that crime has been increasing.

The government has explained that the increase in recorded crime is simply an artefact of changes in recording practices but the press have by no means been prepared to report such explanations. I have personally briefed every journalist of every newspaper, radio station and television channel who reports on crime and on what these statistics mean. Yet most of the media have continued to report the statistics as showing a real increase in crime. On the day we reported that the risk of women being the victim of violence was at the lowest level for many years, one national newspaper nevertheless had its front page entirely covered with the faces of women who had suffered violent crime. Sometimes such miss-reporting has a more amusing side. On the day we published the last crime statistics in England the Daily Telegraph had a cartoon of me on the front page calling for help and saying "Please someone come and help me, I've just frightened myself to death looking at the crime statistics"! But such miss-reporting has real effects—we know, for example, that those who read the more sensational British tabloid press are more likely to think that crime has been increasing.

However, such beliefs, whether fanned by the media or not, have real political consequences. They place great pressure on a democratic government to be seen to be responding. Here is the ultimate irony. A government wanting to improve its recorded crime statistics for sensible, almost high-minded reasons can find that it rebounds as pressure to adopt a tougher law and order response to an imagined problem.

The first effect of recording more crimes is that other common measures of an effective criminal justice also look poor—because the denominator is being inflated. For example, police clear-up rates are often used as a measure of police effectiveness yet recording more crime produces a poor clear-up rate even for the same level of actual clear-ups. This further undermines confidence in a criminal justice system and puts further pressure on a government to be seen to be taking action.

One result in the case of England—as my first slide illustrated—has been to increase our prison population to a level where it is now the highest per capita rate in the EU. As you can imagine, we have been looking very closely at why the

prison population has risen in this way. We know that the increase has been driven by both a rise in the rate of incarceration and in the average sentence length, with the latter being particularly problematic for the size of prison population. However, we also know that most of this increase can not be accounted for by changes in sentencing law or penal legislation. In other words, most of this increase was not the consequence of a considered policy shift emanating from Parliament or Ministers. Rather the change has been driven by a change in the behaviour of judges within a climate of general political debate which has been dominated by the perceived increase in crime and demands for tougher criminal justice responses. Our judiciary may be constitutionally autonomous but they have been very responsive to the public mood and the political debate.

We also, of course, know that England is by no means unique in Europe in increasing its prison population. Furthermore, such changes are more global and are not unconnected to changes in recorded crime. The irony, by the way, is that England has had a falling recorded crime rate once adjustments have been made for the changes in recording practices I have already explained. However, you now know that the political debate in England was actually taking place largely on the premise that crime was increasing at an alarming rate and this was believed to be the case by most of the public. You will know whether the same problem has been present in other European countries.

Now I am not claiming that, in England, a misunderstanding about recorded crime has been solely responsible for our increasing use of prison or the general trend of our penal policy. Even though overall crime has been declining, and mass property crime such as burglary and car crime have particularly declined, there has also been an increase in some direct contact crime, such as street robbery or mugging and also in some limited kinds of serious violence. It is also the case that after the collapse in Britain of a liberal political consensus about crime policy, which I described earlier, law and order has played a central role in subsequent British election campaigns and has become almost a touchstone for the electability of a political party. However, worries about order and the basis for social trust have also been present in most late modern societies and debates about crime and penal policy are often used to symbolise these broader concerns.

The irony that I am pointing to is that these concerns have co-existed with another trend of late modern societies—namely, the extension of formally rational management techniques into the public sector, by devices such as target setting and performance management. Such techniques rely upon more detailed and accurate information flows than were required in the past. In Britain, we have been collecting national recorded crime statistics since the 1860s and they were originally put in place at a time when there was a similar concern for improving the performance of public services. In nineteenth century Britain, as in many other European countries, statistical collections were often used as the basis to drive reform. They were not so central, however, when there was a broad consensus about penal policy. Now they are again at the heart of the debate about reforming public services and penal policy.

Until recently we collected national crime statistics twice a year and then only down to police force level. Now we are collecting such data every month, seven days after the end of the month, and at an increasingly localised level. Such man-

agement techniques have been particularly explored by the British government but they are simply examples of a much broader trend in the rationality of administration.

If I am correct then Nils's plea for more enlightened penal policies is not going to be easy to achieve. It will have to be argued for as part of a mass discourse about the nature of contemporary societies and how they can best be governed. The context for that debate will be a general concern about trust and security, heightened by immediate worries about terrorism, migration and global forms of crime. In order to respond to such concerns in terms of delivery of public services—and especially in the crucial areas of maintaining order and managing crime—governments will turn to ever more formally rational management techniques to try and drive up the quality and accountability of service delivery in the hope of rebuilding public trust. However, these very techniques will, at least initially, reveal the problems in more detail than in the past and radically increase the demand for penal policies to address people's detailed and immediate crime problems. People do want answers to global threats and they want policing to maintain a high level of order and civility in their own neighbourhoods. The biggest threat to the enlightenment values that Nils cherishes is that European states fail to respond adequately to these demands.

Mayhem and Measurement in Late Modernity

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In April and May 1995 the columns of *The New York Review of Books* were subject to a remarkable and, some would say, acrimonious debate. It was an argument which was, to my mind, one of the most significant examples of academic whistle-blowing, wide ranging in its critique, apposite in its target and reasoning, timely and badly needed yet falling, as we shall see, on stony ground.

On one side of this skirmish was Richard Lewontin, Professor of Zoology at Harvard, a distinguished geneticist and epidemiologist, on the other a team of sociologists led by Edward Laumann and John Gagnon from the University of Chicago, who had recently published *The Social Organisation of Sexuality* (1995), and its popular companion volume *Sex in America: A Definitive Survey* (1995). On the sides, chipping in with gusto, Richard Sennett, joint Professor of Sociology at the LSE and NYU.

This debate is of interest because it represents a direct confrontation of natural science with sociology or social science, as it is often hopefully and optimistically called. Such encounters are relatively rare and tend to occur when particularly politically distasteful findings are presented to the public as cast iron and embellished with the primatur of science. A recent example of this was the publication of Richard Herrnstein and Charles Murray's *The Bell Curve* (1994), accompanied by pages of statistical tables which purported to present the scientific evidence for the link between race, IQ and, indeed, crime. At that time many prominent scientists including Steven Rose, Stephen Gould were moved to intervene but normally the walls between disciplines remain intact: Indeed a collegial atmosphere of mutual respect coupled with lack of interest ensures that parallel and contradictory literatures about the same subject can occur in departments separated sometimes by a corridor or, more frequently, a faculty block. In the case of the natural and social sciences this is complicated by a unidirectional admiration—a one-sided love affair, one might say—or at least a state of acute physics envy—between the aspiring social scientist and the natural sciences. Be that as it may, a considerable proportion of sociologists, the vast majority of psychologists and an increasing number of criminologists embrace, without thought or reservation, a positivistic path. Namely, that natural scientific methods can be applied to human action, that behaviour is causally determined, that incontestable objectivity is attainable and that precise quantitative measurement is possible, and indeed preferable. In the case of criminology, this entails the belief that the crimes of individuals can be predicted from risk factors and that rates of

crime can be explained by the changes in the proportion of causal factors in the population.

Richard Lewontin sets out to review the two books. They arose on the back of the AIDS crisis and the need to understand the epidemiology of its spread. The survey was eventually well funded by the research foundations, was conducted by NORC, the premiere social survey research organisation in North America. The project involved a sample of 3,432 people representing 200 million post-pubertal Americans. Just for a minute let us think of the audacity of the sample survey—and this one was more thoroughgoing than most—to claim to generalise from such a small number to such a large population of individuals. Lewontin's critique is on two levels, one the problem of representativeness and two—and more substantially—the problem of truth.

Let us first of all examine the problem of representation. An initial criticism is that the random sample was not actually from the total population. It is based on a sample of addresses drawn from the census, but it excluded households where there were no English speakers nor anyone between the ages of 15–59. Most crucially it excludes the 3% of Americans (some 7.5 million) who do not live in households because they are institutionalised or are homeless. This latter point is, as Lewontin indicates, scarcely trivial in understanding the epidemiology of AIDS as it excludes the most vulnerable group in the population, including those likely to be victims of homosexual rape in prison, prostitution, reckless drug use, the sexually 'free' college-aged adolescents etc. The random sample is not, therefore, drawn from the population as a whole: a *very* atypical population is omitted. Such a restriction in population sampled is a usual preliminary in survey research.

However, once this somewhat restricted sample was made, the research team did not stint in their efforts to get as large a response rate as possible. After repeated visits, telephone calls and financial inducements ranging from \$10 to \$100, the result was a response rate of 79%—of which they were duly pleased. But, as Lewontin points out: 'It is almost always the case that those who do not respond are a non-random sample of those who are asked' (1995a, 28). In this case it could well be prudishness, but in the case of other surveys equally non-random causes of non-responses. For example, in our own experience of over fifteen large-scale crime and victimisation studies which we ran at The Centre for Criminology, Middlesex University (see for example Jones *et al*, 1986; Crawford *et al*, 1990) we made every effort to reduce non-response but never managed better than 83%. Indeed, criminal victimisation surveys as a whole have between one-fifth to a quarter of respondents whose victimisation is unknown. As I remarked at the time, in the thick of quantitative research:

'It goes without saying that such a large unknown population could easily skew every finding we victimologists present. At the most obvious level, it probably includes a disproportionate number of transients, of lower working class people hostile to officials with clipboards attempting to ask them about their lives, and of those who are most frightened to answer the door because of fear of crime.' (Young, 1988: 169).

Even panel studies which follow a given population over time suffer from this problem. To take the famous Seattle Social Development Project as an example (see Farrington *et al.*, 2003). This is a prospective longitudinal survey of 808 children. To start with, these are the children/parents who consented to be included out of the population of 1,053 fifth-grade students targeted—that is, it has a 70% response rate from the outset—with 30% refusing consent. Secondly, youths dropped out over time so, for example, by the age of 12 the sample fell to 52%. There is, of course, every reason to suspect that those who initially did not consent and those who fell out of the panel might have different delinquency patterns to those who consented and remained within the panel.

Lewontin's first point is, therefore, clear and is as applicable to criminology as to sociology. Let me at this point remind the reader of Quetelet's warning. Adolphe Quetelet, the founder of scientific statistics, and a pioneer in analysing the social and physical determinants of crime, introduced into academic discussion in the 1830s the problem of the unknown figure of crime. That is crime not revealed in the official statistics:

'This is also the place to examine a difficulty ... it is that our observations can only refer to a certain number of known and tried offenders out of the unknown sum total of crimes committed. Since this sum total of crimes committed will probably ever continue unknown, all the reasoning of which it is the basis will be more or less defective. I do not hesitate to say, that all the knowledge which we possess on the statistics of crimes and offences will be of no utility whatsoever, unless we admit without question that there is a ratio, nearly invariably the same, between known and tried offences and the unknown sum total of crimes committed. This ratio is necessary, and if it did not really exist, everything which, until the present time, has been said on the statistical documents of crime, would be false and absurd.' (A. Quetelet, 1842: 82)

Quetelet's fixed ratios are, of course, a pipe dream, as unlikely as they would be convenient. His warning, written in 1835 (English translation 1842) has echoed throughout the criminology academy for the last one hundred and seventy years. If we do not know the true rate of crime all our theories are built on quicksand. They will be of 'no utility', 'false', and indeed 'absurd'. Legions of theorists from Robert K. Merton through to James Q. Wilson have committed Giffen's paradox: expressing their doubts about the accuracy of the data and then proceeding to use the crime figures with seeming abandon, this is particularly true in recent years when the advent of sophisticated statistical analysis is, somehow, seen to grant permission to skate over the thin ice of insubstantiality (Giffen, 1965; Oosthoek, 1978). Others have put their faith in statistics generated by the social scientist, whether self-report studies or victimisation surveys, as if Quetelet's warning no longer concerned them and the era of 'pre-scientific' data was over.

Indeed, Richard Sparks and his associates, in the introduction to their groundbreaking British victimisation study, summarised the decade of American research prior to their own with a note of jubilation: 'Within a decade ... some of

the oldest problems of criminology have come at least within reach of a solution.’ (Sparks *et al.*, 1977: 1). As we have seen, the problem of non-response means that such a resolution of the age-old problem of measurement is not resolved. It would be so, of course, if the non-respondents were just—or almost—like the respondents and indeed such an excuse is often invoked with as much likelihood of validity as Quetelet’s ratios. As it is, the atypicality of non-respondents is likely to overturn the significance levels of any probabilistic sampling. Richard Sparks was quite clear about this in his assessment of the potential of victimisation studies. His initial excitement became tempered by considerable caution. Thus he writes, ten years later:

‘Much too much fuss is made, in practically all official NCS publications, about statistical significance (i.e. allowance for sampling variability). A variety of standard errors and confidence intervals for NCS data are now routinely quoted in those publications. Yet it is clear that nonsampling error is of far greater magnitude in the NCS; adjustments ... may offset some of this nonsampling error, though only in a ballpark way, which makes questions of sampling variability virtually irrelevant. My own view (not shared by all) is that if after commonsensical adjustment a trend or pattern appears which makes some sense, then it ought not to be disregarded even if it does not attain some magical level of statistical significance.’ (1981: 44, n. 42)

Telling the Truth?

But let us go on to Lewontin’s next criticism. And here the problem is even more important and substantial than that of non-response and the dark figure. This revolves around the key question of whether those who responded to the questionnaire were in fact telling the truth. That is, that social surveys may not only have dark figures of non-respondents, but a dark figure of non-response—and indeed ‘over-response’—amongst the respondents themselves.

It is rare for surveys of attitude or self-reported behaviour to have any internal check as to validity. After all, if people say they would rather live by work than on welfare, if they profess liberal attitudes on racial matters, or if they tell you that they were assaulted twice last year, how is one to know that this is not true? One may have one’s suspicions, of course, but there are few cast iron checks. Every now and then, however, anomalies stare you in the face. In the case of this survey there is a particularly blatant example. For the average number of heterosexual partners reported by men over the last five years is 75% greater than the average number reported by women. This is an obvious anomaly, it is, as Lewontin points out, like a violation of the only law in economics that the number of sales must be equal to the number of purchases. What is startling is that the researchers are well aware of this. Indeed, they devote considerable time to debating for which of several reasons this ‘discrepancy’ might have occurred and conclude that the most likely explanation is that ‘either men may exaggerate or women may underestimate’. As, Lewontin remarks,

'So in the single case where one can actually test the truth, the investigators themselves think it most likely that people are telling themselves and others enormous lies. If one takes the authors at their word, it would seem futile to take seriously the other results of the study. The report that 5.3 percent of conventional Protestants, 3.3 percent of fundamentalists, 2.8 percent of Catholics, and 10.7 percent of the non-religious have ever had a same-sex partner may show the effect of religion on practice or it may be nothing but hypocrisy. What is billed as a study of "Sexual Practices in the United States" is, after all, a study of an indissoluble jumble of practices, attitudes, personal myths, and posturing.' (1995a: 29)

What is of interest here is the awareness of thin ice, yet the ineluctable desire to keep on skating. Just as with Giffen's paradox, where the weakness of the statistics is plain to the researchers yet they continue on to force-feed inadequate data into their personal computers, here the problem of lying, whether by exaggeration or concealment, does not stop the researchers, for more than a moment, in their scientific task. Of course, in fact as a sociologist, such findings are not irrelevant: they inform you much about differences in male and female attitudes to sex—what they *don't* tell you is about differences in sexual behaviour. Yet what Richard Lewontin is telling us is that interview situations are social relationships—that results are a product of a social interaction and will vary with the gender, class, and age of the interviewer and of the interviewee. But here we have it: it needs a Professor of Biology to tell sociologists to be sociologists. Thus, he concludes:

'The answer, surely, is to be less ambitious and stop trying to make sociology into a natural science although it is, indeed, the study of natural objects. There are some things in the world that we will never know and may that we will never know exactly. Each domain of phenomena has its characteristic grain of knowability. Biology is not physics, because organisms are such complex physical objects, and sociology is not biology because human societies are made by self-conscious organisms. By pretending to a kind of knowledge that it cannot achieve, social science can only engender the scorn of natural scientists and the cynicism of humanists.' (ibid.: 29)

Of course this is not the end of it. Edward Laumann and his colleagues are outraged. They do not think it 'appropriate for a biologist' to be reviewing their work, he does not have the right 'professional qualifications'—'his review is a pastiche of ill-informed personal opinion that makes unfounded claims of relevant scientific authority and expertise' (1995b: 43).

Lewontin, in reply, notes caustically that it is understandable that the team

'would have preferred to have their own work reviewed by a member of their own school of sociology, someone sharing the same unexamined methodological assumptions. They could avoid the always unpleasant necessity of justifying the epistemic basis on which the entire structure of their work depends.' (1995b: 43)

As to his incompetence with regards to statistical analysis, he points to being a bit disturbed to have to reveal his CV, but that he has a graduate degree in mathematical statistics which he has taught for forty years and this is the subject of about one-tenth of his publications including a textbook of statistics!

And, of course, such a process of believing in the objectivity of data is fostered by the habit of researchers of *not* conducting their own interviews, of employing agencies such as NORC, or second-hand, in terms of using older datasets or even a meta-analysis of past datasets. So the data arrives at their computers already punched, sanitised: it is a series of numbers with scientific-looking decimal points. Human contact is minimised and a barrier of printout and digits occurs between them and human life.

But let us leave the last remarks of this section to Richard Sennett. He congratulates Lewontin on the brilliance of his analysis, he laments the current fashion of scientific sociology, and concurs with Lewontin's remark that, if work such as this is typical, then the discipline must be in 'deep trouble'. That's putting it mildly, suggests Sennett, 'American sociology has become a refuge for the academically challenged' (1995: 43). But he adds that mere stupidity itself cannot alone explain the analytic weakness of such studies for 'sociology in its dumbed-down condition is emblematic of a society that doesn't want to know much about itself' (*ibid.*).

Lessons for Criminology

But what has all of this to do with criminology? A great deal and more, for it is probably criminology, of all the branches of sociology and psychology, where the problem of unchecked positivism is greatest. The expansion of academic criminology was a consequence of the exponential increase in the size of the criminal justice system just as the shift from students studying social policy/ administration to criminology parallels the shift from governmental interventions through the welfare state to those utilising criminal justice. The war on crime followed by the war on drugs and then on terror. This has been accompanied by an expansion in funding designed to evaluate and assess governmental interventions and programmes. The material basis for the revitalisation of positivist criminology is considerable and, certainly within the United States, approaching hegemonic. (see Hayward and Young, 2004)

Embarrassing Findings

Criminological research is replete with findings which range from the very unlikely to the ridiculous. I will give just a few examples:

Rarity of Serious Crimes

Victimisation studies consistently report levels of serious crime which are gross underestimations and are *freely admitted* as such. For example, the first British Crime Survey of England & Wales in 1982 found only one rape and that attempted.

Variability of Findings with Different Instruments

If we take sensitive topics such as incidence of domestic violence, the range of figures are extraordinarily wide—and, in no doubt, underestimates. Thus in 1998 the percentage of women experiencing domestic violence, defined as physical assault with injury, was 0.5% in the police figures, 1% in the British Crime Survey, and 2.2% when Computer Assisted Self-Interviewing was used. An independent survey found a rate in the region of 8%. (Mooney, 1999) Which figure in this range is one going to feed into one's PC? What sort of science is it where estimations of a variable vary sixteen fold?

Self-Report Studies

Self-report studies consistently come up with results showing that there is little variation between the levels of juvenile delinquency between the working class and the middle class, between black and white, and produce a considerably reduced gap between males and females. Hence Tittle and Vilemeyer's (1977) extraordinary claim that there is no relationship between class and crime which has been taken at face value by many theorists. All one can record about this surmise is John Braithwaite's pithy remark:

'it is hardly plausible that one can totally explain away the higher risks of being mugged and raped in lower class areas as the consequence of the activities of middle class people who come into the area to perpetrate such acts.' (1981: 37)

The Assault Rate on White Men

The United States NCVS regularly comes up with results which show that the assault rate reported by white men is higher than or just about equal to that of black men. For example, in 1999 the rate was 32.3 per 1,000 for whites compared to 31.0 per 1,000 for blacks. This is totally against any evidence from homicide rates or other indices of violence which would suggest a much higher rate for blacks (see commentary in Sparks, 1981).

Findings of the International Crime and Victimization Studies

The International Crime and Victimization Study (van Kesteren *et al*, 2000) frequently finds rates of reported violence between nations which are almost the inverse of the homicide rates. (See Young 2004)

The Pluralism of the Dark Figure

Up till now we have discussed either technical problems of non-response or the more substantive problem of exaggeration or lying. I want now to turn to a third problem which generates even greater and more impenetrable barriers for scientific quantification. The first two problems—which Lewontin addresses—presume that there is an objective data to be registered. However, there is a profound difference between measurement in the natural world and in society, namely that the definitions of social phenomena are constructed by individuals and in this they will vary with the social constructs of the actors involved. If one hands out a dozen metre rules to students and asks them to measure the length of the seminar room, they will come to a common agreement with a little variation for accuracy. If one asks the room full to students to measure levels of violence they are, so to speak, already equipped with a dozen rules of different gauge and length. They will come out of the exercise with different amounts of violence because their definitions of violence will vary. And the same will be true of the respondents to a victimisation study. All of us may agree that a stab wound is violence, but where along the continuum does violence begin: is it a shove (if so, how hard?), is it a tap (if so, how weighty?), or perhaps it is a harsh word, an obscenity, a threat? People vary in their definitions and tolerance of violence: there is a pluralism of measures.

