Serassis / Kania / Albrecht (Eds.)

Images of Crime III

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Representations of Crime and the Criminal

Telemach Serassis / Harald Kania / Hans-Jörg Albrecht (Eds.)

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Preface

Robert Reiner

When I originally agreed to write the Preface for this third volume of the *Images of Crime* series on 'Representations of Crime and the Criminal', it was my intention to praise a valuable and flourishing initiative. Yet it seems, sadly, that my role is the obverse of Shakespeare's Mark Antony. I came to praise the series, not to bury it – but unfortunately my role seems to have become that of valedictorian. The series was valuable and vitally important because it embodied a conception of criminology that has been something of an endangered species in the last three decades of neo-liberal triumphalism, and remains imperilled despite the weakening of market fundamentalism since credit crunched last year.

The editors of the first volume, published in the first year of the millennium, declared its subject matter to be the examination of 'representations of crime and the criminal in science, the arts and the media', an agenda that the Preface to that volume described as 'rather understudied'. This is in my view less true now than it was then, with the proliferation of studies of crime and the media, and the buzz around the cultural criminology perspective. But what I think was even more valuable than the idea of analysing images of crime, was the series' commitment to a highly eclectic approach, 'interdisciplinary as well as transnational' to quote the original Preface again, and strongly committed to a critical perspective.

The volumes themselves were exciting and stimulating in large part because they brought together scholars from a wide range of countries and a diversity of disciplines, including not only criminology – itself of course a 'rendezvous' subject for many different perspectives as David Downes memorably referred to it – but also sociology, psychology, psychoanalysis, philosophy, politics, literature, law, architecture. The topics in this third volume are characteristic of the variety in the previous two books. They encompass a broad array of conceptions of crime, criminals, and crime control strategies, from constructions of images of criminality in the discipline of criminology itself, through those implied in public discourse and penal policy, to the mass media and popular and serious literature.

The title of the volumes, *Images of Crime*, rather undersells the richness of what they contain. The connecting thread between the disparate topics and treatments is that they all somehow relate to *representations* of crime. Yet in a loosely coupled and eclectic way they also mount a collective challenge to the dominant discourse about crime and control in neo-liberalism. As I have tried to show in my recent book *Law and Order: An Honest Citizen's Guide to Crime and Control* (Polity, 2007), neo-liberalism is responsible both for aggravated problems of crime and violence, and also for public and policy responses that threaten humane and democratic values. In the media, political discourse and the prevailing social imaginary, crime is a summation of all that is feared in an increasingly insecure world, but is never questioned or analysed: all that matters is that politicians, policing and penal practitioners get tough on it. For all the lip-serve to notions of realism and what works, this is a largely futile, symbolic endeavour.

Understanding the complexities of crime, even pledges to 'get tough' on the causes, have been side-lined. So the *Images of Crime* series' commitment to a multi-disciplinary and critical excavation of ideas of crime remains vitally apposite, however much it is a rather quixotic battle against the dominant currents of our time. It is very much to be hoped that, again reversing Mark Antony, the good it did is not interred with the series, but lives after it. I believe that the strength of the scholarly contributions in these volumes will indeed lead to their being referenced and remembered as significant landmarks in critical criminology.

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Introduction

Telemach Serassis, Harald Kania & Hans-Jörg Albrecht

"We look forward to continuing the *Images of Crime* project – not only does it raise important issues and bring together scholars from different countries and disciplines, but it is also a pleasure working on!"

With this phrase ended our introduction to the second volume of *Images of Crime.*[1] Unfortunately, things don't always turn out as we wish: The scholars were present, with their ideas and contributions, the pleasure was still there, but *the times they are a-changin'*.[**] It's rather ironic, but in an era when critical discourse is most needed and the incentives are multiplying, it's becoming more and more arduous to produce this kind of discourse. Robert Reiner concluded his flattering review of *Images of Crime II*[***] *w*ith the exhortation "Criminologists of the world unite – you have nothing to lose but your research grants". Yet, it seems that research grants are an important stake, and on the other hand, there is much more to be lost when you try to raise issues which are not mainstream or even tolerable – Voltaire must be turning in his grave![****]

In such an environment and under rather unfavourable circumstances, *Images III* appears as the swan song of a very promising and – we dare believe – very fertile project.

Again a team of great colleagues – older and younger – shared our cause and embraced the endeavour. The result is a collection of articles, covering a wide range of subjects, which contribute significantly to the respective debate. We chose not to group the contributions – since the boundaries are not always so clear – but

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[1] Hans-Jörg Albrecht, Telemach Serassis & Harald Kania (eds.), *Images of Crime II: Representations of Crime and the Criminal in Politics, Society, the Media and the Arts*, Edition Iuscrim, Freiburg, 2004.

[**] Bob Dylan, Columbia, 1964.

[***] *Crime, Media, Culture*, vol.1/no.2, 2005, p. 225.

[****] Though he was aware of the fact that "it is dangerous to be right in matters where established men are wrong" ('Catalogue pour la plupart des écrivains français qui ont paru dans Le Siècle de Louis XIV, pour servir à l'histoire littéraire de ce temps,' *Le Siècle de Louis XIV*, 1752).

the volume moves from more theoretical to research papers, covering images of crime, social control, moral panics, law and order, as well as the media, literature, television and cinema.

Nils Christie and *Hedda Giertsen* audaciously discuss sexual mores and their role in social control. Examining the changing roles of men and women, as well the status of children and adolescents, they examine the notion of such key issues as sexuality and sexual crime, with respect to social control. They argue that "earlier, the field of sexuality was useful for general forms of control of females within Western countries. With the decline in male dominance and a strengthening of female perspective, the man's (or woman's) use of physical or psychical force and threats of force is seen as the dominant characteristics of the sexual offences, thereby linking them to ordinary and criminalized acts of violence, threats and coercion". They point out that, after the 'normalisation' of other forms of sexual conduct, social control has shifted its attention to certain sexual crimes, such as paedophilia and prostitution, thus creating new 'monsters' and a new field on which society, the law and science can focus.

Jayne Mooney and *Jock Young* offer an insightful approach to moral panics in late modernity. Drawing from Stan Cohen's theory (*Folk Devils and Moral Panics*) and Jock Young's analysis of late modernity (*The Exclusive Society*), they focus on youth culture and examine the role of society and the mass media (and also of the academy). They claim that there exists a spin of representation with the (oligopolised) major media chains as the protagonist, but also with the involvement of the agencies of control, and that we live in an era of 'permanent moral panic', as opposed to Cohen's 'transient panic', which involves "in particular the triptych of welfare scrounger, immigrant and drug addict frequently racialised and to which after 9/11 a further refracting mirror has been added: that of terrorist". They conclude: 'Here we have the extraordinary structural change wherein a sizeable section of the population have become socially excluded and then cast with the stigma of trouble, contamination and danger. […] The notion of moral panic delves to the very heart of our social order, its occurrence is potent ammunition in the production of division, it is subtle rhetoric in the fabric of legitimation".

Nikos Paraskevopoulos writes about the new type of penal control, which appears with globalisation and according to which the 'social enemy' can be found almost everywhere. As a result of the evolving inequality, collective fears and violence emerge, which in turn leads to a new orientation of the penal control system, which now has as its target not only criminals and outsiders, but practically every member of society. According to Paraskevopoulos, this is best reflected in both substantive and procedural penal laws. Typical examples of this development are, among others, the retreat of 'security of law' as a fundamental principle, the concern more about risks and less about harm, the zero tolerance policy, the turn from substantive to procedural laws, the expansion of the fields of police and administration in comparison with criminal justice, the growth of surveillance systems, the

widening of the concept of suspect. He concludes that these trends facilitate the expansion of the penal control and will, in many cases, conflict with the constitutional and conventional framework for the protection of individual rights.

Ronnie Lippens attempts in his contribution to explain change in criminological thinking. Using insights from anthropological theory and actor-network theory, criminological change is explained as that which results from the circulation, in actor-networks, of tribal images. Tribal image, then, takes centre stage in this contribution. In particular he focuses on two features of tribal images, i.e. their hybridity and their porosity.

Anthozoe Chaidou deals with violence, focusing on its prevalence in everyday life. She argues that, in spite of the methodological difficulties in its definition, violence – in various forms at both the individual and collective level – has become an inherent element of everyday life, to which societies are increasingly accustomed. In addition to more obvious manifestations of violence, which can be detected, recorded and analysed, there also exist not so distinct forms, which should be considered even more dangerous, to the extent that they cause harm in a rather insidious way. A characteristic case of the latter is state violence in its current forms, especially with the use of modern technology, which lead to serious restraints in the protection of individual rights. According to Chaidou, contemporary violence should be considered the outcome of transformations in social and power structures, rather than an individual phenomenon. Accordingly, its study needs to depart from traditional positivistic approaches and focus on the emerging socio-economic and power relations.

Klaus Bott, Kerstin Reich and Hans-Jürgen Kerner put forward an innovative approach to perceptions of crime. According to existing research, individual conceptions of crime are not congruent with criminal law, and age is a key factor in this disparity. The intention of their study is to get an impression from the base and the development of criminological knowledge of children and youth. Usually the point of departure in such studies is based on definitions of crime provided by the criminal law. Young people then decide to what extent they agree with them. The authors did it the other way round, trying to get a fundamental understanding of crime, criminal acts and sanctions directly from the children. To this end, they posed some core questions to groups of children of different age, education and cultural background: What is 'crime' in their view? How do they create their images and concepts of crime and criminals? And finally, who or what has an impact on the development and the internalisation of these concepts? First results indicate a clear but simple and mystic image of good and evil for infants. They noticed a wide consensus of the different groups interviewed about what serious crime means, although there is a remarkable cultural and ethnic variation. And, contrary to their presumption, children do not assume one can discriminate between 'criminals' and 'non-criminals' directly when looking at persons.

Jörg Hupfeld examines the gender differentiation regarding attitudes toward crime, which is indicated by several empirical studies, and in particular how, and why, women and men might hold divergent views. His initial goal is to explore subjective crime theories. In spite of at least three decades of research and a considerable body of research, there are still many open questions. Some of those questions, which are discussed subsequently, refer to the dimensions of subjective theories of crime. Others concern the influence of offence type and respondent gender on crime theories and the intention to punish. The present discussion concentrates on attribution theory and moral theory on the one hand, and on the perceived severity of crime on the other hand. According to Hupfeld, within this theoretical framework it seems possible to understand some of the mixed gender-related effects that have been reported up to now and to make several specific predictions. Finally, some empirical results that support the theoretical considerations are presented and their practical relevance is discussed.

Michael Bock presents an unconventional approach to family violence: In his opinion, men become victims of their female partner's aggressive behaviour to a much larger extent than customarily assumed as well as presupposed in the practice of violence-preventing policy. This predominant image of domestic violence is originated in a cultural pre-shaped view. Men do not perceive themselves as victims, or they remain silent because of fear of stigmatization and mocking. In addition, female and male experts and officials in social institutions and in the departments of criminal prosecution do not consider males as victims. This leads to a vicious circle: because even less men than women find their way to social institutions or to justice, statistics persistently present almost exclusively female victims, leading to the establishment of a stereotype, because of which male victims prefer to remain silent rather than expose themselves to the danger of a 'second victimisation'. According to Bock, two particularly vulnerable groups, which have not been adequately considered, are elderly people and children, who become victims of female 'violence'. Results of his study indicate that a gender-specific violence-preventing policy governs our society, in which male victims and female perpetrators are systematically faded out. The selective view, which regards men only as perpetrators, has fatal consequences for children, who are mistreated by their mothers, because neither they nor their fathers stand any chance against the prejudices of the institutions in charge. Bock argues that, although there is immense excitement and concern about the atrocity of 'domestic' violence, in fact only women are considered as victims, and almost never children or any other person living in the same household.

Daniel Vyleta scrutinises the affinities and interweaving between criminalistics and crime fiction, taking as a case study the work of Agatha Christie. At the turn of the nineteenth to the twentieth century various conceptualisations of criminality competed within the scientific discourse of crime. Criminologists in Italy, France, Germany and elsewhere in Europe were engaged in the endeavour of locating difference upon criminal bodies, within criminal minds or criminal lifestyles. In the 1890s criminalistics crystallised into a rival science of criminality, calling for a shift of attention away from the criminal and onto the technical challenges of

evaluating material evidence and the psychological dimension of the investigative process. Crime fiction absorbed these rival narratives of crime and made use of them, even as criminologists scoured fiction in search of illustrative evidence for their theses. Criminalistic know-how, in particular, was soon disseminated in detective stories hinging on the analysis of a fingerprint or the correct identification of rare poisons. By the 1920s and early 30s, British 'golden age' crime writers like Agatha Christie would formulate entire plots around the conflicting concepts of criminality, playing out the public's and the police's criminological expectations against the criminalistic skills of their detectives. Vyleta elucidates the complex relationship of criminology, criminalistics and detective fiction in the opening decades of the twentieth century, and places Christie's work in this context.

Jan Alber addresses the political instrumentality of the representations of prisons and prisoners from the Victorian novel to twentieth-century films. Prison narratives may generate cultural understandings of the legitimacy or illegitimacy of prison as a form of punishment. At a first glance, one might feel that most prison narratives – like Dickens' novel 'Little Dorrit' or the film 'The Shawshank Redemption' – present us with innocent and likeable prisoners (or identificatory figures), who shed a critical light upon the prison and the treatment prisoners receive. However, upon closer inspection, one does realise that the same narratives also present us with irreclaimably depraved criminals who seem to justify the existence of prisons so that the prison is also represented as a societal necessity. In Alber's view, this 'liberal-conservative consensus' concerning the prison can be observed in Charles Dickens' novels as well as in later developments in the twentieth century.

Paul Mason deals with prison representations in Hollywood films. He asserts that the invisibility of punishment brought about by the birth of the prison ensures that media discourses of incarceration contribute, in a number of ways, to public comprehension of penal culture. One such discourse is constructed by Hollywood. Mason offers a framework for exploring what can be termed Hollywood's discursive practice of constructing images of prison. He suggests an epistemological structure which fuses genre theory, Foucauldian discourse analysis and representation, and argues that such a framework addresses the theoretical lacunae that have previous existed in work on the prison film. In offering a cartographic account of Hollywood's prison film output, he further speculates on how such an analytic framework can usefully be employed in investigating prison cinema through a discussion of what is termed Hollywood's 'mechanistic discourse of imprisonment'.

Monika Fludernik and *Martin Brandenstein* turn to television trial soaps, taking as an example the German reality show 'Barbara Salesch – Das Strafgericht' which has been playing to great acclaim on German SAT1 TV programme since 1999. So popular is the series that in the meantime there are four such series in competition, all broadcasting on weekday afternoons between 2 and 5 pm on German television stations. The authors discuss the way crime and criminals are presented in this se-

ries. They also focus on the non-realistic elements of the show, its sensationalist transformations of the trial format, and on possible didactic elements in the films. Their work is based on a research project on "Norm, Law and Criminalization".

Gabrio Forti discusses the highly selective nature and impact of mass media (especially television) reports on crime, depicted in current media theory, as well as criminological analysis, which has been confirmed by a recent Italian interdisciplinary research. All data collected seems to support the conclusion that the media are mostly prone not to present macro-social conditions as the sources of the problem of crime, but rather to describe it as a result of individual factors, which somewhat explains why none of the solutions usually called for by the media address the social structural causes of crime. Forti provides a summary of the methods and the main results of the research, and evaluates them on the basis of recent data on amount and ways of Italian media consumption. Drawing on current Italian and international literature, as well as on some core statements about the constraints imposed on modern television, he finally tries to explain the current image of crime in Italy – mostly similar to old-positivist stereotypes on crimes and criminals – and the limited range of responses to crime contained in media accounts.