Let us look at two ‘anomalies’ in this light. The peculiar results of the International Crime Victimisation Studies where the rates of violence reported approximate the inverse of the rates of violence occurring (if we are to trust the homicide figures) may well be not merely that reporting to strangers distorts the level of violence, but that countries with low levels of violence may well have low levels of tolerance of violence and thus report acts which other, more tolerant/violent nations, might ignore. Similarly the comparatively higher rate of violence against white compared to black men may reflect differences in definition as to what constitutes ‘real’ violence. Once we have acknowledged the pluralism of human definition, we can then return to the dark figure with even greater doubts and trepidations. For the dark figure will expand and contract not merely with the technical means we bring to it, but with the values of the respondents and indeed the categories of the interviewers. And the social rather than the merely technical permeates our measurement on all three levels: whether it is the respondents who refuse to talk to us, to those that in their relationship with a stranger (of class, gender, age, and perhaps ethnicity) will attempt to convey an impression of themselves (a product of their own personal narrative which they have woven around the ‘facts’ of their lives), to the values and meanings which the interviewer brings to the table.

Eysenck's Dilemma

It is important to stress how damaging such findings are for the positivist, for the scientific project of studying humanity. For positivism needs fixed categories, agreed measurements, objective and uncontested figures. The late Hans Eysenck, the doyen of psychological behaviourism, recognised this quite clearly in the last book he wrote on criminology with his colleague Gisli Gudjonsson. For, in *The Causes and Cures of Criminality* (1989) they began by taking issue with the authors of *The New Criminology* (Taylor *et al*, 1975) in their assertion that crime is not an objective category but a product of varying legal fiat—Eysenck and Gudjonsson quite clearly recognise this as an obstacle to science and get round the argument by differentiating two types of crime: victimless and victimful crime. Victimless crime—and they give examples from prostitution to anal sex—they concede, are subjectively and pluralistically defined. These are eliminated from the realm of objectivity—but victimful crimes, and here they list such phenomena as theft, assault, murder, rape, are, they argue, universally condemned and, therefore, clearly objective. This is obviously untrue: all of these crimes are subject to varying definitions—to talk of them having a fixed nature is to teeter on the brink of tautology. Rape is, of course, universally condemned because it is an illegal sexual attack, but what is rape varies and, indeed, expands with time, witness the acknowledgement of marital rape *as* rape. And assault, as we have seen, is greatly dependent on our tolerance of violence.

Such a situation of social construction is subject in late modernity to greater contest and pluralism of definition. So the hidden figure expands and contracts with the values we bring to it. In a pluralist society it is no longer possible to talk of a hidden figure x with which we can attempt to measure, but a whole series of hidden figures x , y , z etc.

The Bogus of Positivism

The positivist dream of a scientific sociology of crime, which attempts to objectively relate cause and effect, becomes all the more impossible in late modernity. As we have seen, both the causes of crime and the definitions of crime, that is the outcome or effects, become problematised. To move from, say, unemployment to crime, or deprivation to crime, you need narratives; correlation alone cannot assure causality, it is only the narratives which link factors to outcomes that can do this. People turn 'factors' into narratives—they are even capable of turning such factors on their heads. Furthermore, what is crime itself is part of this narrative. It is a variable dependant on subcultural definition and assessment.

The bogus of positivism was that it only *seemed* to work when the world was reasonably static, where vocabularies of motive were seeming organically linked to points in the social structure and where definitions of crime were consensual and unproblematised. The loosening of moorings in late modernity, and the multiple problematisation consequent on pluralism destroys this illusion. As Martin Nicolaus exclaimed in his famous article in *Antioch Review* so many years ago,

‘What kind of science is this, which holds true only when men hold still?’ (1969: 387)

We live in a time of rapid change. In these times, rather than the variables determining the change, it is almost as if the change occurs and the factors seem to scuttle after them. Prediction of real life events of any consequence has always been a lamentable failure in the ‘social sciences’, just think of the collapse of communism and look at the writings of political scientists prior to the days of *glasnost*. In criminology we have witnessed in our lifetimes two dramatic changes completely contrary to our scientific predictions. First of all, in the period from the sixties onwards, the crime rate increased remorselessly in the majority of industrial countries despite the fact that all the factors which had been identified as reducing crime were on the increase (e.g. wealth, education, employment, housing). I have termed this elsewhere the ‘aetiological crisis’ in criminological theory (1994) and this set in motion an intense debate amongst criminologists and is the basis for the extraordinary creativity and plethora of theories that occurred in the last thirty years. But having spent the whole of our professional lives researching why crime should almost inexorably go up (whether by relative deprivation, broken homes, social disorganisation, breakdown of controls, labelling, etc.) we find ourselves in the infuriating position of the crime rate in very many industrial countries (including the US and the UK) beginning to go down, against all predictions that I know of. Here we have a double trauma or whammy, if you want!

The Crime Drop in America and the Crisis of Positivism

On November 16 2000, in San Francisco, a packed meeting of the American Society of Criminology gathered together to discuss a most extraordinary happening in the world of crime. For from 1991 onwards, violent crime in the United States, which had led the advanced world by far in rates of murder and robbery, had begun to fall. Homicide dropped by 35.7 per cent from 1991 to 1998 (from 9.8 to 6.3 per 100,000) (Blumstein and Wallman, 2000). Al Blumstein, of the National Consortium on Violence Research had brought together a dazzling array of experts: demographers, economists, sociologists and criminologists, all contributing their views on the change with graphic charts and probing statistical analysis. I listened with fascination to how they factored each of the developments over the period to explain the phenomenon, from changes in the distribution of handguns, the extraordinary prison expansion, zero-tolerance policing, down to changes in crack-culture and technology. At the end of the session they asked for comments from the audience, no doubt expecting some detailed remark about policing levels or the influence of handgun availability, or such like; but the first question, from a Canadian woman, was something of a revelation. She pointed out, ironically, how Canadians were supposed to be condemned to culturally lag behind their American cousins, but that they too had had a drop in violence, despite the fact that they had not experienced such a period of rapid prison expansion, that zero-tolerance policing was not *de rigueur* and that Can-

ada had only a small problem of crack-cocaine. (see commentary in Ouimet, 2002). She was followed by a Spanish woman, who said something very similar about her country. And, in fact there was a crime drop in 13 out of 21 industrial countries during 1997–98. (Barclay *et al.*, 2001; Young, 2004)

Blumstein's team focused on the relationship between variable changes and the drop of violence. Once international data is examined one must seriously question whether they were looking at the correct variables. Furthermore, to cap it all they traced their line of correlation between these variables and the level of violence when, in fact, property crimes were also declining. The most immediate explanation of this is that we are encountering 'spurious causality'. (See Andrew Sayer, 1992: 193) But the enigma of the crime drop takes us far beyond the world of technical mistakes. The usual procedure in such analysis is to take the demographics and other factors which correlate with crime in the past and attempt to explain the present or predict the future levels of crime in terms of changes in these variables. The problem here is that people (and young people in particular) might well change independently of these variables. For in the last analysis the factors do not add up and the social scientists begin to have to admit the ghost in the machine. Thus, Richard Rosenfeld of Blumstein's team writes ruefully:

'If the church is the last refuge of scoundrels, "culture" is the final recourse of social scientists in search of explanations when existing economic, social and political theories have been exhausted.' (2000: 157)

So there we have it, subculture becomes the final refuge of scoundrels! And Rosenfeld comments, 'It is possible that American adults are becoming, in a word, 'civilised' (*ibid.*: 156).

From a more sympathetic perspective, Andrew Karmen in his meticulous analysis of the New York crime drop—*New York Murder Mystery* (2000)—casts his eyes across all the various explanations judiciously giving them various explanatory weightings, but at the end of the book talks of 'the final demographic factor which might be the most important of all' (2000: 249). But then, he reflects, 'the shift is not even strictly demographic in nature: it is attitudinal and behavioral as well as generational' (*ibid.*). And, he adds, 'Unfortunately the existence of this suspected evolution in subcultural values defies precise statistical measurement. It is not clear what kind of evidence and statistics could prove or disprove it.' Karmen points to the possibility of profound changes in the norms of urban youth culture. And here he refers to the pioneering work of Ric Curtis, the New York urban anthropologist who talks of the 'little brother syndrome'. That is, where younger children, having witnessed the devastating effects of hard drugs, gun culture, intensive crime on their older brethren decide that these things are not for them, they are no longer hip and cool—the culture evolves and turns its face against the past. This observation has ready resonance with, for example, any attempt to understand changes in drug use. These do not seem to relate to changes in social factors or the impact of the war against drugs. They seem to relate to changes in fashion—although this is perhaps too light a word for it—changes in subcultural project would probably be more fitting.

Curtis relates these changes closely to the development of late modernity, to the loosening of the moorings that I referred to earlier, or 'Life in the postmodern global economy', he writes, 'is one in which identity formation is less dependent upon the influence of family, neighborhoods, race/ethnicity, nationality and history, and more than anywhere else the inner city is an empty canvass an open frontier where new structures, institutions and conventions are waiting to be built.' (1998: 1276).

An Open Season on Numbers?

Am I suggesting an open season on numbers? Not quite: there are obviously (as Sennett points out in the *Sex in America* debate) numbers which are indispensable to sociological analysis. Figures of infant mortality, age, marriage, common economic indicators are cases to point as are, for example, numbers of police, imprisonment rates and homicide incidences in criminology. Others such as income or ethnicity are of great utility but must be used with caution. There are things in the social landscape which are distinct, definite and measurable, there are many others that are blurred because we do not know them—some because we are unlikely ever to know them, others, more importantly, which are blurred because it is their nature to be blurred. Precision must be constantly eyed with suspicion, decimal points with raised eyebrows. There are very many cases where statistical testing is inappropriate because the data is technically weak—it will not bear the weight of such analysis, there are many others where the data is blurred and contested where such testing is simply wrong. There has over the last decade grown up a peculiar formula for writing journal articles. The introduction usually presents two theories in competition but they are strange one-dimensional creatures almost unrecognisable compared to the real thing but rendered simple and decontextualised for the purposes of operationalisation. This acephalous introduction, this headless chicken of an argument is then followed by an extensive discussion of measures whilst the data itself is usually outsourced from some past study or bought in from a survey firm, an obligatory regression analysis follows, an erudite statistical equation is a definite plus and then, the usually inconclusive results are paraded before us. The criminologists themselves are far distant from crime out there hidden behind a wall of verbiage and computer print out, the barrier graphited with the greek letters of statistical manipulation.

What can we do to get out of this sanitised redoubt? What is needed is a theoretical position which can enter in to the real world of existential joy, fear, false certainty and doubt, which can seek to understand the subcultural projects of people in a world riven with inequalities of wealth and uncertainties of identity. What we need is an ethnographic method which can deal with reflexivity, contradiction, tentativeness, change of opinion, posturing and concealment, which is sensitive to the way people write and rewrite their personal narratives. It will not be solved by a fake scientificity but by a critical ethnography honed to the potentialities of human creativity and meaning.

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Victim Policy—Only for the Good?

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Introduction

Being here in Helsinki, it seems highly appropriate to begin by recalling an article from nearly 30 years ago by the grand old lady in criminal law and criminology in the Nordic countries, Inkeri Anttila. The title of the article is “Victimology—A New Territory in Criminology” (1974).

Although she welcomes the new focus on victims of crime, Anttila offers what she calls “a word of caution” as regards what is characterised as victim-centred research. First of all she sees a real danger in “the possibility that interest will simply shift from the *individual* offender to the *individual* victim” as opposed to a societal perspective, while at the same time underlining the fact that the scope of individual-centred research is enlarged by 100 percent, or even more, when also the victim merits attention. A second warning in her article relates to that the new field places an overemphasis on such types of criminal behaviour where there is an easily identifiable victim, leading to neglect of other dimensions of victimisation. She also particularly wants “to point to the dangers of an atomistic mode of thinking, where sometimes only the offenders, sometimes only the victims are the main targets of interest” (Anttila 1974: 10).

Where do we stand today three decades later?

Well, for one thing it looks like atomistic thinking has prevailed to the extent that criminology and victimology frequently appear as totally separate areas of knowledge, establishing a false categorical distinction between the labels offender and victim. A dichotomy gets rooted, which goes against plenty of empirical documentation as well as everyday experience.

While criminological victimisation research has been referred to as a kind of “inverted criminology”, simultaneously there has emerged a purer science of the victim of crime, which deals in depth and extensively with victims’ own experiences of crime and its aftermath.

Accompanying research into the consequences of victimisation, victim support organisations and victim movements has grown at an amazing speed and scale. The explicit purpose is to support crime victims and reform the position of the victim, inside and outside of the criminal justice framework. Applied victimology is the term often used to describe a close co-operation between the academic field and an activist branch. (Once the abolitionist movement gave impetus to an action-oriented criminological agenda, now a strengthening rather than weakening of the criminal justice system receives increasing concern.)

Arguably it is possible to discuss *crime victim policy* as distinct from crime policy, though no one can doubt that the most effective way of reducing victimisation is to reduce crime. There is, of course, an inherent connection between crime prevention and victim prevention.

Victim policy can be loosely conceived as any undertaking—in word or deed—aimed at supporting victims of crime, be that with regard to the traditional system of criminal justice or within a broader social welfare perspective.

Today it is said that everybody is “for” and nobody is “against” the crime victim. But, as we all know, it has taken several decades to try to improve the lot of crime victims in general and not the least the fate of especially vulnerable groups of victims. It is hard to believe that any informed person would want a return to the dismal situation before victims were “discovered” and efforts made to alleviate their position.

However, an intensively expanding victim engagement has also generated what can be seen as disquieting tendencies that need to be examined. I will only address a couple of problematic issues.

Victim policy issues/controversies

An all-encompassing victimisation

The greater attention paid to crime victims in recent years indicates an overall shift of identity or at least a shift of label involving most of us. While once in the 1960s and 70s, it was stressed in criminological research that everyone commits some type of lawbreaking at one point or other, now victims of crime comprise us all or at minimum we figure as potential victims. Being victimised tends to replace the role of offending.

Crime victims, defined as people who have been exposed to criminal acts, are in fact being introduced in that role, for example, in television news where the subtitle presents “Mary—victim of crime” (cf. Tham 2001). Meanwhile the concept of victim has undergone a remarkable expansion. Victimisation seemingly entails nearly all forms of harms, losses, pain, suffering and discomfort that life can provide—as any viewer can experience by watching shows that nowadays are referred to as victim-television.

According to a Danish historian (Henrik Jensen 1998), victim mentality is a cultural symptom that since the First World War—and the existential loss of innocence—to a higher and higher degree characterises the 20th century development. From this point of view, crime victims have joined the ranks of other “defenceless victims of brutal environments”, who seek personal attention and compassion in a society where these values appear scarce (ibid.: 15; my translation).

Victim mentality is understandable in a society exceedingly filled with people who experience external and internal risks of all different kinds. In an ever more individualised society, people easily feel isolated and become increasingly anxious about their own life situation and personal narrative. Capital of trust has eroded and in such a climate of individual insecurity, a victim identity can thrive. The victim image is simultaneously heavily supported by political forces, the se-

curity industry and in mass media coverage. This all-inclusive, limitless victim discourse is bound to be problematic.

Victimhood and beyond

The victim labelling carries implications that go beyond the actual experience of victimisation (as bad as it might be). It brings forth a status as victim, but victimhood is an ambivalent attribute. On the one hand the recognition as victim accredits legitimacy and a promise of being on the receiving end of emotional support and practical assistance. On the other hand, the victim assignment signals personal powerlessness, and it goes against a concurrent requirement that every individual should be able to have control over his or her own life and master fate.

Despite a certain attractiveness, the recognition as victim at the same time implies a degrading stigma that in the long run hardly leads to a satisfying self-identity. And an individual who readily sees herself or himself as victim can hardly avoid being exposed to humiliations or injustices.

Victimhood involves a double-edged status because of the in-built difficulty in balancing agency with being a passive object of circumstances or actions by others. The right to be a victim is apparently often closely tied to an obligation to fit into the image of a deserving victim. In this discourse concerning “worthy victims”, the question of an individual’s own responsibility stands out as a crucial issue.

In order to counter a strong victim blaming tradition and to generate (valid) sympathy, especially battered women have frequently been portrayed as without blame. But the cost associated with not being held responsible also has to be taken into account. This involves denial of competency, and the abused is then framed in a psychologically coined expert-version of “learned helplessness” or receives another syndrome attachment (see e.g. Downs 1996).

Objections have been raised against the prevalent victimhood frame. A fairly recent Swedish anthology, examining what the social construction of the victim entails, has in translation got the title *The refractory victim* (Åkerström & Sahlin 2001). Others as well have pointed out that because of the negative connotations of pain, weakness, loss of control and subjugation, some victim organisations and many victims themselves do not wish to have the label applied to them. Instead they prefer a term like “survivor”. The notion of “victim empowerment” also conveys an active approach.

All in all there is growing concern about the overall social impact of victimisation in “what is said to be a growing and unattractive culture of victimisation in which more and more people abjure responsibility for their own actions or refuse to accept that events may be beyond human control” (Rock 2004: 14, cited in Moody 2003).

Victim policy as a means of creating public consensus

In terms of politics, a reorientation has taken place and crime victims have gained top priority, though foremost on an ideological level. Their needs and rights have been acknowledged in international as well as national declarations;

many only formulated as promising aspirations, while later ones at least on paper carry legally binding force.

Nonetheless, according to some critics, crime victims have been politically manipulated, particularly in North America, in that victim policy demands are hijacked and redefined to suit law-and-order campaigns for repressive politics (see e.g. Elias 1993). Illustrations of zero-sum thinking allegedly in the interests of victims can also be found elsewhere, supporting the saying: "It is not evil for one but that is good for another".

Yet the most striking feature is probably the political consensus surrounding victim concerns. In this light the victimisation discourse, with the victims' movement as prime mover, has been analysed as a possible new foundation for a Durkheimian collective consciousness in society (Boutellier 2000). Solidarity with crime victims creates a basis for a common morality and re-establishes a threatened consensus in our secularised times, where relativistic norms and values prevail.

On a more pragmatic level, it has been pointed out that member states in organisations like the Council of Europe and the EU with remarkable ease agree upon victim reforms—in part because they believe that their own country already submits to the standards in question. However, an evaluation of the Council of Europe 1985 recommendation *The Position of the Victim in the Framework of Criminal Law and Procedure* clearly demonstrated lack of implementation (Brienen & Hoegen 2000).

The more recent and binding document by the Council of Ministers of the European Union, the 2001 *Framework Decision on the Standing of Victims in Criminal Proceedings* was too easily adopted according to one well informed commentator. Although he views the adoption of declarations concerning victims' needs as important in order for reformers to be able to confront governments, he asks that more attention be paid to hidden agendas and political expediency as the real motivation behind victim policy agreements (Groenhuijsen 2003). Notably, it is rather ironic that while EU states are mostly uncritical of their own treatment of crime victims, they are very critical towards accession states (ibid.).

Moreover, a Swedish commentator (Tham 2001) has proclaimed royal engagement in crime victims as perhaps the most decisive sign of the consensus sharing and uncontroversial nature of this concern. The Swedish queen is principal protector of the national victim support organisation and Her Royal Highness Princess Anne is more than a head figure for Victim Support in the UK. She also opened the latest world symposium in victimology (South Africa in 2003) and gave a plenary presentation on assistance to victims of crime.

What are the appropriate roles of victims in the criminal justice process?

Without doubt, victims of crime have for a long time been ignored in the administration of justice. They have been depicted as the forgotten party; neglected, deserted, deceived, frustrated and even abused by the system. Slowly over a few decades grievances have been heard and, to some degree, needs have been responded to.

Concerning some reform areas there is no opposition: Victims should be treated with respect, compassion and dignity; compensation should be available as well as, for example, separate waiting facilities in courtrooms. In addition, research has repeatedly documented that victims want information about their case, about the criminal justice system and about support.

However, other dimensions related to integrating the victim of crime to the process stand out as highly controversial. Policies aimed at enhancing victim participation in the criminal justice system emerged throughout the 1980s. Many countries belonging to the Anglo-American legal family have adopted victim impact statements. This measure allows victims to submit a written or oral statement on the impact of the crime victimisation at sentencing, but has been met with strong resistance by a number of legal scholars (see e.g. Ashworth 2000). The primary objections include the possible threat to the rights of the accused, victim revenge and sentencing severity.

How far it is possible in the US to involve crime victims or their close relatives further in the execution of sentences can be illustrated by legislation that secures the family of a murdered victim the right to attend the execution of the offender. Likewise the victim or family members have a right to say whether a prisoner—after many years of imprisonment—shall be eligible for parole. It is difficult for me not to see this type of victim participation as a prolongation or even cementing of victimhood.

“Relative moderation” is said to represent the main tendency in European reforms for crime victims. And in the continental context, the inclusion of victim input at sentencing has not received major backing. Still there is, for example in the Nordic countries, a growing recognition of an inadequate standing for victims in criminal proceedings. With the adoption of the earlier mentioned EU framework decision we will in all likelihood see some changes in the coming years.

Is restorative justice a better deal for victims?

There is a considerable debate among both academics and professionals about whether restorative justice offers victims a better deal than the ordinary criminal justice system. This issue received considerable attention at the XI International Symposium on Victimology, which took place in the summer of 2003.

Restorative justice is a very broad term with no precise definition and under which a number of different initiatives fall. One popular definition says that restorative justice is: “a process whereby all parties with a stake in a specific offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall 1999). Nevertheless, victims are not always included in the restorative justice process, and some victim advocates maintain that victim involvement frequently is set aside in favour of the other stakeholders, that is, the offender, the community and the government. With respect to victim-offender mediation, however, victims do participate either directly through face-to-face contact or indirectly, when the mediator shuttles between the two parties.

Despite victim involvement in mediation and a documented interest among victims to take part in this process, the crucial question is whether or not they actually want decision-making power. Do they want the power to decide or does such a right to be heard place an unwanted burden on them?