In this volume, as in the previous ones, we held on to our principle of non-interference: there has been no guidance or selection, much less censorship on behalf of the editors. We are aware that this may have resulted in a sense of 'looseness' and – in certain instances – contradictions between contributions, or even a degree of ambiguity as to the scope of the task. But we have always considered *Images of Crime* an open forum for the discussion of alternative approaches to crime and the criminal – as well as to criminology itself, a discipline which both constructs and disseminates representations, and is at the same time influenced by representations which are constructed in an interweaving manner by politics, society, the arts, and the media.

As mentioned in the beginning of this introduction, we believe that such approaches are essential in the asphyxiating neo-liberal atmosphere we live in. We are also aware that it is becoming more and more difficult to convey the message, especially since mainstream scholarship is now more powerful than ever. We have worked all these years without any sort of funding and with increasing impediments. And if the three volumes of *Images of Crime* have managed to attract even a small audience, if the ideas put forward had any influence at all, we consider it a successful outcome of our efforts.

We wish to express our gratitude to all the contributors for their support and understanding. We also owe them an apology for any inconvenience that may have been caused. Special thanks to Robert Reiner both for his encouraging review in *Crime, Media, Culture* and his continuous support which was expressed – among others – with his acceptance to write the preface.

The Max Planck Institute once again played a major role in the accomplishment of the undertaking. Thanks to Michael Kilchling and Michael Knecht, Gaby Löffler and Chris Murphy for the final publication of the book.

Finally, we would like to thank all the friends and colleagues who participated in the *Images of Crime* project all these years. Perhaps we'll meet again.

On September 3, 2007, Professor Günther Kaiser passed away. An outstanding figure of German and European Criminology, an exceptional researcher and teacher, and a significant personage at the Max Planck Institute, Günther Kaiser was also involved in *Images of Crime* and honoured it by writing the preface to the second volume.

As a minute token of our respect we dedicate this volume to his loving memory.

When Sexuality Lost Its Disciplining Power
Changes in Conditions for Control

Nils Christie & Hedda Giertsen

Banana flies are particularly well suited for research-purposes. That is because they have such a short life. Born in the morning, old in the evening. Next day is the day for a new generation. A perfect species for studies of change! In one year, hundreds of generations have passed – available for research purposes.

As banana flies are for biologists, sexual mores are in our time for social researchers in Western societies. The mores change so fast. Murder has some stability – at least in their core-areas as with Cain and Abel. But sexual standards are these days a heaven of fast changes. So fast come the changes that many among us within our own life span have experienced several generations of very different sexual taboos – most going, but also some coming.

Taboos going

An observation from the male in the team:

I can still remember the first divorced woman I ever saw. She had dark hair and lots of bodily in and out. I just passed on my bike, and have never seen her again. I was six or seven years. It was unforgettable. Today, a majority in my surroundings have been divorced one or several times from formal or informal types of marriages.

Back to both of us:

In our youth, unwanted pregnancies were a most unpleasant scenario – often leading to what at that time was called "enforced marriage" – the young couple "had" to marry to prevent a scandal. For young people of today, enforced marriages is what happens to persons in Muslim families, a tradition we have laws against. Abortion was of course illegal, as were advertisements for contraceptives.

When we started as students, there was a penal law against concubinage – living together without being formally married. There were of course also penal laws against homosexual relations. Today, partners with the same sex sign a sort of marriage contract, and are hailed by friends and relatives at the step of city halls after signing. The Mayor of Oslo is a declared homosexual, so too was a former Minister of Finance.

A well-known physician appeared regularly offering with medical advice on our national TV. Sometimes he appeared as a man, sometimes as a woman.

More than ever is accepted, what has happened?

On females and males

A shift in the balance of power

As we all know, an important development took place in industrialized societies from the nineteen seventies onward. The short epoch with housewife as a fulltime occupation had mostly come to an end, waged labour came instead. Women became economically independent. At the same time came the contraceptives and relatively free access to abortion. A woman was no longer dependent on a gentleman's offer of marriage in order to take part in sexual activity and have children without loosing respectability. Women can decide what shall be the outcome of a sexual event: a child – or not a child. These changes in practical arrangements proved to influence the position of men in relation to women. Males have simply lost in power and dominance.

What is this change about?

When women got control of their bodies, sexual pleasures, pregnancies and childbirths, a main tool for male control of most other parts of her life activities evaporated. This is in accordance with Foucault's[1] view that norms and laws seemingly aiming at regulating and controlling sexual behaviour had their main importance as means to control people. Sexual norms were useful for the general disciplining of people and keeping them in their place.

When reputation lost its grip

The means of control were of course not only laws and formal reactions. The most effective ones were probably those enforced in informal settings in daily life. For a woman, a bad reputation as being 'easily accessible' might lead to severe social costs. Still this is an important topic, but not to the extent it once was. Up till the eighties it was possible to shame people, particularly women, into conformity, to make them subjugate to strict regulations of when to have sex with whom and how. A reputation of not conforming meant that she was not only a bad woman but also a woman being seduced by indecent wishes and pleasures. She was not in control of herself. But the main concern was not the woman, but the males she be-

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[1] Michel Foucault (1976) (English translation 1978/1981) *On the history of sexuality*.

longed to (father, brothers, husband) who lost respectability, reputation and, in her, an important object for investments.

Gone are the days where norms of sexuality could be used as one of the central tools in the control of women's life. A symbolic funeral of this tool of control took place in Oslo some years ago. The heir to the Norwegian throne married Mette Marit, an unwed mother and single provider for a little boy. Not many objections were aired, not even when Mette Marit openly stated that she had lived a rather 'outgoing life'. She is today to an exceptional extent accepted by the population.

On youth

Since the 60s, there has been a remarkable change in the power balance between young persons and adults.

Not in all respects: Those with long educations are most often not economically independent until far into their 20ies. But otherwise, much of their life is beyond control both of parents and authorities. And this happens at an early age. Young people are out there, somewhere, easily mobilized on a mobile – or they are all over the globe, electronically. We do not know their whereabouts in the electronic space, nor do we know it in the streets, not exactly. We do not know all those our children are in contact with. And we do not know what they concretely do; whom they associate with, and under what sort of circumstances.

But sometimes they take it all home – sex-life included. And again, grownups are without power. It is not uncommon that young people come out from what until quite recently was their "child-room" with a hitherto unknown person of the opposite sex for Sunday breakfast. Public debates appear now and then on the appropriateness of this pattern. In the largest newspaper of Norway, 'Aftenposten', we found (24-02-2001) a whole page under the title: When is the boyfriend to be allowed to stay over in the child's room? One example was given: The daughter had just reached 16. Her boyfriend had since long stayed over with her during the nights. Shortly before the two of them had received a week together at a mountain-resort as a Christmas gift from the family. She was 15 at that time, which meant that their relation, legally speaking, exemplified a sex crime.

Another indicator of changed mores was exposed in 'Dagsavisen' (16-06-2005), also a major newspaper in Norway, one close to the government. All girls above 16 years of age are, if they so wish, given pills against pregnancy. It is to reduce the number of abortions. They get the pills free of charge. But according to the newspaper, the costs for the State have soared, and therefore the authorities wanted to remove the most expensive pills from the assortment. Included in the text about all this, we find a picture of two pretty young girls, crystal-clear in their negative view on this untimely restriction of free choice of contraceptives. Gone are the days of hush – hush. Young people have a sex life, and they don't hide it.

What is illustrated is a parallel development to what happened in the control of female sexuality. Here, in Western countries, parents have lost control of the sexual life of young persons, but thereby – and again in accordance with Foucault – also over other aspects of young persons life.

On children

We do not need children for work any more. No goats to guard, no nets to clean, no wood to chop. Without material functions, kids represent a problem – particularly unsuited for participation where grown-ups work. Kids are not only out of work, but forbidden to work through laws against child labour.