The victimological literature is quite clear regarding victim input into procedures: victims seek information, consultation and consideration. However, it is less clear just to what extent victims want to participate in the decision-making process. A recent Canadian study indicates that victims place great emphasis on having a voice in the process and having their voice heard, but “while they seek input, they are content to leave decision control in the hands of the authorities” (Wemmers & Cyr 2003). The findings are interpreted as follows:

“Given that victims do not seek decision-making power, but simply want to be taken into consideration, victim participation in the criminal justice process should not pose a threat to the existing power balance, nor to the rights of the accused within the conventional criminal justice system” (*ibid.*).

The optimistic view is therefore that the unsatisfactory limited role that is given to the victim as merely a witness in the proceedings can be upgraded without sacrificing the basic rights of the offender. Both victims and offenders can be shown respect and recognised as subjects rather than being objectified by the law.

Interestingly enough in terms of reconciling traditionally incompatible punishment perspectives, Howard Zehr, possibly the most well known proponent of restorative justice, deals with this paradigmatic rivalry in a book review. In one of the chapters by a legal philosopher, it is argued that “the theory of retribution and the theory of restoration are not the opposites they are often represented to be; indeed, they have a great deal in common. Both reflect a central, perhaps universal, moral intuition that something is owed to victims and society by offenders and that there ought to be a reciprocity between offence and response; where they differ is on the currency of what will make this right” (Zehr 2003: 653).

It is further claimed that “restorative justice advocates have done a disservice by positioning restoration and retribution as mutually exclusive adversaries”, and Zehr concludes: “As a restorative justice advocate who initially popularised this dichotomy, ... I have personally taken this argument to heart and changed my approach accordingly” (*ibid.*: 654).

Let me conclude by arguing that from a victim perspective, reliance on the conventional criminal justice system certainly makes it difficult to erase the narrow dualistic option between either being placed in the role of a blameless victim marked by passivity or being treated as an active subject and therefore somehow a part to what has taken place.

A restorative justice approach—though not necessarily as a mutually exclusive alternative—has the potential of offering a wider range of options for all crime victims. That is, victims by no means represent a homogenous entity and everyone does not fall into the category of the “ideal victim”. Victim has to be treated as “a term that is about interpretation by self and others rather than an objectively identifiable category” (Moody 2003). Victim policy accordingly needs to take that diversity into serious consideration.

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Crime Trends in Europe from 1990 to 2000¹

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Introduction

In this presentation I will examine the evolution of crime rates according to police statistics from 1990 to 2000 in twenty-nine European countries². The offences considered are intentional homicide, assault, rape, robbery, theft, vehicle theft, burglary, domestic burglary, and drug offences. Data are taken from the first and the second edition of the *European Sourcebook of Crime and Criminal Justice Statistics* (Council of Europe, 1999; Killias et al., 2003).

Methodology

It is a well-known fact that reporting and recording practices affect the validity and reliability of police statistics as measures of the social reaction to crime, and that these practices vary across offences, countries, and time. For example, according to the International Crime Victims Survey (ICVS) conducted in 2000, in the so-called industrialized countries, only 40% of the attempted burglaries were reported to the police, but the percentage rises to 78% when completed burglaries are considered. Nevertheless, the latter percentage varies from 92% in Belgium to 59% in Portugal. Moreover, in Poland the percentage rose from 49% in 1992 to 54% in 1996, and to 62% in 2000 (van Kesteren, Mayhew & Nieuwbeerta, 2001: 194–5). It is for these reasons that, for some offences, the correlations between victimization rates and police recorded crime can be improved if data are weighted according to the percentage of offences reported to the police (Aebi, Killias & Tavares, 2002).

As far as recording practices are concerned, crime rates vary according to the moment when data are collected for police statistics, the counting unit used in the statistics, and the way in which multiple offences and offences committed by more than one person are counted (*European Sourcebook 2003*: 74–5). Thus, it has been shown that the high rates of rape in Swedish police statistics are due to a combination of all these factors (von Hofer, 2000) and that the group of Euro-

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2 Austria, Bulgaria, Croatia, Czech Republic, Denmark, England & Wales, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Moldova, Netherlands, Northern Ireland, Norway, Poland, Romania, Russia, Scotland, Slovenia, Spain, Sweden, Switzerland and Turkey.

pean countries that records data for statistical purposes when the offence is reported to the police systematically presents higher crime rates than the group of countries that records data when the police have completed the investigation (Aebi, submitted). In fact, statistical counting rules seem to be the main explanation of cross-national differences in recorded crime.

As a consequence, the validity of cross-national comparisons of crime rates according to police statistics is extremely doubtful. On the contrary, police statistics provide a reasonably valid basis to study time series, as long as the statistical counting rules and the legal definitions used have not experienced substantial changes during the period studied or have changed in ways it is possible to run controls for (von Hofer, 2000). That is why in this presentation I will not talk about crime *levels* but about crime *trends*.

Besides, in order to reduce the impact of sudden changes in the data recording methods of a particular country, I will not analyze trends in each country but in two groups of them. The first group includes sixteen Western European countries and the second one thirteen Central and Eastern European countries (see Annex). Furthermore, I will use the rates of offences known to the police per 100,000 population in each country to compute *median rates* instead of mean rates for both groups of countries because, from a statistical point of view, the mean is extremely sensitive to extreme values (*outliers*), while the median is not. In addition, as small numbers contribute to the lack of statistical reliability, my analysis does not include countries with less than one million inhabitants. As a matter of fact, such countries may experience substantial changes in crime rates from one year to another that are only due to the addition or the subtraction of a few offences.

All in all, the analyses cover twenty-nine countries and ten offences over eleven years, but, as some countries did not provide data for every offence and every year, they include less than the 3,190 theoretically possible figures. In that context, when only one year was missing in the time series of a country for a specific offence, I interpolated it using the figures given by the country for the previous and the subsequent year. If the missing value was the figure for 1990—i.e. the first year of the time series—I used the figure for 1991; if it was the figure for 2000—i.e. the last year of the time series—I used the figure for 1999. When data for more than one year was missing, the country was excluded from the analysis. Whenever there were differences in the figures provided for 1995 and/or 1996 between the first and the second edition of the European Sourcebook, I used the figures of the second edition, which is an update of the first one (European Sourcebook 2003: 5). Finally, my calculations of median rates and percentage changes between 1990 and 2000 are based upon unrounded scores (i.e. they include all decimals that could not be shown in the printed versions of both editions of the European Sourcebook). The list of countries included in each analysis can be found in the Annex and their number is specified in the headings of the respective Figures.

Findings

Property offences: Theft, vehicle theft, burglary, and domestic burglary

Property offences are presented in Figures 1 to 4. They include an overall measure of theft (Figure 1) and a number of subcategories such as vehicle theft (Figure 2), burglary (Figure 3), and its subcategory domestic burglary (Figure 4). According to the classification of offences of the *European Sourcebook*, theft does not include robbery. Thus, in countries where the concept of robbery is expressed as theft with violence against persons (e.g. Spain), robberies were subtracted from the total number of thefts by the national correspondents that provided the data for the *European Sourcebook*.

In Western Europe, theft increased from 1990 to 1993 and started decreasing afterwards. Thus, the median theft rate for 2000 was 16% lower than the one for 1990. Domestic burglary followed the same pattern, registering an increase between 1990 and 1993 and a decrease subsequently. Overall, a comparison of the rate for 2000 with the rate for 1990 shows a 10% decrease in domestic burglary. In the case of burglary, there was an increase between 1990 and 1991 followed by a decrease in 1992 and 1993, a rather stable trend from then up to 1999—with rates comparable to the rate for 1990—and a substantial decrease in 2000. Hence, the median burglary rate for 2000 was 12% lower than the one for 1990. Vehicle theft followed an analogous trend until 1997, that is an increase from 1990 to 1991/1992 followed by a decrease in 1993 that led the rates to be stable

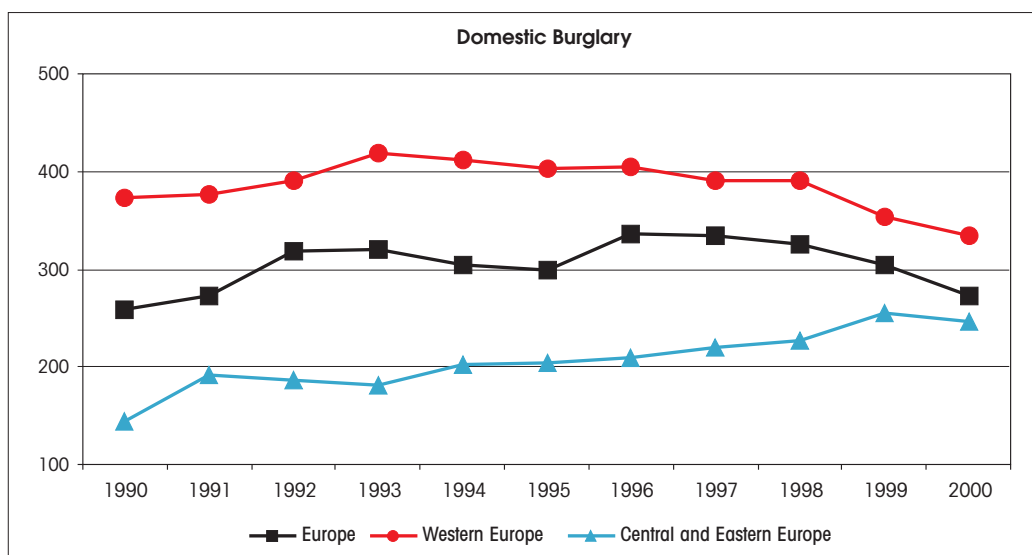


Figure 1. Median rates of theft per 100,000 population from 1990 to 2000 in 19 European countries according to police statistics

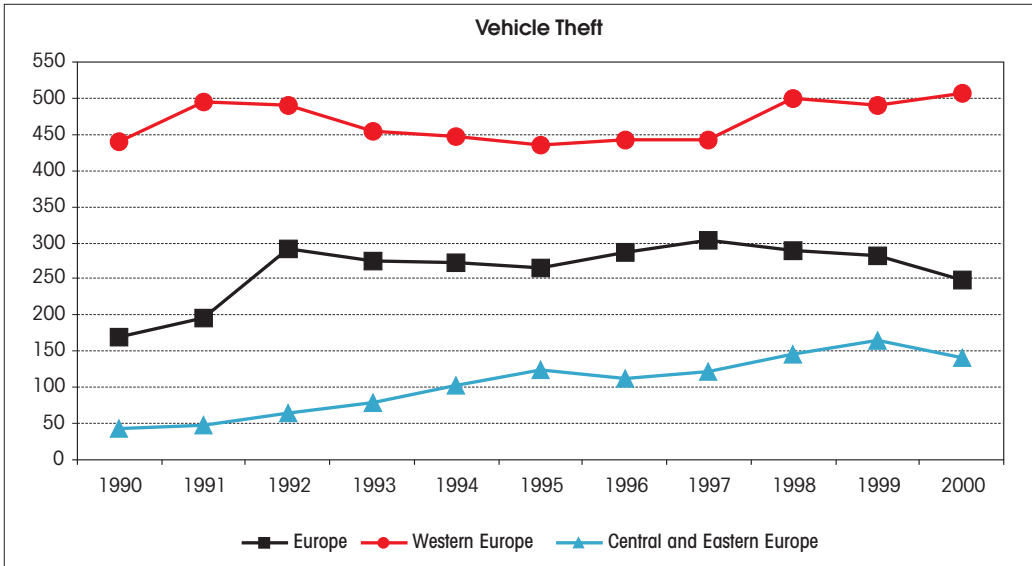


Figure 2. Median rates of vehicle theft per 100,000 population from 1990 to 2000 in 23 European countries according to police statistics

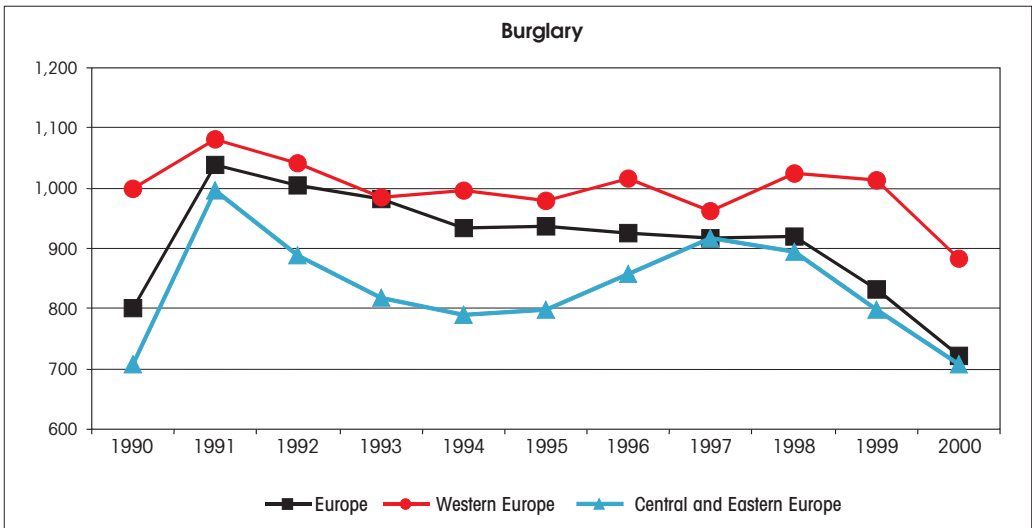


Figure 3. Median rates of burglary per 100,000 population from 1990 to 2000 in 17 European countries according to police statistics

and comparable to the rate for 1990; but in 1998 the rates rose again and they remained at that level until 2000. All in all, the median rate for vehicle theft in 2000 was 15% higher than the median rate for 1990.

In a few words, in Western European countries property offences increased at the beginning of the 1990s, registering peaks from 1991 to 1993, and then decreased in such a way that, by 2000, their median rates were lower than in 1990.

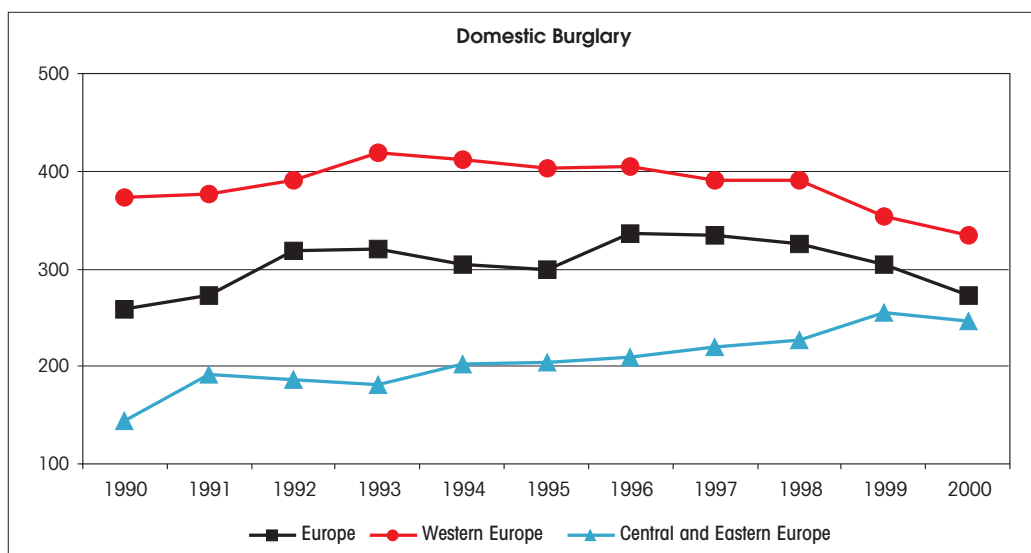


Figure 4. Median rates of domestic burglary per 100,000 population from 1990 to 2000 in 16 European countries according to police statistics

The only exception is motor vehicle theft, which followed the same pattern until 1997, but registered an increase in the last three years of the time series.

In Central and Eastern Europe, domestic burglary increased by successive stages during the whole period studied. Thus the median rate for 2000 was 72% higher than the rate for 1990. Motor vehicle theft increased almost constantly leading to a median rate 236% higher in 2000 than in 1990. Theft and burglary followed a curvilinear trend characterized by a sharp increase at the beginning of the decade, followed by a decrease until 1994, a new increase until 1997 and 1998 and a decrease during the last years covered. On the whole, theft increased by 47% during the period studied, while the median rate for burglary was the same in 1990 than in 2000.

In sum, in Central and Eastern Europe, rates of property offences were pretty low in 1990 and followed an upward trend throughout the decade. With the exception of burglary—an offence for which the sample is probably not representative of the region studied because only five countries provided data—all property offences presented higher rates in 2000 than in 1990.

Violent offences: Homicide, assault, rape, and robbery

Violent offences are presented in Figures 5 to 9. They include homicide (Figures 5 and 6), assault (Figure 7), rape (Figure 8) and robbery (Figure 9).

In Western Europe, assault and rape increased in an almost linear way during the 1990s. In fact, when the first edition of the *European Sourcebook* (Council of Europe, 1999) was published, an analysis of the available trends for both offences led Killias & Aebi (2000a) to warn that “the increase might not have reached its upper level by the end of the time series” (Killias & Aebi, 2000a: 52) which, at that moment, was 1996. In fact, the increase was even sharper since

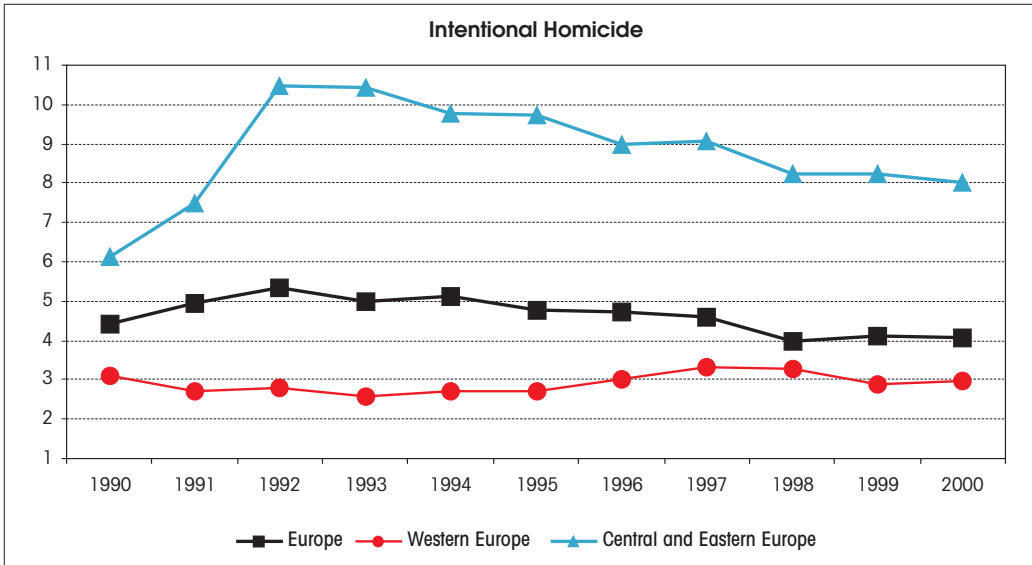


Figure 5. Median rates of intentional homicide including attempts per 100,000 population from 1990 to 2000 in 23 European countries according to police statistics

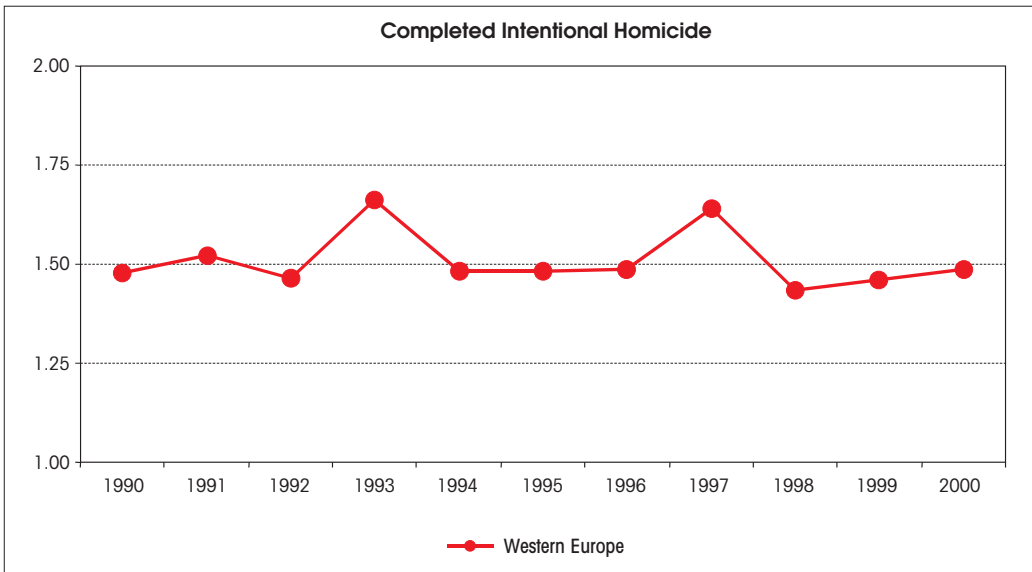


Figure 6. Median rates of completed intentional homicide per 100,000 population from 1990 to 2000 in 14 Western European countries according to police statistics

1997. On the whole, the 2000 assault rate is 85% above that of 1990, and the 2000 rape rate is 36% above that of 1990. Robbery increased substantially at the beginning of the time series (1990–1993), then decreased provisionally in the middle (1994–1995) and started rising again to finish the series with a median rate

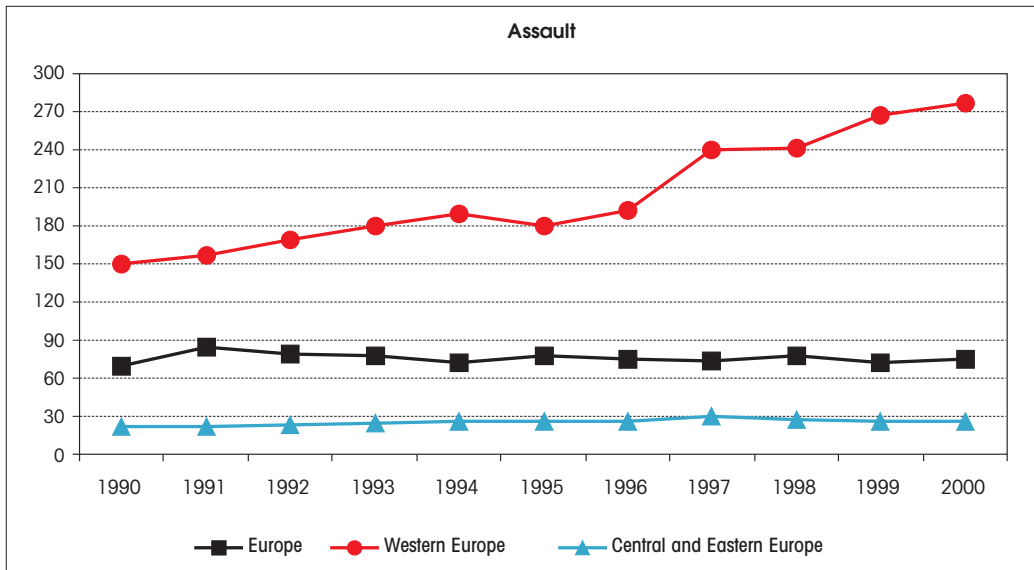


Figure 7. Median rates of assault per 100,000 population from 1990 to 2000 in 23 European countries according to police statistics

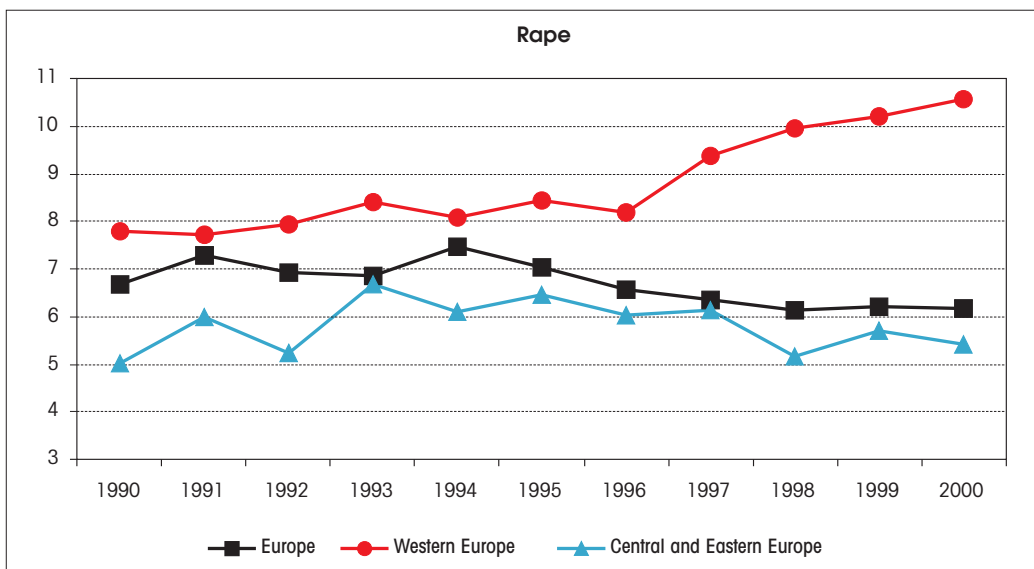


Figure 8. Median rates of rape per 100,000 population from 1990 to 2000 in 25 European countries according to police statistics

for 2000 that was 22% higher than the one for 1990. Only homicide remained stable during the whole period.

In Central and Eastern Europe, rape reached a peak in 1993 and decreased after that. Nevertheless, by the end of the series, the rate was still 8% higher than in 1990. Assault reached its peak in 1997 and was also followed by a slight de-

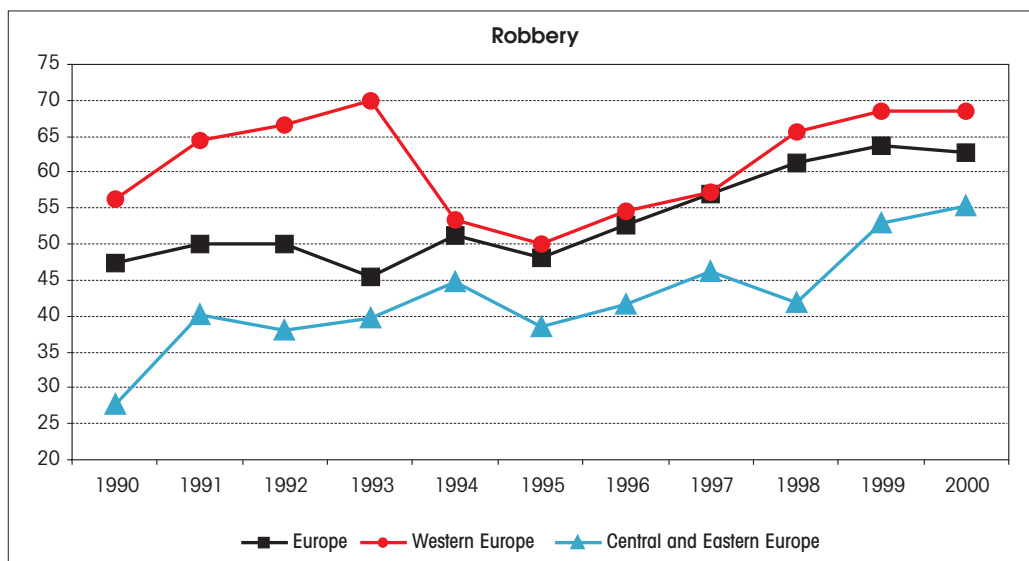


Figure 9. Median rates of robbery per 100,000 population from 1990 to 2000 in 24 European countries according to police statistics

crease, but once more the median rate for 2000 was higher—in this case by 16%—than the rate for 1990. Robbery followed a curvilinear upward trend in such a way that, by 2000, the median rate was 100% higher than in 1990. Finally, homicide increased sharply at the beginning of the time series, reaching peaks in 1993 and 1994 and decreasing constantly after that, although in 2000 the median rate was still 30% higher than in 1990. Incidentally, homicide was the only offence that showed higher median rates in Central and Eastern Europe than in Western Europe.

In sum, according to police statistics, European societies would have been more violent by the end of the millennium than ten years before. Nevertheless, both sides of the continent followed a different trend throughout the 1990s. In Central and Eastern Europe the peaks were reached sometime during the beginning or the middle of the decade (i.e. between 1992 and 1997) and, with the only exception of robbery that continued to increase, the trend was a decreasing one by the end of it. In Western Europe, on the contrary, violent offences followed an upward trend, with homicide as a noteworthy exception.

Drug offences

As can be seen in Figure 10, both in Western and in Central and Eastern Europe, there has been a steady increase of drug offences during the whole period studied. In fact, every European country experienced an increase in police recorded drug offences between 1990 and 2000. Thus, in 2000, the median rate of drug offences was sixteen times higher than in 1990 in Central and Eastern European countries, and two point six times higher in Western European countries.

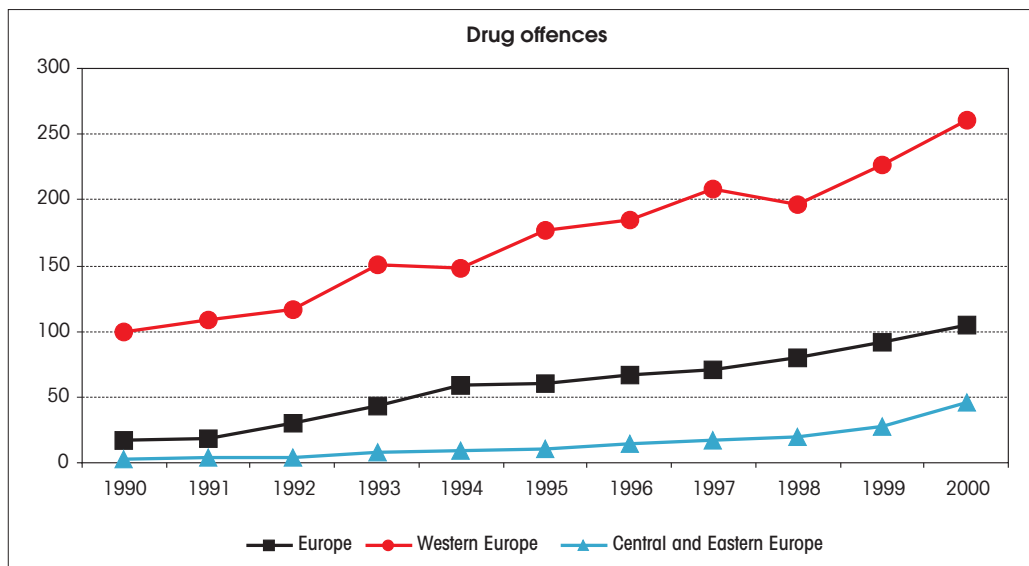


Figure 10. Median rates of drug offences per 100,000 population from 1990 to 2000 in 20 European countries according to police statistics

Discussion

In order to understand the crime trends that I have just exposed, one must take into consideration the political, economic and social situation of Europe during the period covered by the analyses. In November 1989, the fall of the Berlin wall produced a substantial modification of crime opportunities by putting in contact two parts of the continent that differed dramatically in wealth; thus, within a few months, a substantial market for stolen products, including stolen cars, jewelry, electronic devices and even clothes emerged in Central and Eastern Europe (Killias & Aebi, 2000a). This led to a more organized kind of crime with the development of gangs that took advantage of the new lines for the transportation of drugs, illegal goods and commodities, and even human beings, between both sides of the continent.

In that context, the increase in all kinds of property offences registered on the wealthy side of Europe at the beginning of the 1990s seems quite logical, and adjusts itself to the predictions of an opportunity-based theory such as the routine activities approach (Cohen & Felson, 1979, Felson 2001). The decrease that followed could be explained by the combination of at least three factors. Firstly, a saturation of the Eastern market; secondly, a reinforcement of police measures against transborder crime, especially in countries seeking to become members of the European Union; and, thirdly, as suggested by Lamon (2002) on the basis of ICVS data, an improvement in security measures in Western European households.

Robbery is an interesting case because it is a combination of a property offence and a violent offence. Like property offences—and probably for the same

reasons that I have just explained—it increased in Western Europe at the beginning of the 1990s and started decreasing shortly afterwards; but this was followed by a new upward trend since the middle of the nineties. The latter may be somehow related to the increase in drug use in Europe (see below) and its consequences on the number of muggings committed³, but its main cause seems to be the increase in small electronic devices—and, in particular, mobile phones—ownership and theft. Thus, research conducted in England and Wales on the basis of the 2000 British Crime Survey, school surveys and recorded police robbery figures, shows that mobile phone theft increased by 190% between 1995 and 2000—while the number of phone subscribers increased by 600%—and represented 28% of all robberies in 2000/2001 compared to 8% in 1998/1999 (Harrington, & Mayhew, 2002). This evolution reminds one of the explanation given by the routine activities approach (Cohen & Felson, 1979, Felson 2001: 32) suggesting that one of the main causes of the mushrooming crime rates in the United States after 1963 was the proliferation of lightweight goods that were easy to steal. In the same line of reasoning, mobile phones belong undoubtedly to the category of *hot products*, defined by Clarke (1999) as products that are stolen much more than others because they are concealable, removable, available, valuable, enjoyable and disposable. Moreover, we seem to be far away from a saturation of the black market for these products as new models—including new functions and gadgets such as built-in digital cameras—are being released constantly⁴.

Finally, the increase in vehicle theft in Western Europe at the end of the time series is due to increases in eight out of fourteen countries, while England and Wales, France, Germany, Italy, Scotland and Switzerland showed a downward trend during that period. These trends are not easy to explain with the available information because of some methodological problems. First of all, the number of vehicle thefts per 100,000 population is not a good measure for such a crime. A better indicator would be the number of vehicle thefts per 100,000 cars available in each country. Unfortunately, there is no reliable data on that issue as figures from the ACEA (*European Automobile Manufacturers Association*) do not include motorcycles, which represent a substantial part of vehicle theft—e.g. 25% in France—in some countries (EUCPN, 2003). Second, in countries such as France, Italy or Spain that receive tens of millions of tourists each year, the theft of cars and motorcycles rented by them can be quite important (Aebi & Mapelli, 2003) and adds more distortions to the crime rate per 100,000 population. Third, vehicle theft includes theft for profit and theft for joyriding, but the proportion of

3 For example, in Switzerland, the relatively high rates of robbery at the beginning of the 1990s were partly due to muggings committed by drug addicts near open drug-using sites, and the decrease of such offence in the mid-1990s seems largely due to the success of the Swiss heroin prescription programs (Killias & Aebi, 2000b). Incidentally, Switzerland is one of the just three countries—the other two are Finland and Scotland—that registered slightly lower rates of robbery in 2000 than in 1990.

4 The idea that hot products go through a life cycle of vulnerability was first put forward by Gould (1969) and developed lately by Mansfield, Gould & Namenwirth (1974), Felson (1997), and Guerette & Clarke (2003). According to the latter: “At first, these products attract little theft because they are unfamiliar and relatively unavailable. As their popularity among consumers grows, thieves become attracted to them for personal use or for resale. Subsequently, they become widely available and relatively inexpensive, and their attractiveness for theft declines” (Guerette & Clarke, 2003: 7).

each of these categories varies across countries and over time. For example, taking into account the number and the type of cars stolen and recovered—and assuming that the cars recovered are mainly those that were used for joyriding—from the 1970s to 2000 in Italy, Barbagli, Colombo & Savona (2003: 148, with references) found that by the end of the century joyriding had decreased while theft of cars had increased, and that the number of cars recovered was quite different according to their cubic capacity. The latter finding suggests that there is a careful selection of the type of cars stolen that could be explained by the existence of a (mainly Eastern European) black market for some specific models.

In Central and Eastern Europe, crime trends followed a different pattern. In fact, with the exception of homicide, most offences presented pretty low rates in 1990. Such rates were probably a reflection of the life style under the authoritarian regimes that were falling apart at that moment⁵. However, the reliability of police statistics during such a period of transition is doubtful. Furthermore, such statistics were still under the influence of the recording practices applied during the communist regimes, which were most likely oriented to show low crime rates.

In that context, the fall of the communist regimes was followed by an explosion of violence in Central and Eastern Europe that was particularly palpable in the sharp increase of homicide at the beginning of the 1990s. Shelley (2002) has suggested that in Russia the increase in violence was due to the transition and the rise of organized crime, and the same explanation seems to hold true for the rest of Central and Eastern Europe, with the already mentioned exception of Turkey (see note 4). Then, as countries started to reorganize themselves, violence became less common. At the same time, the development of a market economy multiplied the number of consumer goods—suitable targets for theft—and was accompanied by a social fracture between those with power or influence and the rest of the population—that started suffering of mass unemployment—creating thus the setting for an increase in property offences.

This process went together with an increase in the number of drug users. In fact, according to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), drug use increased during the 1990s both in acceding and candidate countries to the European Union (EMCDDA, 2003a) and in the European Union and Norway (EMCDDA, 2003b). The ESPAD school survey project also showed that the lifetime prevalence of use of illicit drugs among 15–16-year-old students increased in Europe between 1995 and 1999 (Hibell, Anderson & Bjarnason, 1997; Hibell, Anderson & Ahlstrom, 2000) Thus, the upward trend in police recorded drug offences mirrors a real increase in drug use in the whole Europe. The latter could be related to an increased availability of drugs in the markets provoked by the opening of the European borders that facilitated the distribution of drugs produced principally in the Middle East (Killias & Aebi, 2000a)

At the same time, the struggles between different groups and organizations that tried to take control over these new lines of transportation of drugs, goods and commodities, and human beings—mainly illegal aliens and prostitutes—as

5 Turkey—included only in the analyses of robbery and vehicle theft trends—is of course an exception to that situation.

well as over the markets associated to them, may explain a part of the increase in violent offences in Western Europe. That would also explain partially the increase in the number of foreign prisoners in Western European prisons⁶. In fact, that increase has often been evoked by the mass media as well as by right wing parties to support the idea that there is a link between immigration and the rise of violence in Western Europe. However, this idea is extremely simplistic for a variety of reasons.

In the first place, foreigners sent to prison for their participation in criminal gangs or networks acting across national borders cannot be compared to immigrants or guest workers. In the second place, a considerable number of foreigners are in prison for infractions to immigration laws (Tournier, 1997; Melossi, 2003; Wacquant, 1999), that is to say that they are in prison for being foreigners and not for being suspects or authors of a criminal offence. In the third place, one must take into consideration that the deterioration of most Western European economies since the mid-1970s and the rise of unemployment led to a progressive hardening of immigration laws in such a way that, nowadays, it is very difficult to enter Europe as a legal immigrant. The consequence was an increase in the number of illegal aliens (*sans-papiers*) and asylum seekers, which are in fact the categories that are usually over-represented among offenders (Barbagli, 1998). Killias (2001: 168) suggests that this representation may be linked to the fact that—in contrast with legal immigrants—illegal aliens and asylum seekers cannot make long-term plans because they already know that sooner or later they will be expelled, and therefore some of them may engage in criminal activities that provide quick profit.

Nevertheless, in the context of the specific category of *legal* immigrants, a review of recent European studies (Killias, 2001: 173–9) shows that second generation immigrants present higher levels of involvement in delinquency than their native counterparts. Such finding raises a question: Is this a matter of different cultures or of different socioeconomic status? In fact, this is more or less the same question that was answered by Shaw & McKay (1942) with their studies of the city of Chicago, and we can apply a logic similar to the one used by them to try and give an answer to it.

To begin with, we know that, when they are living in their own countries, Western Europeans present lower rates of delinquency than immigrants coming from other cultures. But what happens when they migrate to other cultures? If their low rates of delinquency were explained by their culture, then they should not present higher rates of delinquency than the autochthones. On the contrary, if their low rates of delinquency were related to their socioeconomic status and they migrate to another culture where they have a lower socioeconomic status than the autochthones, then they should present higher rates of delinquency than them. The problem is that few Western Europeans are migrating nowadays to other parts of the globe and, whenever they migrate, they usually do so because they are sent abroad by their employers and therefore they do not have a lower socioeconomic status than the autochthones.

6 The percentage of foreigners in European prisons can be found in the Council of Europe Annual Penal Statistics (Council of Europe, 2003).

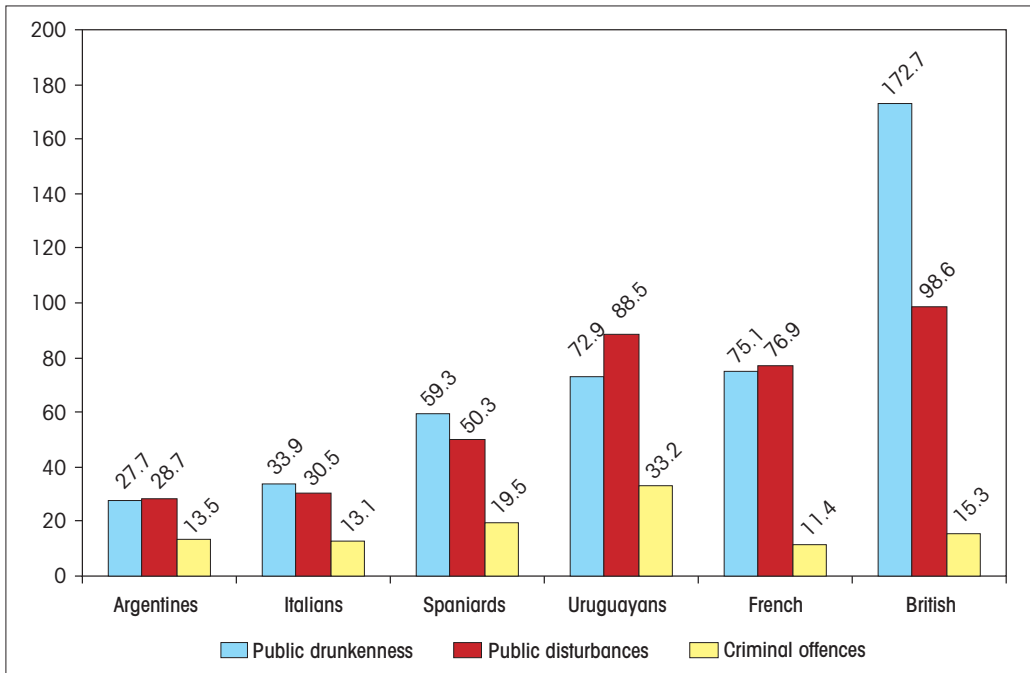


Figure 11. Arrest rates per 1,000 males aged 16–50 by nationality in Buenos Aires, Argentina, in 1910. *Source:* Blackwelder & Johnson (1982: 368)

However, the situation was completely different one hundred years ago, when Europe was a land of emigration. Therefore, I decided to look for research concerning that period, and particularly for research on emigration to South America, which is usually considered as a subcontinent with a very different culture⁷. Quite a few studies are available—often ignored by European researchers that tend to focus their attention on studies on emigration to the United States—and they arrive to similar conclusions that are best illustrated by the arrest rates calculated by Blackwelder & Johnson (1982: 368) and represented here in a graphic way in Figure 11.