The life of grown-ups is made possible by keeping children away, in kindergartens, schools and day-care homes. A strike in this support system for the life of adults represents a catastrophic event for parents.

Kids are in this situation a nuisance, but a remarkably wanted one. In divorce cases, the parties can agree on the split up of property. But where should the children go? In the old days, some thirty or forty years back in Western countries, it was obvious; they should go with the mother. But not now, not any more. Fathers are fighting, claiming their property rights to their small nuisances in the form of access or contact with those children we usually are so happy to get rid of in schools or day care. In several countries, fathers have created special organizations to promote their rights to children after divorce. At other arenas, similar activities take place: Unisex-couples – males as well as females – are fighting for their right to adopt children.

A new term has recently been coined. Modern parents are said to be "curling parents of serviced children" (Hougaard 2005). Parents are desperately polishing the ground the children will tread, smoothing the surface, to their best ability removing obstacles so that the small ones can slide without friction – until reaching maturity – or catastrophe. Playgrounds are rebuilt to be in accordance with EU standards. Thick rubber-mats cover the ground below the equipment for climbing and play, to guarantee soft falls. Trees to climb in the forests are obsolete.

They don't work for us. They will not necessarily take care of us in our old age, that is what we have the State for, or insurance companies. Nonetheless, they are important to us. Instinctually. Maybe also as our last link to the large wheel of nature; birth, growth, maturity? Or maybe there is more to it: I have a child. I exist! This may be some of the base for their royal status.

Such dare and vulnerable beings must be protected against all sorts of dangers – also the sexual. Here is an arena where sexual norms still play an essential role; in the families and in the dangerous streets.

Sexual crimes

In this situation where so much is accepted, and where the power balance between man and woman as well as between young and grownups are greatly changed, one might perhaps have expected that reported crimes on sexual acts would have declined and quickly approached zero. But this is far from being the case. With changes in the power-balance, some new battlefields emerge, while some old ones disappear. Read as a report on social changes, the crime situation confirms what we have said so far. First:

Reported cases of rape have increased

The males have lost authority and reputation has lost some of its grip. That means that the female parts in such occurrences have less to lose by reporting on what happened, and are also now more listened to and taken seriously. With increased sexual freedom, it is not so easy to stigmatize her for being at the wrong place at the wrong time with the wrong clothes. It is her right to be there. Her normal right. What is no longer seen normal, is the offending man's behaviour, may be also the man himself. Earlier, the positions of offender and victim were blurred; both parties – the offender as well as the victim – were seen as somewhat guilty taking part in unwanted, indecent, sexual behaviour. She by being there, he by being 'a bit too masculine', or as a man who just acted according to men's natural inclinations. Today, when the possibility of using norms about sexuality as a means to control people has declined, when sexuality has lost much of its controlling power, females will to some extent have improved their position in court cases. The offender is now more clearly seen as the responsible one, if guilty as nothing but an offender. It is not quite that easy for him to blame the victim and negotiate his position – at least not to the same extent as before. Even in this situation, the suspect is very often not found guilty, this to the disappointment of both the complainant and to the many female pressure groups. But this result is inevitable, when courts function as they are supposed to function. Since such cases will often have no witnesses or technical proofs, it will be his words against hers. In such a situation, a decent court has no alternative to an acquittal according to the principle that the benefits of doubt goes to the accused one – the one to receive pain. For our reasoning, the most important element is the increase in reported complaints to the police, not the outcome of the penal proceedings. But this outcome points to the need for other answers to rape situations than penal courts.

In line with the development of decreased male dominance, new types of rape have gained attention in several countries: "rape in marriage" and "rape of prostitutes" – inconceivable categories some years back when sexual access to the wife belonged to the property right of the husband, and where the prostitute was in a position where she had no rights whatsoever.

This tendency to reduced space for negotiations is illustrated in a new law in Norway from 2003, criminalising "negligent rape". In rape cases, men had often claimed that they interpreted the woman's 'no' as a 'yes', and it was not unusual that the court accepted this. The new law reflects that men are supposed to understand and respect that 'no' means 'no'.

These changes indicate that these types of offenders now are perceived as more similar to offenders who have committed traditional crimes: *they* are the ones to blame, and are thereby in a position more difficult to negotiate.

Incest

In modern families a dangerous participant has surfaced; *the father*. This is reflected in data on incest. Up to 1984 we had nearly no cases on incest registered in the crime statistics – the number of such cases under investigation by the police dipped between 5 and 14 per year. But from 1985, we experienced a steady growth. In 1989 the figure passed 100 per year, and has later mostly kept above that level. It is nearly all father/daughter relations. Up to 1968, such cases were close to non-existent – that is in the statistics, but not in realty, certainly not.

The reasons for the father's appearance in the statistics is probably clear. Fathers have lost their authority as the representatives of the state in the family. Women and children are now listened to, at least to a much larger extent than they were before. Their stories are taken seriously and brought into the public domain.

But it is not so that all this lost power of the husband has gone to the wife and children. The State has taken much of it back, sending a controlling eye straight into the life of families with children. This is done through observations made by employees in kindergartens, schools and agencies established to care for children's health (Kjersti Ericsson 1996). These will report to other authorities – the police are one of them – if they suspect misbehaviour. There are reports (Dagsavisen 27.06.05) of whole families moving to other districts to escape interference from Child Welfare Boards.[2] Also pregnant women are under surveillance when it comes to control of the foetus. Doctors and health authorities control the owner of the womb so that nothing wrong shall happen to the coming citizen (Barbara Duden 1993). If the pregnant woman is a drug-user she might be forced to stay in hospital until after delivery, and perhaps experience that the child will later be taken away from her.

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[2] This brings back memories from the 18th - and 19th centuries when Romany families (travellers in some countries, tinkers in others) fought many desperate fights, mostly losing, against authorities engaged in "rescuing" their children from a life as travellers and by forcibly placing them in children homes.

The paedophile

Then to the streets: We have every reason to think that there are dangers out there. We read about it. We see it on TV. Terrible acts. We see how children are seduced into situations, which suddenly change and become nightmares of force and assaults followed by lifelong problems. If the media one day might be without any particular horrors from Oslo, we might get some supply from Stockholm, or from Belgium – the main country for such export these days. Some parents might discover their children on mobile- or pc-displays, having been photographed in situations which up till recently belonged to the most intimate private sphere. And we can no longer protect these youngsters through types of control which are explicitly or implicitly based on a wish to control their sex-life. They are free – but then also in danger of completely unacceptable approaches of violence or seduction.

This is again reflected in the police statistics. In a column reporting complaints of illegal sexual acts against persons below 14 years, we meet the same tendency of strong increase. Up to 1982, the figures kept below 100, but recently the number of such cases has edged close to 500.

In our interpretation, this is an illustration of the effect of two factors in interplay. First, it is a picture of the growth in anxiety among adults regarding the situation children exists in. Secondly, increased female power might also here play a role. Mothers are now in a position where they can voice standards for what is not acceptable – and be listened to. 'Don't transgress my borders. And don't touch my child – at least not against her or his will – or if you are considerably older!' This situation is one that creates fertile ground for the rebirth of an ancient role, now converted into a monster; the paedophile. Bad and dangerous – at last one that a great majority in our sexually tolerant time can fiercely condemn.[3] The situation has changed.

In earlier years incest and sexual assaults as well as rape were more dominated by a male perspective; as part of men's unruly nature and strength – a strength that of course was also highly needed and appreciated in an economy dependent on these attributes. Today, such acts are to a greater extent perceived by women and also by many men as nothing but exploitation of force towards persons in more weak positions. In this situation, the respected paedophile from ancient Greece is converted to one of the most despised beings of modern societies. He becomes an outcast from ordinary society and an outcast from the society of prisoners.

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[3] It is a danger that the extreme anger directed against suspected paedophiles might paralyze the courts and bring them to forget their obligations to also protect the suspect. Much due to a pensioned judge, Trygve Lange-Nielsen, many such cases have been re-opened, and earlier convicted men have been acquitted – some of them after serving several years in prison.