Figure 11 shows the implication in delinquency of ethnic minorities in Buenos Aires in 1910. Interestingly enough, the ethnic minorities of that period were mainly Western European citizens: French, British, Italians and Spaniards. Even more interesting is discovering that they were more implicated in delinquency than native born Argentineans. For example, 99 out of each 1,000 British citizens were arrested in Buenos Aires in 1910 for public disturbances, and the arrest rates were 77 out of 1,000 for French citizens, 50 out of 1,000 for Spaniards, 31 out of 1,000 for Italians, but only 29 out of 1,000 for native-born Argentineans. Thus, one has to admit that the overrepresentation of ethnic minorities among offenders has a lot more to do with their low socioeconomic status—and its conse-

7 For details of my research on that topic, see Aebi (in press).

quences on health, education, neighborhood of residence, group of peers, work opportunities, and other aspects of life—than with their culture.

Therefore, I think that the current European debate on ethnic minorities should focus on improving their quality of life and avoiding the consolidation of ethnic neighborhoods instead of on discussing their cultural differences. The road is long because the mere fact of talking about *second* and *third* generation immigrants instead of *nationals* reflects the failure of Western European societies to integrate them. The reason for that failure is quite simple: instead of developing immigration policies, Western Europe has always developed labor market policies for immigrants. Such a situation led to a paradox such as applying social control theory (Hirschi, 1969) to explain delinquency of nationals and immigrants when such a theory is based on the importance of the attachment to parents—considered as one of the main elements of the bond to society—while we live in countries where even legal immigrants cannot always bring their families with them. In fact, European immigration laws help weakening the bond between immigrant parents and their children by creating artificially broken homes.

After all this has been said, I would like to point out that there are also some artificial reasons for the increase in recorded violent offences in Western Europe during the 1990s. In the first place, the increase is partially due to changes in data recording methods—which are sometimes referred to as *better recording practices* although it is questionable if these practices are better or simply different. Regarding assault, this was the case for countries such as Northern Ireland—where the number of assaults was multiplied by four between 1997 and 1998—and England and Wales—where assault increased by 63% from 1997 to 1998—and Ireland—where assault increased sharply in 2000, although the figure is not comparable to the one for 1999 because the latter covers only nine months (*European Sourcebook 2003*: 47). As concerns rape, Finland, Germany, Italy and Spain enlarged their definitions during the 1990s (*European Sourcebook 2003*: 47), but the changes did not introduce clear breaks in the time series such as the ones pointed out for assault.

In the second place, the increase in violent offences in Western Europe seems partially due to an increase in the reporting of offences to the police. In that context, recent research on the Netherlands (Wittebrood & Junger, 2002), England, and the Scandinavian countries (von Hofer, unpublished) has shown that, during the last quarter of the 20th century, victimization surveys indicated a slight increase of violent offences, while according to police statistics there was a huge increase of that kind of offences. In Spain, the increase in assault is mainly due to an increase of more than 100% in the reporting of domestic violence. Indeed, in 1997 there were 3,492 domestic violence offences known to the Spanish police forces, while in 2000 there were 7,122. Thus, in 1997, domestic violence offences represented 27% of the total number of assault offences, while in 2000 they represented 41%. Although in Spain there are no regular victimization surveys that would give an alternative measure of that offence, it seems difficult to imagine an actual increase of more than 100% in domestic violence taking place in only three years.

However, it must be kept in mind that, in 2000, every Western European country included in the analysis presented higher rates of assault than in 1990, and that only three countries (Denmark, Spain and Switzerland) presented lower rates of rape than in 1990.

Indeed, homicide is the only violent offence whose rates remained stable throughout the 1990s. Such stability may be due to two major factors: the relatively low and stable rates of arm possession in Western European households (Killias, van Kesteren & Rindlisbacher, 2001) and the quality of the health services. Harris et al. (2002) have studied the importance of the latter in the United States. They point out that, despite the proliferation of increasingly dangerous weapons and the very large increase in rates of serious criminal assault since 1960, the lethality of such assaults dropped dramatically between 1960 and 1999. According to Harris et al. (2002), this paradox is explained by the developments in medical technology and related medical support services. Without such progress, instead of having a downward trend, the United States would probably have had an upward one. In my opinion, the same explanation holds true for Western Europe in the 1990s.

Finally, it is interesting to point out that, while the analysis of Gottfredson (unpublished) suggests that the general evolution of delinquency in the United States is correlated with the evolution of homicide rates, my analyses show that there is no such correlation in Europe. The availability of guns is probably one of the major causes of such a difference that, in any case, confirms the particularities of the European context.

Conclusion

According to police statistics, between 1990 and 2000, in Central and Eastern Europe there was an increase in drug and property offences, while violent offences reached a peak during the 1990s but were decreasing by the end of the decade. During the same period, in Western Europe there was an increase in drug and violent offences, while property offences reached a peak at the beginning of the 1990s and started decreasing afterwards.

These trends were heavily influenced by the political, economical and social changes that took place in Central and Eastern Europe since the break-up of the Soviet Union in 1989. The political turmoil that followed helped the development of organized crime and led to an increase in violent offences—especially homicide—in that region of Europe. The trend was reversed when the political situation started to stabilize. At the same time, unemployment rose, the socio-economic status of a good part of the population declined and, even if the development of a market economy increased the availability of goods and improved macroeconomic indicators, it is not clear whether this improvement was also experienced at the microlevel. As a consequence property offences followed an upward trend in Central and Eastern Europe throughout the 1990s.

Moreover, the emergence of a large black market for stolen goods in Central and Eastern Europe seems to be the cause of the increase in property offences in Western Europe at the beginning of the 1990s. The subsequent decrease of such

offences is probably related to a relative saturation of Central and Eastern European markets, a reinforcement of police measures in the frontiers, and an improvement of security measures in Western European households. By the end of the time series, a majority of Western European countries experienced an increase in vehicle theft that could be related to the existence of a market for some specific cars, although more research is needed on that topic. Finally, robbery matched the evolution of property offences until 1995—that is an increase followed by a decrease—but started to increase again from 1996 to 2000. This upward trend in the second half of the decade seems mainly related to the increase in the theft of mobile phones and other small electronic devices.

Regarding the increase in drug offences in both sides of Europe, research on drug use shows that there has been an increase in the number of drug users in the whole continent since 1990, a finding that suggests that the increase in offences is not a mere artifact produced by police statistics. This upward trend could be related to the increased availability of drugs in European markets. In fact, the opening of the European borders helped the development of new lines of transport for drugs and all kinds of goods and commodities—legal, illegal or stolen—as well as for the traffic of human beings—mainly illegal immigrants and prostitutes. Furthermore, the fights over such lines of distribution and potential markets may explain partially the increase in violent offences in Western Europe. Other causes of that increase are the development and consolidation of problematic neighborhoods in some European cities, as well as an increase in the reporting of violent offences to the police and modifications of data recording methods (i.e. changes in the way data are recorded for police statistics).

In sum, crime trends in Europe are perfectly explained by an opportunity-based theory such as the routine activities approach (Cohen & Felson, 1979, Felson 2001). This, of course, does not prove that the theory is universal, but suggests that it works well in market economy societies. Nevertheless, its application to Europe also shows that crime opportunities are heavily influenced by socio-economical factors. In fact, crime opportunities in Europe throughout the 1990s seemed to be shaped by the socio-economic situation of the different countries of the region.

Therefore, I believe that situational crime prevention measures will help reduce crime—and should therefore be encouraged because by reducing crime they will improve the quality of life of the citizens—but they will not be enough if they are not accompanied by a reduction of social and economical disparities between countries. The enlargement of the European Union constitutes a first step in that sense, but the rest of the world should not be forgotten.

A final remark

I would like to end this presentation with a sort of annex summarizing the very interesting discussions in which I took part during this third conference of the European Society of Criminology. In fact, one of the things that I appreciated the most while reading the program of this conference was that the organizers had in-

vited representatives of that wide movement that, for the sake of convenience, I will label here as *critical criminology*, even if such a label includes a series of different views on crime that sometimes are not strictly compatible. I was never really convinced by the methodology applied by critical criminologists in their essays but, as I believe that Karl Popper (1959/1934) was profoundly right when he pointed out that critical thinking is the basic element for the growth of knowledge, I thought this would be an excellent opportunity to confront and criticize different views on *crime*. I must admit, however, that the discussion had a tough start when professor Christie stated in his plenary address: “I do not think crime exists”.

Giving a reply to that assertion, I pointed out at the end of my plenary address that the denial of crime implies also the denial of the offenders and the victims. If crime does not exist, then victims of crime do not exist either, and the whole field of victimology should disappear. Of course I agree with the general opinion that crime as well as crime statistics are social constructs. However, it must be kept in mind that the concept of social construct is also a social construct, because language itself is a social construct. In practice, it is very difficult to explain to a person who has been raped that she or he has not been the victim of a crime, because crime does not exist. Therefore, a good way to start a discussion would be to try to find a common field to talk, for example, about behaviours such as intentionally killing a person, inflicting a bodily injury on another person with intent, or depriving a person or an organization of property, as well as about the social reaction to them.

As there was not enough time in the plenary session to continue the discussion, professor Christie gave a short speech during the dinner organized by the Scandinavian Research Council for Criminology in which he pointed out that his assertion should not be taken literally. In my opinion, the problem with that line of arguing is that it puts the discussion right out of the field of science. An assertion that cannot be taken literally cannot be falsified. It is impossible to prove that an author is wrong when you cannot establish precisely what he or she means.

Another interesting and related topic of discussion emerged when, in his plenary address, professor Christie criticized the use of crime statistics by criminologists. The critique was not new but, paradoxically, he was also using crime statistics in his presentation. Professor Christie showed prison statistics from Finland and argued that the decrease in the number of prisoners that took place during the second half of the 20th century was the result of a form of re-integrative shaming from the part of the authorities. In fact, the case of Finland has also been studied by Kuhn (1997) and Törnudd (1993) among others and is probably the best illustration that the decrease of the prison population in a country is to a large extent the result of a political decision. Interestingly enough, the only way to know if the prison population of a country is high or low is to compare it with the prison population of other countries, and this can only be done through the use of prison statistics such as the ones produced by the Council of Europe (2003). Moreover, the best way to show that prison populations are not related to crime rates is to compare them with police and court statistics (see Aebi & Kuhn, 2000). Thus, a radical opposition to the use of crime statistics does not seem very fruitful.

However, during the different discussions with professor Christie as well as with other critical criminologists, I could not help feeling somehow uncomfortable, because I always had the impression of discussing with people with whom I have a lot in common. As I see it, critical criminology was the transposition to the field of criminology of the ideas that prevailed among the youth of the 1960s and 1970s, a generation known in French as *les soixante-huitards* (i.e. the May 1968 rebels). Such ideas were inspired by the perception of the world as a particularly unjust place, and I totally agree with that perception. In fact, life becomes almost unbearable when one tries to think of the number of injustices that are being committed at this very same moment. Nevertheless, I think that critical criminologists made a big mistake when they mixed political engagement with science, because it is a well-known fact that a militant is rarely objective.

Moreover, I think that their radical positions only made things worse during the last twenty-five years. The main message of critical criminology in the 1970s was that crime was not a real problem (“crime does not exist”). As a consequence, the progressive political parties—in which critical criminologists were engaged—never developed a criminal policy. Such a decision, taken in a period of constant growth of delinquency according to all crime measures (Braithwaite, 1989: 49; and Killias, 2001: 113, both with references), was completely irrational and helped indirectly the growth of the most conservative criminal policies. The situation is now critical as extreme right-wing European parties continue to rise by promising simplistic *solutions* to crime.

I hope that in the future critical criminologists and non-critical criminologists will finally manage to work together as a scientific community and help improving that situation, but this may well be the task of the new generation of criminologists. In fact, the first generation of critical criminologists grew up and developed its ideas in a completely different context. Thirty years ago, confrontation was a way of living and one could dream of utopias by the side of the fire provided by the Welfare State. Nowadays, we are trying not to lose what is left of that State. “The times they are a-changing”, said the poet Bob Dylan, a verse that could be followed by those of T. S. Eliot that always come to my mind when I read the essays written in those years: “time is always time, and place is always and only place, and what is actual is actual only for one time and only for one place.”

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Annex Countries included in each analysis

	Intentional homicide (including attempts)	Completed intentional homicide	Assault	Rape	Robbery	Theft	Motor vehicle theft	Burglary	Domestic burglary	Drug offences
Western Europe										
Austria	YES	YES	YES		YES	YES	YES		YES	YES
Denmark	YES	YES	YES	YES	YES			YES	YES	
Finland	YES	YES	YES	YES	YES				YES	YES
France	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Germany		YES	YES	YES	YES	YES	YES	YES	YES	YES
Greece	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Ireland	YES	YES	YES					YES	YES	
Italy	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Netherlands		YES	YES	YES	YES	YES				
Norway	YES	YES	YES	YES	YES		YES	YES		YES
Spain	YES	YES	YES	YES	YES		YES			
Sweden		YES	YES	YES	YES	YES	YES	YES	YES	YES
Switzerland	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
UK: England & Wales	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
UK: Northern Ireland	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
UK: Scotland	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Central and Eastern Europe										
Bulgaria	YES	YES	YES	YES	YES	YES		YES		
Croatia	YES	YES	YES		YES	YES				
Czech Republic	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Estonia	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Hungary		YES	YES	YES	YES	YES	YES	YES	YES	YES
Latvia	YES		YES	YES	YES	YES	YES		YES	YES
Lithuania	YES		YES	YES	YES	YES	YES	YES	YES	YES
Moldova	YES		YES	YES	YES	YES		YES	YES	YES
Poland	YES		YES	YES	YES	YES	YES	YES	YES	YES
Romania			YES	YES	YES		YES	YES		YES
Russia	YES	YES	YES	YES	YES	YES	YES		YES	YES
Slovenia	YES	YES	YES	YES			YES	YES	YES	YES
Turkey					YES		YES			YES

Counting Crime in Europe: Survey Trends 1996–2000

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Abstract

The International Crime Survey (ICVS) is a well established research instrument in the industrialised world. It has already been repeated four times since 1989 with the regular participation of several Western European countries. Since 1992, a growing number of Central-Eastern European countries have started taking part in the ICVS. The responsibility for such surveys was taken forward largely by UNICRI, which was keen to sensitise governments of former socialist countries on the dimensions and extent of crime in their urban areas—especially as police data on crime were often poor. The ICVS database today contains information on a total of thirty-three European countries that have participated in the survey at least once. On average, approximately 28% of European citizens suffered at least one form of victimisation over the twelve months preceding the interview. Analysis in this paper will focus in particular on the findings of the 2000 ICVS and trends between 1996 and 2000. Trends analysis is made possible by comparing victimisation rates in those countries which took part in both the 1996 and 2000 sweeps of the ICVS. Such a comparison reveals that victimisation rates are generally consistent and only modest variations have been registered, with an overall trend downwards for the three types of crime considered (burglary, robbery and assault with force). Further analysis deals with crimes reported to the police and differences observed among participating countries that highlight the relationship between citizens' perception of the police and reporting patterns.

Introduction

The International Crime Survey (ICVS) started in 1989 and has been repeated four times since then. It is a household survey, the major characteristic of which is addressing citizens' experience of crime and victimisation in a standardised way in all participating countries. The ICVS started and further developed as a telephone interview in most participating countries¹. This limited its scope to the most affluent regions of the world (Western Europe, North America, Japan).

1 Most European surveys adopted the CATI method since 1989. However, it is widely recognized that telephone surveys are best when telephone penetration is over 80% of households.

However, the organizers understood the potential of the ICVS in collecting “truly” comparable information on victimisation experience of citizens and started looking for opportunities to increase the participation of former socialist and developing countries.

Since 1992, through the involvement of the United Nations², face-to-face surveys using the ICVS questionnaire started spreading in a growing number of Central-Eastern European countries, also thanks to grants and contributions from various donors who believed in the ICVS as a tool to collect crucial information for the development of evidence-based crime prevention and criminal justice strategies. Special attention was paid to the usefulness of survey results in complementing administrative data on crime, which were often scarce in the region, and in assisting initiatives aimed at increasing citizens’ participation in crime prevention and police reform.

General objectives of the ICVS

The ICVS shares most of its objectives with all victim surveys. Its peculiarity rests in standardisation and international comparability of the results. The main objective is providing **comparative indicators** of crime and victimisation risks, public perception of crime and fear of crime, performance of law enforcement, activities of victim assistance services and use of measures for crime prevention at the household level.

Another important objective is promoting crime surveys as a research and policy tool at the international, national and local levels: in some participating countries the ICVS represents the first opportunity to test survey methodology in the area of crime prevention and security. In this respect, the ICVS also aims at enhancing adequate research and policy analysis methodology and promoting international co-operation by providing an opportunity for a large number of countries to share methodology and experience through their participation in a well co-ordinated international research project.

In many countries the ICVS contributes to creating an opportunity for transparency in public debate about crime and reactions to crime and strengthening public and criminal justice concerns about citizens’ participation in the evaluation of criminal policy and particularly in partnership in crime prevention.

Structure of the ICVS

The ICVS is a household survey that uses a standard questionnaire in all participating countries. Between 1,500 and 2,000 households are interviewed in each country/city. To date the database contains more than 220,000 cases. The ICVS questionnaire covers conventional / volume crime by including questions on eleven types of crime against the household and individual. Furthermore it addresses the issues of consumer fraud/cheating and bribery/corruption. For each

2 Firstly the United Nations Interregional Crime and Justice Research Institute (UNICRI) and recently the United Nations Office on Drugs and Crime (UNODC).

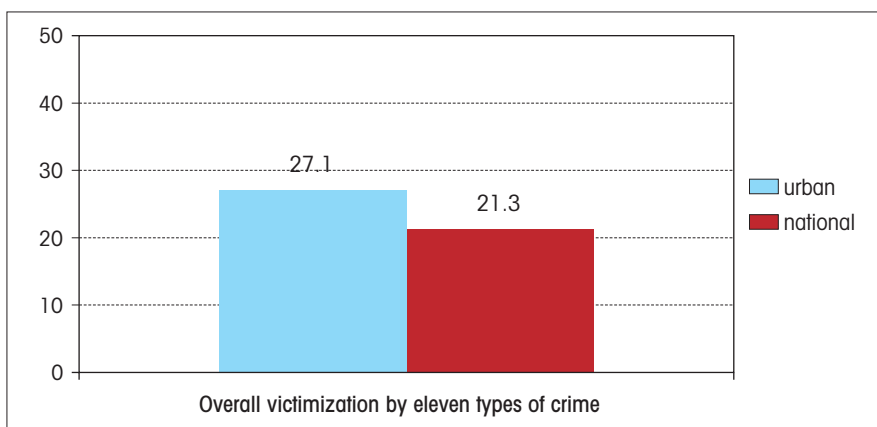


Figure 1. Overall victimisation rates, one year, by eleven types of crime in seventeen industrialized countries, 2000

type of crime experienced, reporting to the police and reasons for reporting or not reporting are asked. Finally the ICVS questionnaire deals with attitudes towards the police; victim support; crime prevention measures at the household level; fear of crime/feelings of safety; and attitudes towards punishment.

In order to limit the cost of the surveys conducted with the face-to-face methodology, in Central-Eastern Europe only samples from the capital city of each participating country were interviewed.³

It should be noted that victimisation rates in urban areas are generally higher than those observed when both urban and rural contexts are considered. Figure 1 refers to seventeen industrialised countries in which the survey was conducted at the national level in 2000. Victimization rates at the urban level are notably higher than those observed at the national level.⁴

Analysis of trends 1996–2000 in Europe

Analysis of trends 1996–2000 refers to urban areas in six Western European countries and capital cities in fifteen Central-Eastern European countries (see Table 1). Trends analysis is made possible by comparing only those countries which took part in both the 1996 and 2000 sweeps of the ICVS.⁵

Due to the different methodologies and contexts, analysis will refer to Western and Central-Eastern European cities as two separate groups. Data presented in the article refer to experiences of victimisation occurred in the calendar year preceding the interview.

3 In this article, comparisons across European countries participating in the ICVS refer to city surveys and respondents from national surveys living in urban areas of 100,000 population and more.

4 For this reason, straightforward comparison with data published in van Kesteren, Mayhew and Nieuwbeerta (2000) is not possible.

5 Analysis here excludes data from the cities of Baku (Azerbaijan), which participated only in 2000 and Belgrade (Serbia), Bishkek (Kyrgyzstan), Bratislava (Slovak Republic) and Skopje (FYR Macedonia) that participated in 1996/97 only. Data from Denmark, Spain and Switzerland (2000 only) and Malta (1997 only), are also excluded.

Table 1. European countries/cities participating in the ICVS 1996 and 2000, type and method of survey

Cities in Central-Eastern Europe	1996	2000	Type of survey (2000)	Survey method (2000)
Bucharest (Romania)	x	x	city	face-to-face
Budapest (Hungary)	x	x	city	CATI
Kiev (Ukraine)	x (97)	x	city	face-to-face
Ljubljana (Slovenia)	x (97)	x (01)	national	CATI
Minsk (Belarus)	x (97)	x	city	face-to-face
Moscow (Russia)	x	x	city	CATI
Prague (Czech Rep.)	x	x	city	CATI
Riga (Latvia)	x	x	city	face-to-face
Sofia (Bulgaria)	x (97)	x	city	face-to-face
Tallinn (Estonia)	x (95)	x	national	face-to-face CAPI
Tblisi (Georgia)	x	x	city	face-to-face
Tirana (Albania)	x	x	city	face-to-face
Vilnius (Lithuania)	x (97)	x	city	face-to-face
Warsaw (Poland)	x	x	city	face-to-face
Zagreb (Croatia)	x (97)	x	city	face-to-face
Urban areas in Western Europe				
England & Wales	x	x	national	CATI
Finland	x	x	national	CATI
Netherlands	x	x	national	CATI
Northern Ireland	x	x	national	face-to-face
Scotland	x	x	national	CATI
Sweden	x	x	national	CATI

Overall victimisation in European cities

The ICVS questionnaire includes eleven types of crime, as follows:

A. Car-related crimes

- Theft of car
- Theft from car
- Car vandalism

B. Breaking and entering

- Burglary
- Attempted burglary

C. Contact crimes

- Robbery
- Assault/threat
- Sexual incidents (women only)

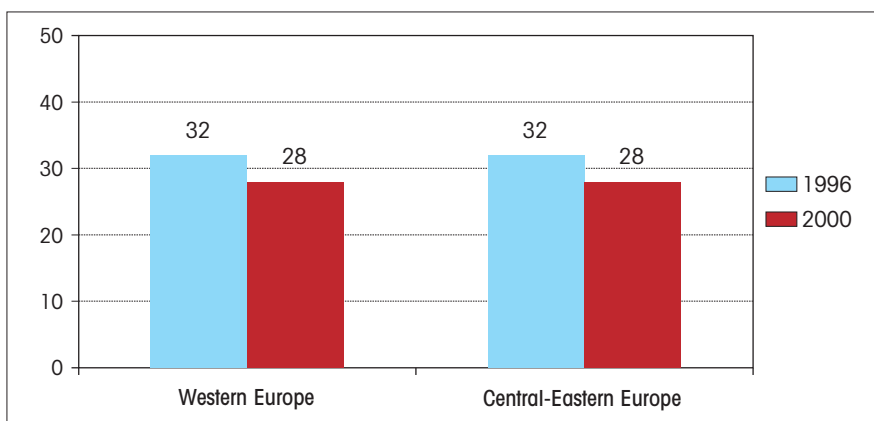


Figure 2. Overall victimisation by eleven types of crime in Western European urban areas and Central-Eastern European cities, 1996 and 2000

D. Other property crimes

- Theft of bicycle
- Theft of motorcycle
- Theft of personal property

The overall rates of victimisation for the eleven types of crime were identical in the two groups in 1996 and remained identical in 2000, showing the same decrease by 4 percentage points (from 32% to 28%—see Figure 2). This incredible result is nevertheless the product of two quite different situations in the two parts of Europe.

As Table 2 can show, the contribution of the different types of crime to the overall victimisation rate is slightly different, especially as regards contact crime (that is higher) and burglary (lower) in the Western European urban areas. However, in both groups the majority of incidents referred to car-related crime followed by other property crime.

Table 2. Profile of crime in Central-Eastern European cities and Western European urban areas, 1996 and 2000 (calculation based on number of incidents)

	Contact crime		Breaking and entering		Car-related crime		Other property crime	
	1996	2000	1996	2000	1996	2000	1996	2000
Central-Eastern Europe	20.8	18.6	14.0	14.6	37.4	39.5	27.8	27.4
Western Europe	26.6	25.6	9.6	10.9	39.1	36.4	24.7	27.1

Crimes reported to the police

Another important difference between the two groups is represented by the percentage of crimes that were reported to the police. Figure 3 shows that in general crimes were more frequently reported to the police in the West. In 1996, 48% of the victims in Western Europe declared having reported the most recent crime experienced to the police. This percentage increased to 52% in 2000. In Central-Eastern European cities only 32% of the victims reported to the police in 1996. An increase was also observed in 2000, but of much smaller proportion (only 2%). This finding shows that, in a situation in which the levels of victimisation were the same, 18% more victims requested formal action from the police in Western Europe than in Central-Eastern Europe.

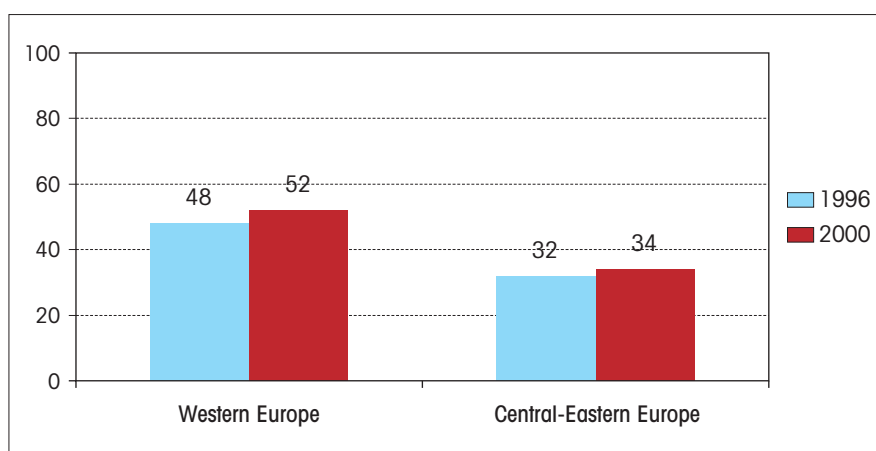


Figure 3. Percentage of victims who reported crimes to the police (average of 11 crimes) in Western European urban areas and Central-Eastern European cities, 1996 and 2000

However, from a police-community point of view, a trend towards more crime reported is welcome since it shows increased confidence in the role of the police after a crime is committed. For example, it is more and more frequent that households and cars are insured and the insurance settlement can be effected only following a proper reporting to the authorities in charge. Of course, insurance cannot prevent crime but it is one of the measures that citizens adopt in order to limit the financial consequences of crime. Increased reporting to the police may also explain the apparent growth in administrative/official statistics for some types of crime.

Trends in specific crimes

Apart from overall victimisation rates, attention should be paid to specific types of crime. The following analysis refers to trends 1996–2000 as regards victimisation from burglary, robbery and assault with force.⁶ Figure 4 shows that victimisation from burglaries and robberies was higher in Central-Eastern European cities while assault with force was more frequent in the Western European areas. Trends down between 1996 and 2000 were observed for all types of crime in both groups, with the only exception of assault with force in Western Europe that was stable.

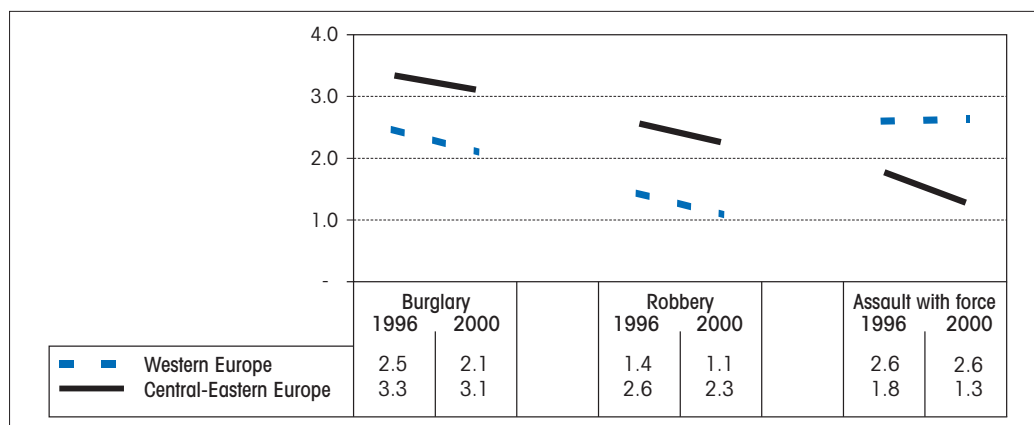


Figure 4. Trends in victimisation for burglary, robbery and assault with force in Western European urban areas and Central-Eastern European cities, 1996 and 2000

Domestic burglary

Burglary is the typical household crime. Furthermore, domestic burglary is considered a very solid indicator in the ICVS, with a clear definition⁷ that allows for common understanding across cultures. Rates of victimisation are very low across Europe, although slightly lower in the West, but the general trend as regards prevalence is towards a decrease (see Figure 5). It should be noted, however, that the percentage of incidents has increased in Central-Eastern European cities between 1996 and 2000. This indicates that a smaller percentage of households has been victimised more frequently. It may also indicate a delay in the “target hardening” process that has been put in place by many Western European households through the installation of burglar alarms and other crime prevention

6 Analysis refers to selected victimisation experience of assault with force, thus excluding victims of threats (no force used).

7 “Over the past five years, did anyone actually get into your home/residence without permission, and steal or try to steal something?” Interviewers are also instructed to make sure that the incident happened at the respondent’s main residence (second houses are excluded, as well as garages and sheds). Unsuccessful attempts are recorded separately.

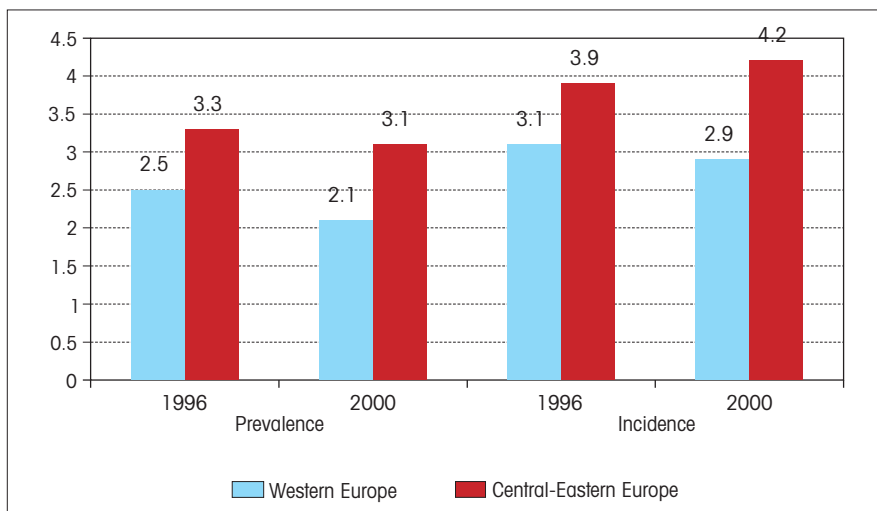


Figure 5. Victimisation rates for burglary, prevalence and incidence, in Western European urban areas and Central-Eastern European cities, 1996 and 2000

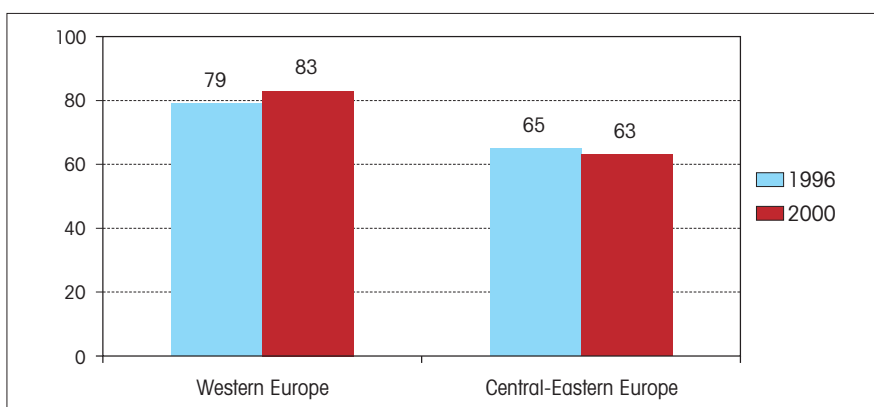


Figure 6. Percentage of respondents who reported burglary to the police in Western European urban areas and Central-Eastern European cities, 1996 and 2000

devices. Previous analysis has demonstrated that such devices are generally installed after the first burglary and helped in preventing a second one. This may not be happening in Central-Eastern European cities.

The levels of reporting to the police are different in the two groups (Figure 6). While in the West the very high level of reporting observed in 1996 went up above 80% in 2000, in Central-Eastern European cities the level of reporting in 2000 was lower than in 1996. This negative trend goes against the overall trend for reporting crimes that is going up as shown in Figure 3. The experience of burglary is quite dramatic, with a clear invasion of privacy and very often a monetary loss that is not limited to the objects stolen but also refers to damages to doors, windows and locks.

The perceived seriousness of the incident, measured on a three-point scale (1 not very serious, 2 fairly serious and 3 very serious) showed exactly the same levels in the two groups (Figure 7). If the perceived gravity of the incidents is the same, other reasons should be found to explain the different reporting behaviour.

Although burglary rates are very similar in the two groups, the respondents from Central-Eastern European cities feared someone would be likely to break and enter their household much more frequently than those in the West. Figure 8 shows that burglary in the next twelve months was likely or very likely for 44% of the Central-Eastern European respondents in 1996 and 2000. In the West, this was true for a much lower percentage of respondents (28% in 1996 that decreased to 24% in 2000).

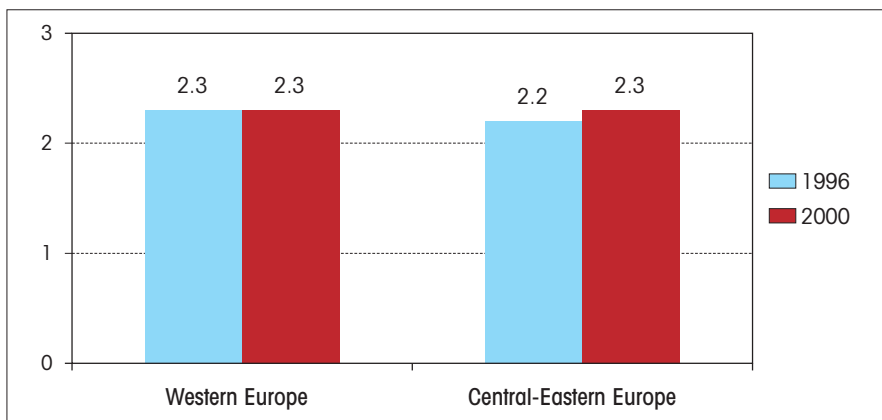


Figure 7. Perceived seriousness of burglary in Western European urban areas and Central-Eastern European cities, 1996 and 2000

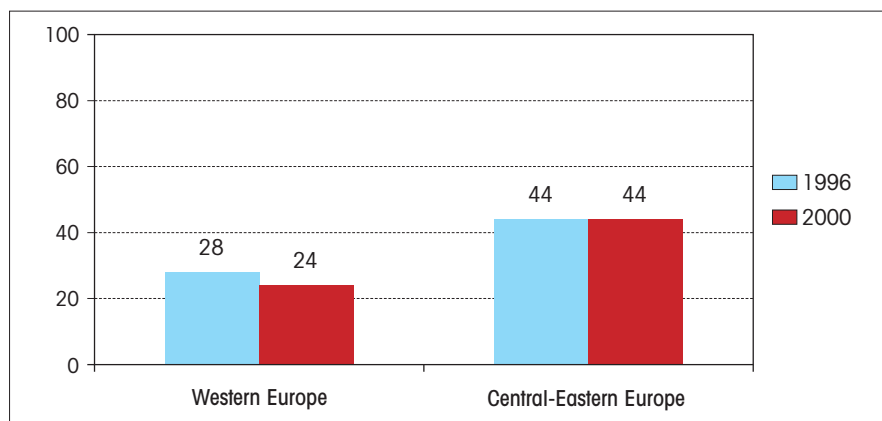


Figure 8. Likelihood of burglary in the next twelve months, Western European urban areas and Central-Eastern European cities, 1996 and 2000 (response categories “likely” and “very likely” combined)

It appears therefore that respondents from Central-Eastern European cities did not feel protected against burglary, and that may probably relate to a historical lack of confidence in the police that is more evident when the police are called to deal with and investigate property crimes.

People who report theft to the police—including burglary—very often expect them to recover the money, find the offender, be able to somehow redress the situation and bring some compensation. The ICVS asked victims who reported to the police about their satisfaction with the treatment received. How did the police respond (see Figure 9)? In Western Europe apparently well, with the share of satisfied customers going up and reaching 78% in 2000. The level of satisfaction with the police upon reporting burglary in Central-Eastern European cities is instead very low and almost stable (from 33% to 34% between 1996 and 2000). Only one-third of citizens who reported said they were satisfied with what the police did afterwards.

The analysis of the reasons for dissatisfaction very frequently brought up the issue of not recovering property or not finding the offenders, but also revealed that very frequently victims complain about the police being impolite, not being interested at all in the case, being slow and not keeping them informed about progress in the investigation. The lack of confidence in the police in Central-Eastern European countries often has its roots in the perception of the police being corrupt. The ICVS 2000 in nine Central-Eastern European cities included a question that was not asked in the West about likelihood of the police accepting money in exchange of help.⁸ Results showed that on average 66% of the respondents declared it was likely that the police would accept money to discharge their duties. Nevertheless, talking corruption is still a very sensitive issue since approximately 20% of the respondents refused to reply to such question.

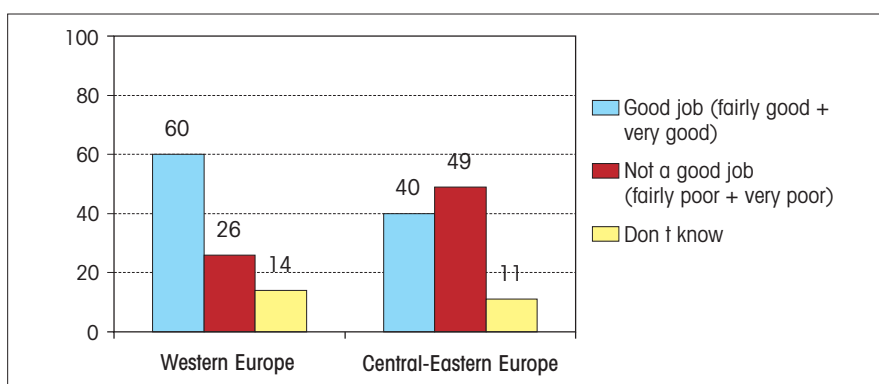


Figure 9. Level of satisfaction with the police upon reporting burglary in Western European urban areas and Central-Eastern European cities, 1996 and 2000

⁸ “Is it likely that a citizen would have to offer money, a present or a favour (i.e., more than official charge), to get help from the police?”

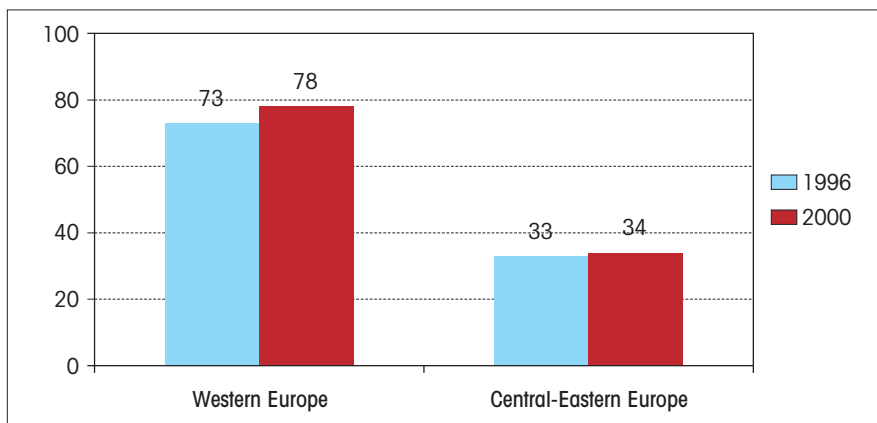


Figure 10. Level of satisfaction with the police (general), in Western European urban areas and Central-Eastern European cities, 2000

A possible explanation comes from the analysis of the overall behaviour of the samples interviewed (victims-non victims) as regards their satisfaction with the performance of the police in preventing and controlling crime in their area. In the 2000 survey (see Figure 10) 60% of the respondents in Western Europe said the police did either a fairly good or a very good job, while only 26% were not happy with their work. In Eastern-Central European cities instead those satisfied were only 40% against the majority (49%) who said that the police did not do a good job. The 2000 data are not directly comparable with 1996 because of a change in the questionnaire as regards the categories of response to the police question. While in the past three responses were possible (police do a good job, a bad job and don't know), there are now five (police do a fairly good job, a very good job, a fairly poor job, a very poor job and don't know). However, taking the compari-

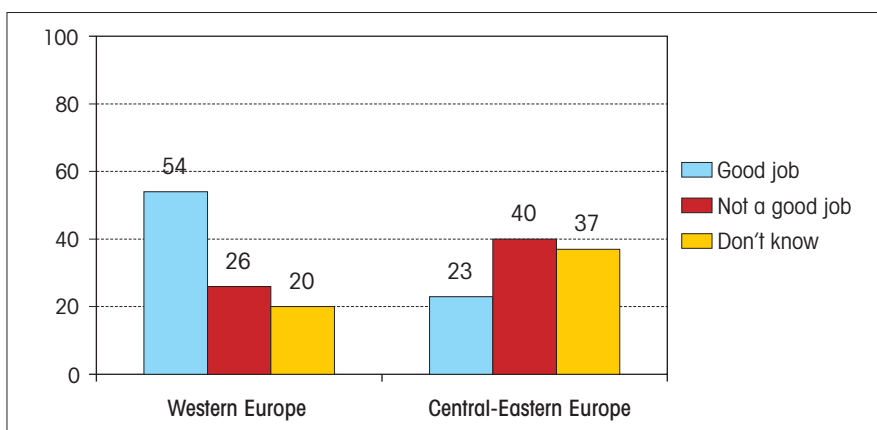


Figure 11. Level of satisfaction with the police (general), in Western European urban areas and Central-Eastern European cities, 1996

son with precaution, by observing Figure 11 that refers to 1996 it appears that there has been an increase in the percentage of people satisfied in both groups of countries/cities. A notable change is the decrease in the percentage of those who said “don’t know” in Eastern-Central Europe.

Conclusions

Two major findings appear from the analysis of the ICVS results in European cities and urban areas: a) very small variations were observed between 1996 and 2000 and b) overall victimisation rates were the same throughout Europe and showed the same trend down.

However, apart from similarities, the analysis also revealed some differences in the profile of crime (more burglaries in Central-Eastern Europe and more contact crimes in Western Europe). Furthermore, in-depth analysis of burglaries revealed that incidence was higher in Central-Eastern European cities and showing a trend towards increase. While the perception of seriousness of burglary was the same in the two groups, fear of burglary was much higher in Central-Eastern Europe.