Prostitution[4]

The phenomenon of prostitution is a battle ground around questions of meaning: Is it sin? Is it the behaviour of a poor victim? Is it crime? Is it work? There are several broad streams of thinking here, often running side by side.

First about the sinner: Sex for money, a deplorable sell-out, a total contrast to the Maria-image, the idea of love as something above money, and an offence against prudence. But not totally so, which explains the survival ability of prostitution. In Norway prostitution was forbidden until 1902, which meant it was a crime to be a prostitute. But in practice this crime was tolerated and regulated through city-ordinances. Prostitutes had to be controlled by the police-physician until 1887. We have famous paintings of the degradation ceremony in the police doctor's waiting room. Women in prostitution were not allowed to use streetcars; this was to prevent embarrassment in case they might have met their customers on public ground (Kjelstadli 1990).

But slowly, the picture of the sinner was converted into the picture of the *victim*. Various forms of "rescue-groups" appeared. Shelters for "fallen women" were established, later followed by service- and self-help centres and organizations. Studies were made on the complicated life prostitutes had lived; difficult childhood, a youth often including sexual assaults and living conditions far below acceptable standards, a life which was not made easier by heavy use of alcohol and drugs. They were victims of life-circumstances. And then, as strongly voiced by Høigård and Finstad (1986/1993) who interviewed prostitutes in the streets, these women were also victims of prostitution itself. The constant violations of physical and psychic integrity have in the end the same effects as being victims of violent acts.

With these and similar impressions in mind, feminists in Norway initiated actions against customers of prostitutes. The word "Whore-customer" was painted on some cars while they were negotiating a tour; lists with names and addresses of some customers were set up in public places. Other direct forms of shaming customers were also applied.

Linked to this, a new category of crime appeared: the prostitute-customer ('hore-kunde). If the prostitute is seen as a victim, and also further victimised by the customer, the natural next step is to criminalize the customer, not the prostitute. Høigård and Finstad (op.cit.) suggested this, arguing that the customer is an ordinary man living an ordinary life where buying sex is an exception. His act of being a customer is not an integrated part of a deviant life style[5] and he is therefore sup-

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[4] Thanks to May-Len Skilbrei for comments and references.

[5] For another view on customers in Norway see Annick Prieur and Arnhild Taksdal (1998).

posed to be deterred by penal punishment.[6] In Sweden it is today a crime to be a customer of prostitutes and Norway seems set to follow in 2008.

To criminalize the customer might of course complicate the life also for the prostitutes. But at least some groups of feminists will disregard that argument. They perceive prostitution as the ultimate institution that undermines the possibility for women to be accepted as being of equal worth to men – not only for those who directly take part in prostitution, but for any woman, whatever her situation might be. Prostitution is seen by them as the fundamental basis for women being seen as objects, as a commodity for sale. (Asp-Larsen 2002;[7] for another view see Skilbrei 2000).

If prostitution is seen as degrading and destructive for all women, penal sanctions might seem appropriate. Since the prostitute is seen as a victim, sanctions must not be directed against her, but against the customer. If these measures make life more difficult for women in prostitution today, this is seen as a minor obstacle compared to the damage prostitution represents for all females (Mona Asp-Larsen 2002, Eva Lundgren and Westerstrand 2004). We see a line here where the position of the prostitute has changed from first being a sinner against God, then to a victim of circumstances, and lastly ending up as a sinner against all women.

But another perspective has also gained ground in recent years. That is the perspective in perceiving prostitution as work.

Changes in the power balance between women and men open up a possibility for leaving the victim status, as well as the sinner status, but continue in prostitution. In a culture with an emphasis on trade, money and private enterprise, and where females have control over their own sexuality, it seems to be easier to continue in prostitution without stigma. The activity is seen as similar to entering the labour market.[8] This view on prostitution is also in accordance with economic independence, which women fought for. Seeing prostitution as an ordinary occupation has been put into official practise in The Netherlands where prostitutes organize and have rights and obligations as other wage earners.

Following this perspective, the buyer is seen as a customer – like in other trade transactions. Here there is no room for criminalizing, neither of the prostitute nor of the customer.

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[6] From the same reasoning they also suggested decriminalizing the pimp who has a love-relation to a woman in prostitution. His crime is integrated in his daily life, so it would be in vain to criminalize his behaviour.

[7] Asp-Larsen (2002) writes: "We have a vision of a society where men and women are equal, where no woman will be a victim of discrimination, violence or sexual assaults. It is impossible to reach such a society if the sexuality of young women can be bought. This is something girls and boys know in their heart." (Our translation)

[8] May-Len Skilbrei (1998) gives a description of this perspective in her book "Når sex er arbeid" ("When sex becomes work").

A fierce discussion has raged in recent years over this topic among Scandinavian and Dutch feminists: Is prostitution to be seen as work and thereby to be compared to other forms of work, open for taxation, sick leave, pension benefits etc? Are prostitutes to be seen as persons who deliberately decide to sell sexual services and cope with this like other workers cope with other forms of work that also might have their costs on bodies and moral positions? Or is prostitution to be seen as a particular form of deviant behaviour, carried out by victimised persons who are forced into prostitution by a difficult history and living conditions? Are those who look at prostitution so far out that they are to be seen as misled by false consciousness and therefore to be kept off the public debate?[9]

Both sides in this conflict include people who see prostitution as a problem, as an activity most often with heavy tolls on body and soul, something to reduce and bring to a stop. But they disagree on descriptions, analysis, and on what are good measures: Is it right to use law, police and punishment to get rid of prostitution by constraining measures? Or should one try to improve the living conditions for women in prostitution, who often also have several other problems. Maybe improved working conditions for prostitutes represent a first step on the way out of prostitution and into other forms of labour (Kirsten Frigstad 2001).

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In many ways, this discussion can be seen as a parallel to the one we have (or rather need to have) in the drug-arena. Should we "normalize" some forms of drug use – and make harm-reduction the main aim? Or should we put up a drug free society as our main aim, followed by a zero tolerance penal policy? Is it the social construction of the derelict, the picture of the miserable victim driven by his craving for the next shot that makes it possible to uphold a control system creating so much misery? Might a conversion of the perspective; from sin and victims and drug-sharks to persons in need of help or even tradesmen and their customers give us improved possibilities for real help to those in trouble? And might a similar reasoning be applied for prostitution?

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[9] See Lundgren and Westerstrand (2004) for this view and Renland (2004) and Skilbrei (200) for criticising this.

The end

We have, with a little help from Foucault, tried to understand the quality and importance of control of sexual behaviour: Earlier, the field of sexuality was useful for general forms of control of females within western countries. With the decline in male dominance and a strengthening of female perspective, the man's (or woman's) use of physical or psychical force and threats of force is seen as the dominant characteristics of the sexual offences, thereby linking them to ordinary and criminalized acts of violence, threats and coercion. But there are costs in these changes. One of them is that the paedophile becomes particularly suitable as the new monster among us, seen like that by both females and males and both outside and inside the prisons.

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Youth, Moral Panic and Late Modernity

Jayne Mooney & Jock Young

It is 1964 on an English beach at Easter in the small seaside town of Clacton, the weather is cold and wet as usual, two groups of kids – Mods and Rockers get into a spat, some bikes and scooters roar up and down the Front, windows are broken, some beach huts are wrecked. There was not a great disturbance – the TV footage looks derisory – but there was an extraordinary disturbance in the mass media commentary and amongst members of the public. 'There was Dad asleep in the deckchair and Mum making sandcastles on the beach' said *The Daily Express* – one pictures them relaxed, pink in the sun, Dad perhaps with the traditional handkerchief tied around his head, and then suddenly a 'Day of Terror' with the 'Wild Ones' who 'Beat Up The Town'. This pattern was reported over a two year period involving other seaside towns, roaming gangs of mods and rockers 'from London' periodically 'invaded', caused mayhem, displayed their arrogance and new affluence, insulted decent people and were in a memorable phrase ' sawdust caesars' puffed up with their own cowardice and aggression.

One reading of this series of events (and many like it) which is encountered frequently in the literature is that an event occurred (for a reason which is unimportant), that it was in itself of little consequence, but it was mistakenly reported and exaggerated by the mass media and consequently generated a feeling of fear and panic in the general public. All of this is, in part, true but such a simple liberal, linear model from media down to public scarcely captures the notion of 'moral panic'. What is missing is both the sense of energy and intensity of this happening and, rather than a one-way process, this is a collective endeavour, for the youth, the media, the moral entrepreneurs, the control agents and the public are, so to speak, accomplices in the action.

Stan Cohen in his recently published third edition of *Folk Devils and Moral Panics* reminds us of the continued importance of its contribution to deviancy theory. It is a richly analysed text of much greater complexity and subtlety than many of the summaries and studies of moral panics which have followed it and it reads today with as great impact as it did in the early Seventies.

Let us look more closely at the constituents of moral panic theory:

1) SYMMETRY: Both the subculture and the moral panic have to be explained – that is both the action and the reaction. Furthermore, they must be explored symmetrically, using the same model of analysis. Thus both moral panic and subculture are read as narratives where actors attempt to solve problems facing them. For this reason although in the main body of the book Cohen focuses largely on moral panic, in the fascinating introduction to the second edition 'Symbols of Trouble' he turns to subculture and finally returns to moral panic in the introduction of the third edition.

2) ENERGY: A pulse of energy is introduced at each stage of the process. The kids on the beaches are driven by a creativity and exuberance which generates youth subcultures. They create but they also thrill to transgress: to get up peoples' noses, to annoy, to act out in front of the world's media. Thus Dick Hebdige's surmise in the wonderful *Hiding in the Light*: 'spectacular youth cultures convert the fact of being under surveillance into the pleasure of being watched' (1988, p8). Furthermore, the public watching the skirmishes are not mere passive spectators: they are morally indignant, they are glad that magistrates and policeman reaffirm the boundaries of decency and propriety (as do the magistrates and police officers themselves). They are not merely manipulated recipients of media stereotypes – they *want* those messages, they read the popular papers and watch the telly with gusto whilst the media, in turn, have learnt that there is a ready market in winding up audiences – they have institutionalized moral indignation with both enthusiasm and self-righteousness. (See Cohen and Young, 1973). In many ways such an invocation of the energy involved in the relationships between the public, the agents of the criminal justice system, the mass media and the youth themselves stands as a clear precursor of the recent work in cultural criminology (see Hayward and Young, 2004).

3) THE REAL PROBLEM, THE REAL SIGNIFICANCE
Cohen is at pains to stress that there is a real problem there and that what is happening is not simply an illusion, a misperception. He touches base with Svend Ranulf's (1964) classic discussion of middle class moral indignation where such intervention is seen to have a 'disinterested' quality – it is a moral anger about something which does not directly affect their interests. Cohen, quite correctly, doubts that the distinction between interest and disinterest is a viable one (2002, p16); for the hedonism and spontaneity of the new youth culture for the Mods, *did* threaten the norms and standards of their elders:

"The Mods and rockers symbolized something far more important than what they actually did. They reached the delicate and ambivalent nerves through which post-war social change in Britain was experienced. No one

wanted depressions or austerity but messages about '*never having it so good*' were ambivalent in that some people were having it too good and too quickly … Resentment and jealousy were easily directed against the young, if only because of their increased spending power and sexual freedom. When this was combined with a too-open flouting of the work and leisure ethic, with violence and vandalism and drugtaking something more than the image of a peaceful Bank Holiday at the sea was being shattered." (2002, pp161-2).

You cannot have a moral panic unless there is something out there morally to panic about although it may not be the actual object of fear but a displacement of another fear or more frequently a mystification of the true threat of the actual object of dismay. The text of panic is, therefore, a transposition of fear – the very disproportionalty and excess of the language, the venom of the stereotype signifies that something other than direct reporting is up.. Listen to the much quoted News of the World report (21/9/69) on the hippie squat in 1969 in an elegant Georgian mansion in Piccadilly,

"Hippie- Drugs- The Sordid Truth"

Drug-taking, couples making love while others look on, a heavy mob armed with iron-bars, filth and stench, foul language, that is the scene inside the hippies' fortress in London's Piccadilly. These are not rumours but facts, sordid facts which will shock ordinary decent living people. Drug taking and squalor, sex … and they'll get no state aid etc."

Savour the mixture of fascination and repulsion, attraction and condemnation, of a text which contains fragments of truth, rephrased and contextualized, as they sit there 'lit only by the light of their drugged cigarettes' led by the elusive Dr John the nom de guerre of Phil Cohen who was later to resurface, in a wicked twist of fate, as a leading theoretician of subculture theory (See commentary in J Young 1971, M Brake, 1985 and especially P. Cohen, 1995)

If one takes these three 'classic' accounts of moral panics. Stan Cohen's study of mods and rockers (1972) situated in 1964/6, Young's study of cannabis and hippies in *The Drugtakers* (1971) situated in 1968 and Stuart Hall and his team's study of the mugging panic *Policing the Crisis* (1978) situated in 1972, they all seem to represent major structural and value changes in industrial society as refracted through the prism of youth.

As was argued in *The Exclusive Society* (Young, 1999) the post war period experienced a seismic change in values and structure as we drifted into late modernity. There was a shift from a society which stressed work discipline and deferred gratification to one which emphasized a balance between work and home, a hardworking, hard consuming Keynsianism and, then further, a shift from the goal of simple material satisfaction ('The American Dream') to one where immediacy,

spontaneity and hedonism became in the ascendant and where a material success merely became a staging post on the route to self-expression and discovery. And we see the structure of society shift from which was inclusive to one of exclusion, of a declining centre of stable work and career, an insecure middle and a large underclass of transient, insecure and grossly undervalued labour (see Schulman, 2003).

Youth culture prefigured, as always, these social changes sometimes as a harbinger of the future, sometimes as a grim faced resistance. Moral panics about the teenage revolution, the hippie, and black youth echoed these changes. The invention of the teenager and the reinvention of teenage by youth themselves was one of the major structural changes of the twentieth century (see Shorter, 1977). On its back arose the most extraordinary flourishing of popular culture, no more so in Britain albeit late to arrive and looking always over its shoulder to America. The very austerity of post-war Britain, its rigid demarcations of class, its war induced sense of sacrifice and discipline, its failed imperial past- all probably added together to make the youth cultures of Britain all the more spectacular when they eventually broke through. What was happening in Clacton, in Brighton, in Margate of all places, and of course in London, was on the face of it mysterious, in a Mary Poppins sense of something strange afoot, something about to happen. But change was in the air, even though, some of its chief architects and minstrels did not understand at the time the significance of what was happening. But The Stones were playing at the Crawdaddy in Richmond, Rhythm and Blues in of all places The Thames Valley, Eric Clapton was at Klooks Kleek in Kilburn and the quintessential Mod band The Who were at Eel Pie Island launching their gig with 'I Can't Explain' and ending it with the amphetamine stutter 'why don't you all f…f…fade away'.

And, of course, the British public half sensed all of this and in a real way the moral panic over the mods and rockers was a defence of a world that was slipping away – an act of moral resistance if you want. In ten years time the music would be mainstream, the austerity and self-discipline of the past regarded not with nostalgia but disdain and the Mums and Dads themselves will have deserted these windy seaside towns for the warmth and vino of the Costa del Sol and Ibiza.