The biggest differences between the groups were however observed as regards attitudes towards the police, starting with reporting patterns. The percentage of burglaries reported to the police was much lower in Central-Eastern Europe, where victims were also frequently dissatisfied with what the police did with their reports. The overall confidence in the police and satisfaction with the police upon reporting increased between 1996 and 2000 but still remained at a much lower level in Central-Eastern Europe.

The results of the ICVS confirm once again that it is necessary to integrate police records of crime with survey data in order to get a more accurate picture of the crime situation. Information obtained through the survey is also crucial for the police in the participating countries in order to monitor their performance and citizens’ attitudes in that respect. While this type of information is present to some extent in Western Europe, there is still very little information available from Central-Eastern Europe. With the forthcoming accession of 10 new EU members, it would be extremely important to start collecting data with a regular European victim survey, still comparable with the rest of the world. The ICVS may represent a very good tool to assist efforts in this direction, especially those recently initiated by the European Commission.

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Constitutionalizing European Criminal Justice

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Abstract

This contribution looks at the implications for the emerging European transnational criminal justice system (otherwise known as the Area of Freedom, Security and Justice (AFSJ)) of the recent ‘constitutional’ initiative taken by the European Union Convention on the Future of Europe under Giscard d’Estaing—an initiative whose fate now lies in the hands of the Intergovernmental Council meeting under the Italian presidency of the European Council in the autumn of this year. The contribution contrasts two themes within the emerging constitutional framework, and on the basis of how these two themes are articulated and their relative priority within the ongoing constitutional debate, it looks at the opportunities and dangers of the constitutionalization process in terms of certain fundamental tensions or oppositions in the emerging AFSJ.

One theme within the constitutional project is highly instrumental. It views the constitution-building process as just one more opportunity (after the Treaties of Maastricht (1992) and Amsterdam (1997) and the Tampere Programme (1999)) to develop the scope and competence of the European polity within various policy areas. This expansionist mindset is nowhere more prominent than within the relatively new and still significantly underdeveloped area of FSJ, particularly in the light of the ‘securitization’ climate that has emerged since the Twin Towers attack on 9/11. The other theme within the constitutional project is more normative in nature. It views the constitution-building process as an opportunity to subject the incrementally developed structure of the EU to ‘constitutional discipline’ for the first time. The emphasis here is upon the regulation of powers already granted, whether by ‘external’ democratic, judicial or administrative means, or by ‘internal’ monitoring within institutions or new checks and balances between institutions. Clearly neither of these themes or tendencies can exist in isolation. A constitution is always about both ‘constituting’ and ‘regulating’—they are two sides of the same conceptual coin. Yet the emphasis may differ markedly—there may be more or less stress upon one rather than the other, and the combination of the two may be more or less optimal. In turn, the balance achieved between these two conceptions is likely to have important implications for certain issues which have been and remain at the centre of AFSJ—namely the balance between intergovernmental (state-based) and supranational (central) authority, between legislative and executive empowerment, between proactive and reactive programmes, and—most generally of all—between accountability and effectiveness.

The contribution offers some thoughts on how the constitutional process is in fact managing the balance between ‘(re)constituting’ and ‘regulating’ and what this implies in terms of the future trajectory of AFSJ—in particular the fundamental question of the relationship between accountability and effectiveness.

Steps Towards Harmonisation —Steps Towards Friction

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Warming up

Before I start I have to make two reservations—one addressed to the colleagues with a more sociological background and one to the lawyers among you.

I have to out myself first of all as being a lawyer meaning that my main field of academic work is the interpretation and application of norms. It is due to the traditional organisation of law studies and university research in Germany that criminal law and criminology are still regarded to be different fields and are therefore mainly strictly separate in personal respect, too. But in my opinion the traditional differentiation between the world of rules and the world of social phenomena is an artificial and improper view. Criminology deals with phenomena which are mostly constructed by law. Murder cannot even be considered a crime without a norm, which rules killing a person to be a crime. On the other hand interpreting and applying and—in the first line—making law is irrational and unreasonable without taking into consideration the results of sociological and especially criminological research. Because of this interdependency of criminology and legal research both disciplines complement one another and thus I have worked together in connected projects with the criminologist at my home faculty, Klaus Boers. So I find myself today in the role I am accustomed to, which is to contribute my legal expertise in criminological research.

On the other hand I have to ask my colleagues in legal research among the auditory to show lenience when I sometimes go back to basics, which to them might occur as being obvious and self-evident. Nothing in law is self-evident.

This should be enough of introduction and reservation; I am aware of the fact that I will miss the expectations of half of the auditory anyway. So let us get down to harmonisation of criminal law in Europe. I will approach the subject in two main chapters: a more technical one concerning harmonisation in law and the process of law-making in the European Union; and in the second part I will try to reveal the hidden agenda—or the ideological principles which guide the criminal policy in Europe.

“Harmony in Law” – some definitions

I have to start with some definitions of “harmonisation” and “frictions” to make clear how I understand and will use these terms¹.

The content of law is free in a political sense, but the instructions of law-making are universal. One of these instructions follows the simple rule that rules must be able to rule people’s conduct. Laws have to respond to the structure of “if ... then”. That means that the law has to rule that a certain (abstractly) described behaviour will have a certain repercussion on the addressee of the rule. I call this the “conditional programme”. This programme is failed when you set two rules, addressing the same person and tying different consequences to the same behaviour. To cut it short I will use traffic lights as an example: If traffic lights showed “red” and “green” lights simultaneously they were no longer able to rule anything. They were double-binding and would form, what I like to name a “pitfall in law” or “frictions”. Thus I state that consistency is one of the fundamental autonomous principles of law which can be regarded as “harmonious” law. The tertium comparationis within one system of laws—for instance the laws of one single state—is the individual as the addressee of the rules. To clarify my position again by using as an example the traffic lights: it is obvious that red and green light in fact must be shown simultaneously, but addressed to different persons. Only from the perspective of the individual who is submitted to laws one can both detect frictions and name the diverse elements which have to be harmonised.

The addressee of rules is in my opinion the starting point, too, when it is about to lay down the principles in according to which consistency of laws shall be established. Every single rule has to go back to guiding principles meaning that it has to put the principle in more concrete forms. Once a norm or a verdict counteracts the guiding principle of the system the result of this will be inconsistency or frictions. I will shorten my argumentation by using again traffic as an example: Imagine for a moment, that on an initiative of UK in order to harmonise traffic in Europe the EU Commission regulated that all trucks should drive on the left. It becomes totally clear, that the traffic law of all countries on the continent then all of a sudden became inconsistent. Such a regulation would not reach the target of harmonisation but would only cause disharmony, i.e. frictions. I will show now that the process of law-making in the field of criminal law in Europe partly follows this example.

I sum up my definitions: Frictions in law are caused by ambiguous, equally ranked legal orders addressing the same people. My understanding of harmonisation is: It is the process of establishing a system of consistent conditional programs going back to hierarchical ordered principles and addressing the same people.

1 In detail see Nelles in Klip/van der Wilt (ed.), *Harmonisation and harmonising measures in criminal law*, Royal Academy of Arts and Sciences, 2002, p. 31 pp.

How has penal law come to Europe—how goes Europe into penal law?

Cross-border crimes and prosecuting them is not a new and not a specifically European phenomenon. So I shortly have to go back to the classical instruments by which States have used to deal with this problem.

International Law

These instruments form part of International Law i.e. international bilateral or multilateral treaties covering mutual assistance and extradition. Most of the treaties ruling mutual assistance are Council of Europe Conventions e.g. on Extradition (1957), Mutual assistance in criminal matters (1959) or the transfer of sentenced persons (1983). The Council of Europe, which may be named as the oldest “Europe” in legal respect, is well known by its most famous European Convention of Human Rights² and by the European Court of Human rights in Strasbourg³. These treaties are still in force. They generally enshrine the safeguards and procedures traditionally applied to international co-operation in criminal matters. These safeguards are designed for two main purposes.

- First it shall be ensured that a country does not assist in the prosecution or detention of a person by another state in circumstances, which are contrary to human rights standards⁴.
- Second, it must be ensured that disparities between legal systems do not result in defendants and witnesses being placed in a worse position than they would be under the national law of the requested country^{5, 6}.

In my terms: the treaties provide principles and special procedures to avoid frictions. A request of one state has to go through several procedures in the requested country. I want to name only two of these principles: Legal assistance is only to be given, if the crime concerned is a crime not only in the requesting but also in the requested state (principle of dual or double criminality)⁷. Legal assistance must not be given, if the principle of “ne bis in idem” was inflicted by the requested state (principle of double jeopardy).⁸

2 For further information see Whelan, ‘Fundamental Rights, Democracy and the Rule of Law in the Third Pillar’, in Barrett (ed.), *Justice Cooperation in the European Union*, 1997, p. 205 pp.

3 For further information see Drzemczewski, *The European Rights Convention: Protocol No. 11—Entry into Force and First Year of Application*, EHLJ 21 (2000), 1 pp.

4 Cf. Schomburg, *Die Rolle des Individuums in der Internationalen Kooperation in Strafsachen*, StV 1998, 153; cf. Jung, *Strafverteidigung in Europa*, StV 1990, 509, 512.

5 Cf. Schomburg, *Die Rolle des Individuums in der Internationalen Kooperation in Strafsachen*, StV 1998, 153, 155; cf. Jung/Schroth, *Das Strafrecht als Gegenstand der Rechtsangleichung in Europa*, GA 1983, 241, 242.

6 Ashworth, Binning et al., *EU Co-operation in Criminal Matters*, JUSTICE 2000, p. 2, 3.

7 Stessens, ‘The Joint Initiative of the France, Sweden and Belgium for the Adoption of a Council Framework Decision on the Execution in the European Union of Orders Freezing Assets and Evidence’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 92; Frieberger, ‘Mutual Recognition of Final Decisions and Dual Criminality’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 161 pp.

8 Vernimmen, ‘A propos de la reconnaissance mutuelle des décisions judiciaires pénales en général’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 147, 149.

On the EU level one has to face the fact, that criminal law and the right to punish are still regarded as lying within the sovereignty of nations i.e. also of the Member States of the European Union⁹. The limits of Union competence are governed by the principle of conferral and this will not be changed by the future constitution (Art. 9 I). So up to now the Union has not been formally empowered to establish Criminal law as such.

From this starting point international treaties have been the classical instrument to rule co-operation in criminal matters within the EU, too. Since 1991 several Conventions have been adopted under European Political Co-operation, such as the Convention on Simplified Extradition Procedure (1995), the Convention on Driving Disqualifications (1998) and the Convention on Mutual Assistance in Criminal Matters (2000).

The well-known Schengen agreements are also International treaties. Their background was to form a platform for police co-operation in order to compensate for facilitating the free movement of persons within Europe¹⁰. The Schengen treaties have become part of the so-called *acquis communautaire* and thus are implemented in the so-called Third Pillar of the EU¹¹ to which I go back later. The treaties impose the obligation to the police to co-operate in the field of prosecution. They authorise police i.a. to follow defendants across borders, to install law enforcement agencies at the boundaries where the officers in fact exchanged information on a very informal way etc.. The principle of *ne bis in idem* is considered in the treaties to prohibit prosecution only if the defendant has already been convicted of the crime concerned or if further prosecution is definitely barred by the decision of an authority after the accused has fulfilled certain obligations (“Einstellung des Verfahrens nach Erfüllung von Auflagen”)¹². The Schengen agreements are regarded to form the blueprint of co-operation between and among national authorities in the field of cross-border law enforcement¹³ in accordance with the (later) EU treaties of Amsterdam and Nizza.

But the main problem of international treaties as instruments of mutual legal aid has been seen in the fact that most of them have not become fully effective (even across the EU) because international treaties have to be ratified and not all of the member states have done so with all of the conventions. The 1991 Convention on the enforcement of foreign criminal sentences for instance has never come into force.¹⁴

9 Nelles, *Europäisierung des Strafverfahrens—Strafprozessrecht in Europa?*, ZStW 1997, 727; Gleß/Lüke, *Rechtsschutz gegen grenzüberschreitende Strafverfolgung in Europa*, Jura 1998, 70; Hecker, *Europäisches Strafrecht als Antwort auf transnationale Kriminalität?*, JA 2002, 723, 724.

10 Gleß in Eser/Lagodny/Blakesley (ed.), *The Individual as Subject of International Cooperation in Criminal Matters*, 2002, 51 pp.; Hecker, *Europäisches Strafrecht als Antwort auf transnationale Kriminalität?*, JA 2002, 723, 724

11 See *Protocol integrating the Schengen Acquis into the Framework of the European Union*, OJ C 340, 10.11.1997, p. 93; for further information see Gleß in Eser/Lagodny/Blakesley (ed.), *The Individual as Subject of International Cooperation in Criminal Matters*, 2002, 52, 73 pp.

12 ECJ 11. 02. 2003 C-187/01 and C.385/01.

13 In detail Nelles, *Europäisierung des Strafverfahrens—Strafprozessrecht für Europa*, ZStW 1997, pp. 727, 728, 735 pp.; Whelan, ‘Fundamental Rights, Democracy and the Rule of Law in the Third Pillar’, in Barrett (ed.), *Justice Cooperation in the European Union*, 1997, p. 205 pp; Anderson et. al., *Policing the European Union*, Oxford 1995.

14 Bradley, ‘The Joint Initiative of the UK, France and Sweden for the Adoption of a Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 126.

European Community Law

The governments of the member states having in mind a more effective system of mutual legal aid within the European Union but not willing to give up their sovereignty to punish made “Co-operation in the field of Justice and Home Affairs” to form one of the fields of common politics of the EU. Besides this politics have been extended also to the field of Common Foreign and Security by the treaty of Maastricht. Since then the metaphor of a temple has been used to describe the legal construction of the European Union. Actually we still have to differ between the three so-called pillars of the European Union, which are to be given up under provisions of the future Constitution.

- The first pillar is formed by the former European Communities (i.e. European Coal and Steel Community; Euratom and the European [Economic] Community).
- The sector of “Common and foreign security” forms the 2nd Pillar. The Council of the secretaries of foreign affairs and the secretaries of war has in some way dealt with criminal matters, too, for instance by stating and updating a Common Position (2001/931/CFSP) on the application of specific measures to combat terrorism (updated in 2003/402/CSFP and 2003/482/CSFP). This position contains a list of persons, groups and entities suspected of forming part of international terrorism and of which the assets may and shall be frozen by every member state under no additional precondition. Nevertheless for the rest I leave out the 2nd pillar.
- The 3rd Pillar is Co-operation in Justice and Home Affairs (CJHA).

This differentiation between the fields of politics go along with different ways of law-making and different legal instruments, too.

The first pillar is the domain of the EU Commission. The main legal instruments are Regulations and Directives¹⁵. Regulations are binding in their entirety and directly applicable in all Member States. Directives, however, are not directly applicable but are binding on the Member States as to be converted into domestic law. Directives not converted within the specified time limit may be invoked by individuals against a State¹⁶ as well as between individuals¹⁷.

In the 3rd Pillar (besides the classical measures of International Law) instruments as follows are foreseen: co-operation and joint actions, Council Decisions and Framework Decisions¹⁸. They are not directly applicable. But Framework Decisions are legislative acts binding, as to the result to be achieved, on the member states leaving them free to choose the form of achieving the results.¹⁹ I will go on to this later.

15 Art. 249 ECT

16 Case 33/70, *SACE* (1970) ECR 1213 (directives; direct applicability); Joint cases C-6/90 and C-9/90, *Francovich* (1991) ECR I – 5357 (state liability for breach of community law).

17 Case 481/99, *Heininger* (2001) ECR (13 December 2001); this judgement is to be found on the homepage of the ECJ (<http://curia.eu.int/en/transitpage.htm>).

18 Cf. Art. 34 paragraph 2 EUT.

19 Bradley, ‘The Joint Initiative of the UK, France and Sweden for the Adoption of a Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 127; Zeder, *Der Rahmenbeschluss als Instrument der EU-Rechtsangleichung im Strafrecht am Beispiel des Rahmenbeschlusses gegen Geldfälschung*, ÖJZ 2001, 81, 82, 83.

a) *First Pillar*

Although it might occur that questions of penal law are only raised in the third pillar, it was within the first pillar that a partial approximation of substantive penal laws was initiated. This is grounded on the Jurisdiction of the European Court of Justice (the leading case is the famous Greek Maize case of 1989²⁰) and amendments of the Amsterdam Treaties (Art. 209A) providing—roughly spoken—that member states shall take the same measure to counter fraud affecting the financial interest of the Community as they take to counter fraud affecting their own financial interests.²¹ The Court added that the measures taken should in every case confer on the sanction “an effective, proportionate and dissuasive character”. Here we meet the starting-point of one of the actual principles of EU’s criminal policy.

Besides this the Community created within the first pillar a series of “non-penal” sanctions such as administrative fines or exclusion from entitlement to further public subsidies.²² These sanctions primarily based on competition law can be regarded as what we call in Germany “Ordnungswidrigkeitenrecht”. The difference between penalties and administrative sanctions is only gradual, not essential. Administrative sanctions are estimated not to contain an ethical charge of wrongfulness but only the charge of having inflicted a rule. This is where metaphysics are brought in. To shorten it: It is obvious that in this field conflicts may arise between national penal law and EC law which is directly applicable, too.

Also within the first pillar OLAF²³ has been created. The Commission has bundled step by step its competence to counteract fraud, corruption and other unwrongful acts against the financial interests of the EU in one Unit for the fight against fraud. (UCLAF which was transformed into an independent Office in 1999). OLAF inter alia exercises (under Regulation (EC) 1073/1999) the power to carry out on-the-spot inspections and checks on the territory of the Member States. Investigations are intended “for the detection of serious or transnational irregularities that may involve economic operators acting in Several Member States”. The Member States are obliged to co-operate and to give necessary support to the Officers of OLAF and to forward documents and information relating to investigations. OLAF’s reports shall constitute admissible evidence in administrative or judicial proceedings of the member State in which their use proves necessary. The right of the suspected and checked persons especially to legal protection is not ruled. OLAF is strictly bound to efficacy. This European Office for fight against fraud, OLAF, can be regarded as a model for the European approach to procedural penal law.

20 Case 68/88, *Adde* [1989] ECR 2965; see Böse, *The Obligations of Member States to Penalise Infringements of Community Law: From Greek Maize to French Farmers*, R.A.E. – L.E.A. 2001–2002, 103 pp; Delmas-Marty, ‘The European Union and Penal Law’, in: *ELJ* 1998, p. 87 pp.; Estella Baker, *Taking European Criminal Law Seriously*, Crim.L.R 1998, p. 361 pp.

21 Van der Wilt, ‘Some critical reflections on the process of harmonisation of criminal law within the European Union’, in Klip (ed.), *Harmonisation and harmonising measures in criminal law*, 2002, 77, 78 pp.

22 In detail Satzger, *Die Europäisierung des Strafrechts*, Köln 2001, p. 57 pp.; Vogel, *Europäische Kriminalpolitik—europäische Strafrechtsdogmatik*, GA 2002, 517.

23 For further information see von Bubnoff, *Institutionelle Kriminalitätsbekämpfung in der EU- Schritte auf dem Weg zu einem europäischen Ermittlungs- und Strafverfolgungsraum*, ZEuS 2002, 185, 196 pp.

EU: Especially the Third Pillar

The instruments which were foreseen in the treaty of Maastricht establishing the EU and thus the 3rd pillar, too, were besides the classical measures of International Law, co-operation and joint actions. In my opinion “co-operation” has been the most effective instrument not to harmonise penal law in Europe but to produce the need of harmonisation. Co-operation takes place in formal as well as in informal ways. Once official authorities are encouraged to co-operate informally, to form networks, to get familiar with the laws of the other member states, to make friends with each other on a very personal level, they are on the slippery slope of collusion. Forum-shopping²⁴ is a well known term, meaning that prosecutors can come to an agreement about where to bring a case to court. I mean that even “authority-shopping”²⁵ has become possible, meaning that the police for instance “chase” a suspect across borders until he finally reaches a member state with the lowest hurdle to obtain special evidence. It is obvious that within a system of informality formal restrictions lose their function as safeguards of individual rights against governmental power. Thus informal co-operation and a fair process have to be regarded as a *contradictio in adjecto*. Procedures are no longer transparent and legal protection is mostly out of sight.

Moreover a number of new institutions and offices has been installed. I will only mention Europol, the European Judicial Network (EJN) and Eurojust which is supposed to form the nucleus of a European Public Prosecutor’s Office.²⁶ Europol and Eurojust are independent Offices with personal immunity of their officers. They are out of individual accountability and legal control.²⁷ Only some institutional supervision is provided resulting mostly in self-important reports of the fore-mentioned institutions.²⁸

This development within the 3rd pillar has been additionally pushed by the treaty of Amsterdam providing as a new instrument the Council framework decision. Framework decisions are legislative acts binding, as to the result to be achieved, on the member states but leaving them free to choose the form of achieving the results²⁹. Since 1999 an increasing number (going to the number of about 30) of such framework decisions have been set into force following the action plan of the Council (of Tampere) on how to implement the provisions of the treaty of Amsterdam establishing the so called “area of freedom, security and justice”.

The most famous in the field of substantive law is the framework decision on terrorism (13.06.2002)³⁰ and in the field of procedural law it is the framework decision on the European arrest warrant (13.06.2002)³¹. Without going into details

24 Kühne, ‘Die Bekämpfung von internationaler Kriminalität und von Drogenabhängigkeit als gemeinsames Interesse der Unionsstaaten’, in Müller-Graff (Hrsg), *Europäische Zusammenarbeit in den Bereichen Justiz und Inneres*, 1996, 85, 92, 95.

25 Nelles, *Europäisierung des Strafverfahrens—Strafprozessrecht für Europa*, ZStW 1997, 738.

26 Cf. Vogel, *Europäische Kriminalpolitik—europäische Strafrechtsdogmatik*, GA 2002, 517.

27 Cf. Gleß/Lüke, *Rechtsschutz gegen grenzüberschreitende Strafverfolgung in Europa*, Jura 2000, 400, 401, 406.

28 Europol for example is—beside the Financial Control—only controlled by its Joint Supervisory Body and the Joint Audit Committee; For further information see Gleß, *Europol*, NSTZ, 623, 624;

29 For further information cf. Footnote 19.

30 2002/475/JHA, OJ L 164, 22/06/2002 p. 0003–0007.

31 2002/584/JI, OJ L 190/1, 18/07/2002 p. 0001–0020.

I will just name some framework decisions which have been adopted in the recent year:

Council framework decision

- on the protection of the environment through criminal law (27.1.2003)³²
- on combating corruption in the private sector (22.7.2003)³³
- on the execution in the European Union of orders of freezing property or evidence (22.7.2003)³⁴

A Council Framework Decision on the application of the principle of mutual recognition to financial penalties (Initiative of UK, France and Sweden; OJ C 278, 2. 20. 2001) is on the agenda of the Council. At the Council meeting of 8 May 2003 the Council announced to be willing to formally adopt this Decision at one of its next forthcoming meetings. First conclusions have been adopted on the tracing of the use of prepaid mobile cards in order to facilitate criminal investigations.

As far as substantive law is concerned the framework decisions tend to be more than just frameworks.³⁵ The framework decision on combating corruption for instance defines in detail and even down to the wording the conducts which shall constitute a crime. With regard to penalties and sanctions these framework decisions operate with minimum and maximum rules. In the field of corruption for instance the conducts referred to shall be “punishable by a penalty of a maximum of at least one to three years of imprisonment”. One could presume that these measures in fact lead to a more “harmonious” penal law in Europe, but in my opinion it is the other way round. Every country has its own criminal law which is embedded in legal and social culture³⁶. Prescribing the conducts as well as the legal threat of punishment causes frictions. Sanctions themselves have to follow the rule of proportionality and this has as a precondition that the whole system of sanctions is coherent.

With regard to procedural criminal law I will take the most recent framework decision on the execution of orders freezing property as an example³⁷: A list of offences is given in the framework decision that shall not—or: no longer—be subject to verification of the double criminality of the act³⁸—a principle which I explained before in the context of international law. Freezing orders have to be

32 2003/80/JHA, OJ L 029, 05/02/2003 p. 0055–0058.

33 2003/568/JHA, OJ L 192, 31/07/2003 p. 0054–0056.

34 2003/577/JHA, OJ L 182, 05/07/2001 p. 0001–0002.

35 Cf. Van der Wilt, ‘Some critical reflections on the process of harmonisation of criminal law within the European Union’, in Klip (ed.), *Harmonisation and harmonising measures in criminal law*, 2002, 80 pp.

36 Cf. Schomburg, *Die Rolle des Individuums in der internationalen Kooperation in Strafsachen—Eine Kurzbetrachtung aus einer deutschen Sicht*, StV 1998, 153; Van der Wilt, ‘Some critical reflections on the process of harmonisation of criminal law within the European Union’, in Klip (ed.), *Harmonisation and harmonising measures in criminal law*, 2002, 77.

37 For further information about the framework decision on the execution of orders freezing property and its development see Stessens, ‘The Joint Initiative of the France, Sweden and Belgium for the Adoption of a Council Framework Decision on the Execution in the European Union of Orders Freezing Assets and Evidence’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 91 pp.

38 The same arrangement is made in the framework decision on the European Arrest Warrant. For the list of offences, mentioned in the Art. 2 paragraph 2 of the framework decision on the European Arrest Warrant, the principle of double criminality is abolished.

executed in every member state under the only precondition that the specific certifications and forms are used which are laid down in the annex of the framework decision. The list of offences is formulated in necessarily generic terms, to cover the field of concerning offences in the national criminal laws. Thus we find for instance offences as “laundering of the proceeds of crime”, “racism and xenophobia”, “swindling” or “sabotage”. It is up to the member states to confer this list into their own criminal law. This will probably avoid frictions within the law of one country, but will cause frictions when it comes to execution of freezing orders. It is not at all self-evident, that freezing orders relate to the same crime in terms of the principle of “*nullum crimen, nulla poena sine lege*”.

This principle states, that there is no crime and not punishment without a law stipulating that a certain and legally defined conduct is regarded to be crime and to be punished as a crime before this act is committed.³⁹ This principle does not go back to Nils Christie in the first line—but to Cicero. This principle hence has been guiding jurisdiction in every European state since more than 2000 years. And it seems to fade away in the European Union.⁴⁰

Ruling principles of the actual criminal policy

I now will come to some preliminary results and will roughly outline where and how Europeanisation in criminal law actually causes frictions and thus leads to a disharmonious law in my understanding of the term.

The term “Harmonisation” in matters of criminal law has been used as a political motto and is in the heart of a strategy which shall insinuate that there really is a problem, called “disharmony” and that this problem has to be eliminated. In my view within the criminal policy of Europe the term of harmony is used only from the perspective of government i.e. not considering the citizen as the addressee of laws and not taking into account the effects on the rights of the individual. This leads to the assumption, that harmony is meant as a state of similarity of rules of investigation.

So what is the hidden agenda and what are the guiding principles of Europeanisation of criminal law?

The aim is to form the so called “area of freedom, security and justice”. In my opinion the attributes have become inverted. The guideline of the criminal policy is:

1. “*Security*” first!

There is a tension between security and freedom. Freedom is necessarily connected to a certain state of insecurity. Life is a most insecure situation and it must even be regarded as being of mortal danger! From the perspective of the government, however, freedom itself is looked at as being the source of insecurity. Freedom contains the freedom to decide between—putting it in every day language—acting good or acting bad. So leaving people free means running the risk that they opt for the bad. This leads to the assumption

39 Cf. Frieberger, ‘Mutual Recognition of Final Decisions and Dual Criminality’, in Kerchove/Weyembergh (ed.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l’Union européenne*, 2001, 163.

40 Cf. Schönemann, *Die parlamentarische Gesetzgebung als Lakai von Brüssel? Zum Entwurf des Europäischen Haftbefehlgesetzes*, StV 2003, 531, 532.

that the free citizen himself is risky and therefore is in principle in opposition to security. From this the conclusion is simple: The real risk is freedom and the real enemy of the security—in principle and in general—is the free citizen. This approach to criminal policy leads to what we call in Germany “Feindstrafrecht” which is characterised as deeply illiberal.

2. *“Fight” against crime*

So the second principle is that crime has to be combated, that one has to fight it. There is a war to be led against everything named “crime”. The weapons are:

- a substantive law covering nearly all sectors of private, social, economic and public life
- “Effective, persuasive and deterrent sanctions”—to which Nicola Padfield will refer
- procedures which are widely delivered from safeguards for individual rights, which are regarded as only to restrain the investigation authorities and to hinder criminal law as being fully effective.

3. *The Principle of mutual recognition*

is one of the new instruments to remove the rights of the individual also from cross-border investigation and mutual assistance in the classical understanding. In my opinion the actors of European criminal policy who in fact are the representatives of the member states’ governments i.e. the Council have only copied principles from the first pillar, i.e. the “Free movement of goods” and implemented them into the 3rd. Evidence, frozen assets, surveillance, data collection, interception of communications etc. seem to be regarded as governmental “goods” which then shall and must be moved free. Here, too, we must notice, that the individual, the citizen as the addressee of laws is of no relevance any longer and left aside.

Freedom first

What can be done? To my opinion we have to raise the principles on their feet again, which means “freedom first”, to probably reach a standard of bringing freedom and security into a balance.

This means in practice to lobby the national ministries of justice and the ministries of home affairs, to confront them with results of criminological and legal research; it also means to do lobbying work on the European level. But to ask for this from you as members of the ESC means to bring owls to Athens (or as I found it translated in my dictionary: to bring coals to Newcastle).

Harmonising of Sentencing: Will It Encourage a Principled Approach?

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It is a great honour to be invited to address this conference, especially under the important heading of the Europeanisation of criminal law. The subject raises many themes of great importance and I am delighted to play some small part in the developing debate. It is a particular pleasure to be here in Helsinki. During the harmonisation project which I'll be discussing in this paper, I said loudly more than once that I would be tempted to move England and Wales into Finnish territorial waters, at least when it came to criminal justice policy, that is. It is wonderful to enjoy these Helsinki waters myself!

Professor Walker yesterday painted, I thought, an ambivalent picture of current changes in the European Union. He pointed out 5 areas where having a constitution might make a difference. Perhaps it is this 'might', this uncertainty at the heart of the Area of Freedom, Security and Justice, which makes me nervous.

Professor Nelles in her presentation explored the legal framework in which harmonisation is taking place. She gave examples of recent developments such as the European Arrest Warrant, the Framework Decision on terrorism, and the draft Framework Decision on the mutual recognition of financial penalties. There are, I think, two preliminary questions which we should ask before we proceed further. First, this conference is entitled Crime and Crime Control in an Integrating Europe. Are we an integrating Europe? If so, what do we understand by this 'integrating Europe'? I was interested to hear the Minister of Justice, when he opened this conference, say that definitions within the European Union become ever more important and problematic. My second preliminary question, What do we mean by harmonization, I will return to later on, but we should bear in mind the problematic meaning of the term from the beginning.

Perhaps I reflect typical British scepticism about decision-making in the EU but I am supported by what the Dutchman, Tim Boekhout van Solinge, says in his fascinating book on *Drugs and Decision-making in the European Union*¹. He says in the context of drugs policy (but it is applicable to the area I am looking at):

It is hard to detect any consistent line in the EU's various action plans and strategies on drugs. Outsiders may imagine that such plans arise as a result of

1 2002, Mets & Schilt, Amsterdam

detailed discussions with frontline organisations, external experts and NGOs. The truth is rather different. They are basically bureaucratic products drawn up by a small circle of officials to whom it may seem a fairly routine job, amounting to a comprehensive list of possible measures and intentions in a variety of areas. The officials seek little contact with civil society or any other part of the outside world while working on them. The result is a wide-ranging and fairly inscrutable array of possibilities that is scarcely serviceable as a basis for specific measures.

Professor Wiles spoke earlier in the week of the traditional enlightenment liberal elite having lost widespread public support. It is I think problematic that European Union decision-makers do not appear to have widespread public support.

In this presentation I would like to highlight some of the conclusions which I have drawn from the research project of which I was fortunate to be a part, a project² led by Professor Mireille Delmas Marty then of the University of Paris 1, now of the Collège de France. I am delighted that two colleagues from the project are here today. We were encouraged by our European Union funders to concentrate on the harmonisation of sanctions in three areas:

- (i) Terrorism
- (ii) Cyber crime
- (iii) Environmental crimes

These areas are of course not the main stream of criminal law. It was curious to embark on a preliminary harmonisation project which concentrated on what might be seen as exceptional crimes. But these three areas were chosen because of their perceived importance to the European Union's objective of creating a high level of safety within an area of freedom, security and justice by developing common action among the Member States. There are already Framework Decisions moving us towards harmonisation in these areas, and of course the Council of Europe has also been busy in the environmental context. Developing common action does not necessarily mean harmonisation. In fact, common action on judicial co-operation in criminal matters includes compatibility in rules and according to the Nice Treaty, article 31, 'progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking'. One of the questions I want to raise this morning is whether harmonisation would inevitably mean a tougher, harsher, regime. I want to raise the danger of what might be called 'symbolic politics'³.

2 See footnote 4 below

3 For a fascinating discussion of this in another context, see Zimring, F. E., Hawkins, G., and Kamin, S., *Punishment and Democracy: Three Strikes land you're out in California*, (OUP, 2001).

The Project

Let me describe to you the Harmonisation Project of which I was a part. The first stage was a questionnaire sent to the 14 country representatives in early 2002 asking us to respond in writing to such questions as:

- Does your law have minimum penalties?
- Does your law allow the sentencer to reduce the punishment because of mitigating circumstances?
- Does your law allow the judge to increase the punishment above the permitted maximum because of aggravating circumstances?
- Are life sentences permitted in your country?

So far so good. You will find the results published in *L'Harmonisation des Sanctions Pénales en Europe*⁴ which contains not only individual country reports but also some hundred pages of tables, which attempt to set out a synthesis of the different sentencing rules applicable in the 14 jurisdictions which took part. These supplement the individual country reports.

I'm not sure that the Tables necessarily always represent national pictures accurately. Language was a great problem for many of us. And I don't just mean working in a foreign language. Terminological confusion abounded. For example, Please list all the ways in which sentences may be varied in your country (well, the French word was 'amenager'? The suggested list to consider included: amnistie, grâce, remise de peine, sursis probatoire, liberation conditionelle, exécution de la peine à l'extérieur. Frequently, I wasn't sure whether my difficulties in responding were caused by the limitations of my French or the difficulties of comparative research in this area. Did liberation anticipée or liberation conditionelle (two different things) include pre-trial, pre-sentence release, or simply post sentence early release? Which, if either, included a conditional discharge, a suspended sentence or simply early release? Even when the language appears similar, the details are often hugely different.

Three phrases intrigued me from the start: the French use of the expressions Les peines encourues; Les peines prononcées; Les peines appliqués/executés. It is difficult to translate them succinctly. The first is the possible or legal penalty, the one that you risk if you commit the crime. The second is what the judge will say in court. The third the punishment that you will actually suffer. We were a group of lawyers and what we tended to concentrate on were the peines encourues, the legally prescribed penalties. But this is deeply misleading. If we have a project of harmonisation, do we wish to harmonise the legal maxima or the reality? It is also I would argue not only misleading, but deeply dangerous to concentrate on prescribed penalties.

⁴ Delmas-Marty, Mireille, Giudicelli-Delage, Geneviève, and Lambert-Abdelgawad, Elisabeth (2003), *L'Harmonisation des Sanctions Pénales en Europe*, (Société de Législation Comparée, Paris, www.legiscompare.com).

Stage 2

We then met for two days in Paris in April 2002. It was obvious that many country representatives were concentrating in their responses on the law found in statutes or penal codes (*la loi*) and ignoring the actual sentences judges and/or magistrates are likely to impose in practice. We decided to develop some hypothetical case studies, which became our ‘cas pratiques’ and each country representative was encouraged to complete a story to show how such a case would proceed in their country. The environmental case study involved a lorry which because of worn tyres crashed over a bridge dumping its diesel into a river. The driver explained that he had warned his boss about the tyres but had been told that economic constraints on the company meant that he should continue for the moment. The story explained that it was a French company with a previous conviction in France. We were asked to explore whether the managing director and/or the company would be prosecuted in our own country and to describe the probable outcome. This provoked fascinating responses: in the analysis, Marcel Bayle concentrated on three areas: first, the huge variations in the definitions of environmental crimes (particularly the *mens rea* requirements); secondly, several countries do not prosecute companies (e.g. Italy) and this raised difficult questions about the differences between criminal law and administrative regulation, and indeed between different levels of criminal or quasi-criminal liability; the third issue was whether the previous conviction in France would be recognised. Although some countries recognise foreign convictions, this in itself led to many practical problems. For example, in England it is confusing that a foreign conviction may not become ‘a conviction’ until the appeal process is exhausted.

The second of the ‘cas pratiques’ was the cyber crime scenario. Here we discovered huge variations in anti-hacking law, including variations in the law on criminalising attempts. When it came to sentencing, it was easier to describe the legal maximum and minimum sentences than the likely outcome (*la peine prononcée*) since prosecutions are in fact rare. If there was a problem of rarity value for the cybercrime story 2, the matter was that much worse, I’m glad to say, for the terrorism story, but again, the replies revealed tensions in the definitions of the crimes involved as well as in the penalties.

Stage 3

Stage 3 of the project involved not only an analysis of the *cas pratiques*, a re-writing of national chapters but also a questionnaire developed by the sociologist Wanda Capeller, which she developed into a fascinating paper on the ‘Criminalisation of Risk and Penal Harmonisation’. I don’t think that I was the only contributor who was a little bit shocked when I realised that she was planning to publish my frank responses to her questionnaire, but it was also highly revealing to see the way we had all struggled to answer questions on the institutions of civil control and civil society in questionnaire form. Her paper usefully pushes us in the direction of exploring the social and political phenomenon behind the harmonisation project, the tensions which are pulling at the European Union, as much as at individual nation states.

Harmonisation

Harmonisation can be effected in a number of ways: it can be imposed vertically from on high, or developed horizontally through co-operation. But what exactly do we mean by the term? Professor Delmas Marty distinguished

- la cooperation (bilateral/multilateral)
- la cooperation renforcee
- la reconnaissance mutuelle
- l'assimilation: (vertical and horizontal assimilation)
- l'harmomonisation
- l'unification: (the development of identical rules)

There are obviously strong arguments, legal, political, philosophical, ethical and practical for harmonisation, at every level. Perhaps the most obvious are the legal advantages whereby harmonisation may lead to an avoidance of the double jeopardy (*ne bis in idem*) difficulty, and to closer mutual co-operation and the recognition of criminal records. There are huge equality and non-discrimination advantages which flow from some sort of harmonisation. Crime does not respect borders. But all these arguments can be stood on their heads and become arguments against harmonisation. Different national cultures result in different values. This is essentially a political question: it seems to me a worthy political ambition that we should seek slowly to reconcile our different political and social attitudes to crime and punishment. But it is also a legal question: Is it a legitimate constitutional activity? Is it a desirable or necessary ambition? Is it likely to be effective? Is it feasible? No one should underestimate the current diversity.

Pitfalls

So I move on to discuss some possible pitfalls in the harmonisation process. Perhaps the most important for me is the question whether harmonisation is a distraction from the real issues. The real fight against most crimes, especially those such as terrorism and cybercrime, will be carried out by the police and other intelligence officers. Harmonising sentencing law is not an obvious political priority. But if our political masters are determined there is a really basic first question.

Can we European countries agree on a sentencing framework, based on core principles acceptable to all member states? What are the key principles, acceptable to all countries? Desert, proportionality, deterrence or rehabilitation, for example. A fundamental review of philosophical first principles is required. I remain very nervous that in the current political climate if we were to agree, at an EU level, on common principles of punishment, these would lead to increased sentences of imprisonment without any real debate as to the efficacy and justice of such sentences.

These possible pitfalls lead me to quote the wise and cautious words of our Chairman of today's plenary session, Professor Kimmo Nuotio, of the University of Helsinki, who argued that

‘The other direction, not the top-down model of implementing hard law, but the softer grass-root strategy of promoting “free movement of legal ideas and innovations” between the legal systems, and encouraging the inclusion of comparative aspects in law drafting processes, and the use of model legislation and other soft law, might prove more successful in the long run’⁵.

There is a real danger that the pressure from the EU towards framework decisions encouraging minimum sentences for perceived threats such as terrorism will lead to a very superficial form of harmonisation. It will ignore the value of diversity and the need for flexibility.

Hurdles

Even if you decide that harmonisation is a project to be espoused, there are a number of hurdles to be jumped before anything approximating harmonisation can be achieved. Do we need a common institutional structure? Common definitions in substantive, procedural and evidential law? To agree whether we are harmonising maximum penalties simply, or the reality? In which case, we should start with early release rules. There is little point having clear guidelines on sentencing frameworks if there is no such clarity on the interpretation and application of those sentences. Also effective sentences demand substantial resourcing as well as effective measures of effectiveness, which we do not have.

Conclusions: What about a principled approach?

The value of comparative law and of comparative criminology is of course to allow us to discover the richness, weaknesses and contradictions in our various systems. There is a real value in diversity: I had the opportunity to go to China a couple of times to discuss sentencing issues. The first time was to discuss the importance of consistency. To argue for consistency in China seemed as curious as arguing for worldwide consistency. But consistency is important, because inconsistency can be unfair. Differences must be justifiable. Diversity also has its attractions: it can be a sign of richness, of what Professor Eser calls ‘this treasure of alternatives’⁶. So how can we agree on common standards and policies which allow for imagination and innovation, and not heavier sentencing?

I offer two examples, two starting points, to contribute to the discussion. The first is clause 135 of a Bill currently before the UK Parliament:

Clause 135 of English Criminal Justice Bill 2002:

Purposes of sentencing

Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing —

- (a) the punishment of offenders;
- (b) the reduction of crime (including its reduction by deterrence);

⁵ Op cit note 4, at page 470

⁶ Op cit footnote 4, at page 416

- (c) the reform and rehabilitation of offenders;
- (d) the protection of the public; and
- (e) the making of reparation by offenders to persons affected by their offences.

Parliament is being asked to legislate the aims of punishment, but without any priority being given to these different aims. Will this help? It may, or it may not, make judges and magistrates think a little more about their function⁷. But it will do little in itself I fear to build faith in the sentencing system, or in the authority and expertise of sentencing judges.

I offer you an alternative starting point for proportionate sentences, taken from Professor Delmas Marty's analysis:

Indicateurs	Échelle de gravité
Intérêt lésé	Valeur à haute protection (absolue ou quasi absolue) Valeur à protection relative Règles de discipline de la vie en société
Dommage	Dommage réalisé quantitativement fort Dommage réalisé quantitativement faible Menace (mise en danger)
Faute	Faute intentionnelle Faute d'imprudence (simple ou délibéré) Faute matérielle

But I have no more time and it is not my purpose today to find our core principles but simply to underline the need for some hard thinking. Do please contact me by email if you would like to discuss these issues further. I end simply with more thanks, and not only to my colleague Dr Amanda Matravers for projecting my PowerPoint presentation for me! This conference will have achieved a great deal in promoting the free movement of criminological ideas and innovations. We have lots to learn from each other. But may we not be steam-rolled into hasty and inappropriate harmonisation. Thank you for inviting me, and thank you for listening.

⁷ More importantly, it puts no limits on the upper limits of sentencing.