Late Modernity and the Permanent Moral Panic

The concept of moral panic, thus, arose at a particular time of change both in the wider world and in the academy itself. It occurred in a period when society and culture seemed to move rapidly ahead and where sociological theory bustled noisily behind. But this is not to argue that the concept should be locked in time. The most seminal antecedent is Kai Erikson's *Wayward Puritans* (1966) which discussed 'the shapes of the devil' in Puritan New England and amongst other things the witchcraft trials at Salem. From there to the medieval witchcraft hysteria and

then via Arthur Miller's *Crucible* to McCarthyism and back over the Atlantic to the furies of anti-Semitism. There can be little doubt that these are the unspoken historical antecedents of the concept. But what of today, is there anything special about moral panics in the twenty first century? Angie McRobbie and Sarah Thornton in their brilliant updating of the concept in the article 'Rethinking Moral Panics for Multimediated Social Worlds' (1995) generate some significant pointers.

A major thrust of their argument is that in a media saturated world the division between the media representation and the untouched world beloved of 'effects' research is increasingly unlikely. 'Social meanings and social differences are inextricably tied up with representation. Thus when sociologists call for an account which tells how life actually is, and which deals with real issues rather than the spectacular and exaggerated ones, the point is that these accounts of reality are already representations and sets of meanings about what they perceive the 'real' issues to be. These versions of 'reality' would also be impregnated with the mark of media imagery rather than somehow pure and untouched by the all pervasive traces of contemporary communications (pp570-1). Or as Ferrell and Saunders put it 'as cultural criminologists we study not only images but images of images, an infinite hall of mediated mirrors' (1995, p14).

Contemporary youth cultures are intensely aware of their image, they grow out of their representation both at the moment and by bricollaging from across the world together with a 'retro' gaze at the past (see Gaines, 1998). Moreover, as McRobbie and Thornton point out, they are likely to be intentionally transgressive and to welcome in a punk fashion moral panic and adult condemnation. Further, the agencies of control themselves – the police and government spokespersons, exist in a world of press release, spin and representation and counter-representation. They will be scarcely outsiders in the media circus. Where we differ from McRobbie and Thornton's analysis is that their notion of a 'multimediated world' would suggest a greater diversity of representations that actually occurs. Or to put it another way diversity, of course, occurs from specialty magazines to internet chat circles but the main thrust of representation hinges around the major media chains and their ever-increasing oligopolization. Panics and scapegoating would seem to focus upon the social excluded: in particular the triptych of welfare scrounger, immigrant and drug addict frequently racialized and to which after 9/11 a further refracting mirror has been added: that of terrorist. In this we differ also from Stan Cohen, the notion of 'permanent moral panic' may well be something of an oxymoron but the time of transient panic is long past. In the fibrillating heartlands of the first world; images of the excluded, the immigrant, the drug user and the terrorist visit us daily, the intensity dropping and peaking like tremors but never vanishing nor presenting temporary relief.

Here we have the extraordinary structural change wherein a sizeable section of the population have become socially excluded then and then cast with the stigma of trouble, contamination and danger. Michael Harrington wrote in the sixties of *The*

Other America (1962) a world where the poor had become invisible, today we have, in contrast, an othered America (and elsewhere across the industrial world) where the poor are in the searchlight of condemnation, the object of stigmatization, surveillance and blame. The notion of moral panic delves to the very heart of our social order, its occurrence is potent ammunition in the production of division, it is subtle rhetoric in the fabric of legitimation.

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Targeting Majorities
New Orientations of Penal Control

Nikos Paraskevopoulos

1. The hypothesis in brief

In late modern times globalisation seems to be irreversible, along with an expansion of markets, communication networks and multiculturalism. However, most studies presently show that the gap between rich and poor countries is widening. The world is becoming more complicated and challenging, as immigration grows and social institutions gradually abandon their role in the distribution of such goods as health and education.

Obviously, these changes reflect on the reality, models and images of penal control. Some of them are well discussed. Instead of the 'just deserts', a 'law and order' model influences law reforms and crime control strategies. The terrorist attacks in Manhattan, Istanbul, Madrid and London accelerate this development.

My hypothesis has as its starting point this turn, with the aim to look further into the issue, which concerns tendencies, not certainties of the past, already established in late modernity.

In investigating the target of the contemporary system of penal control, we have to consider the declared aims of penal law, as well as its latent functions.[1] This will help us explain some tendencies at the level of governance and practice, which are sometimes neglected by normative theory.

According to my hypothesis, majorities of people risk to be targeted both by serious crime and by penal control. Every civilian, passenger or pedestrian, is at risk of being victimized by terrorism. At the same time, everyone can be subjected to surveillance, to arrests for minor offences, or to severe investigation measures. The classic *Panopticon* of Jeremy Bentham[2] always offers a clear image, mirroring penal control. Nowadays, however, surveillance is extended beyond the boundaries of a penitentiary. Almost everybody is under surveillance, not only criminals or sus-

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[1] Duff & Garland (1994: 34) are asking how far these latent functions can be seen as the real determinants of penal practice.

[2] The term 'classicism' is used to denote the criminology of J. Bentham (Garland, 2002: 11).

pects of a criminal offence, or even deviants or outsiders. Targeted are the majorities, including all known minorities and outsiders, while only the higher part of the social structure remains out of the target.

Certainly, both substantive and procedural penal law have already been applied equally to everybody, under conditions prescribed by the rules. An abuse – or change – of the system will occur, if police and penal power could intervene without any precondition. We will discuss this eventuality.

2. Towards globalisation of the penal control: about the policies

After the Second World War, the full employment economy inspired optimism and favoured the inclusion of more citizens in the market. The traditional - liberal penal law systems reached a balanced function: protection of goods through security and punishment on one hand, guaranteeing of rights and resettlement of offenders on the other.

An actual globalisation, as a set of social processes with economic, cultural and ideological dimensions, started after the end of the Cold War. Some difficult conditions however emerged with it. The potential of serious crime was multiplied, mainly due to the new technologies, and the terrorist attacks contributed to a dramatic situation and atmosphere. Inequality of income and wealth also became a major problem and issue.[3] From time to time, social or economical analyses, but also 'light' texts (paradoxes, etc), present findings like "the ten richest individuals in the world have a total wealth equal to that of the forty poorest countries", or "51 of the world's 100 largest economies are corporations and only 49 are countries".[4]

The conceptual construction of crime and the criminal, as well as the way in which they are controlled, are the outcome of social, political and administrative processes (Serassis, 2001: 81). If more people fall in the circle of the poor and excluded and fewer are possessing wealth and power, a new field of tensions will be created. The humiliation of exclusion will lead to a hardening of attitude and behaviour.[5] Some groups will use opportunities offered by civil society to challenge class, ethnic or race inequalities and the state will intervene securing the markets. Simplistic or not, a rhetoric is developing, which suggests that the current world order values human life only when it contributes to the economic growth. Hence, documented reports of violations of human rights in states well integrated in the globalised market, even with authoritarian governments, do not seem to trouble neoliberal thinking (Evans, 2001: 59).

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[3] Carlen (1994: 309).
[4] Steger (2003: 48). See also Lea (2002: 109).
[5] Recently Young (2004: 558).

Some features of criminality, corresponding to this outlook, are already visible in fully developed and developing economies. High crime rates are regarded as a normal social fact.[6] A shift of professional crime from the blue-collar underworld to the middle-class is observed,[7] as citizens do not hesitate to take illegal and unfair advantages. In some Eastern and Central European countries it is very hard to differentiate between economic crime and normal economic activity, whilst circumstances are favouring large-scale economic activities.[8] The primary labour market makes the once secure middle-class jobs increasingly uncertain[9] and even young people seem to represent a danger in an ageing society.[10]

Within this environment, both victimisation and offending are widespread. Offenders do not fit in the image of the criminal, but rather in that of the average citizen.[11] The culture of the underclass has already spilled over into the mainstream (Lea, 2002: 131). So, some specialists speak about a kind of 'dissolution' of the criminal's subject and image into a cluster of factors.[12]

Describing 'actuarialism', Jock Young writes: "The actuarial stance reflects the fact that risk both to individuals and collectivities has increased, crime has become a normalized part of everyday life, the offender is seemingly everywhere in the street and in high office, within the poor parts of town but also in those institutions which were set up to rehabilitate and protect, within the public world of encounters with strangers but also within the family itself in relationships between husband and wife and parent and child. We are wary of scoutmasters, police officers, hitch-hikers, babysitters, people who care for the elderly, husbands, dates, stepfathers and stepmothers; the 'other' is everywhere and not restricted to criminals and outsiders" (Young, 1999, 391).

Undoubtedly, members of the 'anti-globalisation' movement or civil rights mass activism fall under the targeted majority.[13]

Instead of normalization - integration policies and focus on justice, the new actuarialist thinking suggests two things. First, the turn from the 'just deserts' to the 'law and order' concept of penal control. It is often said that government policies are currently being justified not on the basis of their providing a fair punishment,

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[6] Garland (2000: 367-368). See also Serassis (2004: 11), connecting this phenomenon with the transformations effected by the transition of Western societies from modernity to late modernity.

[7] Karstedt & Farral (2004: 66), mentioning also other recent studies.

[8] Aromaa (2000: 31).

[9] Young (2004: 558).

[10] Marcus (2003: 11).

[11] Karstedt & Farral (2004: 66, 79).

[12] B. Hudson (1996: 155).

[13] For a very short review of the confrontations between the forces of globalism and its active challengers see Steger (2003: 122-130).

but because of their effectiveness in controlling crime.[14] Risks depend on a combination of factors making some occurrences more or less probable.[15] Policies aim at the management of these risks of victimisation and disturbances.

According to the second suggestion, the criminal justice doctrine should cease normalising and integrating ideas and projects.[16] Actuarial techniques of risk assessment, derived from the handling of dangerous offenders, have been generalised and transferred to other groups. Thus, the definition of dangerousness is expanded. If everyone – with the exception of members of some powerful groups – can be a suspect or considered dangerous, inclusion falls out of any social policy.

Thus, the transition from the inclusive society of modern times to the exclusive model of late modernity is in action.[17]

Consequently the idea 'tough on crime, tough on the causes of crime'[18] was restricted to its first half: the hardening of policing and punishment was programmed, but the tackling of poverty or unemployment was accepted to be beyond short or medium-term perspectives. The idea that most violations of human rights are rather due to the current economic structures than to the evil side of human nature is neglected.[19] So, the hypertrophy of penal control is employed where social welfare declines and the poor relief fails to prevent destabilisation. A global community plagued by inequalities and full of tensions will have the opportunity to foster cohesion by using the fear of crime. Security is now an issue dominating debates and influencing electoral campaigns in every European democracy.[20] Real violence and mainly terrorism mixed up with collective fears illustrate a new environment of danger and intolerance.

Since the above constitute a perspective, the most probable abuse of the penal system will be its use as a tool for the control of majorities.

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[14] See Cavadino & Dignan (2002: 52).

[15] According to Lea (2002: 124), this leads far beyond traditional ideas of dangerousness.

[16] Hudson (1996: 154).

[17] Yar and Penna (2004: 553) criticised Young's position. In his reaction Jock Young argues plausibly that the dystopian projects of control and of exclusion have no inevitability (2004: 559).

[18] See Downes & Morgan (2002: 297).

[19] Evans (2001: 8).

[20] Marcus (2003: 11).

3. Towards globalisation: the institutional level

Given the aforementioned understanding of globalised crime and reaction, the traditional concept of individual responsibility, a human right itself, is obscured. The abstraction allows targeting of everyone doing just what everyone else does.[21]

This toughening of penal control is rapidly influencing the national penal systems; in most countries the prisons are overcrowded,[22] at a time when the number and rate of violent crimes are slightly declining. Some criminologists regard this decline as a success of repressive policies, but most of them are quite circumspect.[23] Obviously, a penal control system involving majorities does not produce new integration institutions and structures. Exclusion is cheaper and easier: as a common product of exerted control, it explains the increasing convergence between the penal system and immigration policies at the national level.[24]

After reviewing and comparing the developments during the second half of the twentieth century, one could observe a differential application of the respective Conventions.

Within the humanistic and liberal post-war climate, the first kind of required globalisation was the one within the field of human rights. The Universal Declaration of human rights, proclaimed by the General Assembly of the United Nations (1948), and the European Convention on Human Rights (1990, 1953) constituted major steps towards the globalisation of Human Rights. This globalisation was decided early, before any formation of a common social and political basis could provide the requisite support. This resulted in insufficient application of both Conventions.

In late modern times[25] the demand for security, the development of communications, the cooperation of police and military forces and the production of the necessary technological equipment preceded the creation of institutions regulating security. There followed the adoption, at the global or regional European level, of conventions and other instruments introducing effective measures against terrorism and organized crime. Within the European Union, the entry into force of the Maastricht Treaty marked the judicial and police cooperation as a field of main common interest for the Member States. This cooperation is regulated by the European Convention on Mutual Assistance on Criminal Matters, signed on 29 May 2000.

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[21] See Lea (2002: 139).

[22] For U.K. see Morgan (2002: 1115).

[23] Melossi (2001: 33).

[24] We live in a time of extreme 'vigour, efficiency and strictness' as to deportation of non-citizens convicted of crimes: Kanstroom (2004: 651).

[25] The concepts of security changed after 1990 according to David & Roche (2002: 146).

The European Council, also, turned the spearhead of its activities towards serious crime (combating of organized crime, money laundering and corruption, adoption of Guidelines on Human Rights and the Fight against Terrorism).[26] The Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters has been opened for signature by the member States of the Council of Europe, in Strasbourg, on 8 November 2001.

At the universal level, a number of recent institutional achievements, such as the United Nations Convention against Transnational Organized Crime and the establishment of the International Criminal Court (Rome, 1998), affirm the current orientation and the determination to prioritise security.

Hence, as structures and forces have already been established, the problem of application of legal instruments for security is reversed: a rather expanded than insufficient, as in the post-war period, application is being observed. Bearing in mind this expansion, we will now consider specific aspects: is there a tendency to normalize this expansion, or does it remain an impetus, facilitated by or leading to abuses? Could we find reforms, new principles or specific instruments serving the targeting of majorities? In an attempt to provide an answer, we will explore two separate fields: substantive criminal law on the one hand, and procedural criminal law, on the other.

4. Substantive Criminal Law

The parallel consideration of international and national[27] penal systems constitutes an extremely difficult task. Therefore, we will examine the common source of innovations reflecting the need for strong penal control: these innovations are initiated by International Conventions and Action Plans. Regularly, their adaptation and reforms of national criminal laws follow.

4.1 The decline of the certainty of law principle

Punishment presupposes crime; *actus reus* and *mens rea*. The proof and gravity of these elements assist in the scaling of the severity of the corresponding penalty, according to the classical retributive idea and the principle of proportionality.[28] The offender is to be blamed for an offence, defined as such by law.

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[26] The Guidelines have been adopted by the Committee of Ministers of Council of Europe on 11 July 2002. See *Guidelines*, Strasbourg: Council of Europe publishing.

[27] For a comparison of European and North American crime prevention policies, see Takala (2000: 51).

[28] See Ten (1987: 154-160), v. Hirsch (1994: 128-130), Tonry (1994: 142-158), Cavadino & Dignan (2002: 56).

According to the certainty of law principle, which is an essential supplement to the legality principle, the elements of the offence must be defined precisely and without any analogy to the accuser's detriment.[29] The European Court of Human Rights has interpreted Article 7 of the European Convention on Human Rights broadly, by embodying the additional clause that only the law can define a crime.[30]

These principles, supported by critical legal doctrine, guarantee that a strictly limited number of persons confront penalties. The modern - liberal penal justice system allowed minimal (*ultima ratio*) interventions in freedom.

In late modernity retributive ideas have been declining. The criminal system seeks to manage factors associated with the risks of victimization. Ideally, the best target should be the group of potential victims and offenders.[31] The expansion of key legal definitions such as organized crime or terrorism is an important technique used to expand penal control.[32] The enlargement of the circle of persons controlled by penalty is assisted by the elasticity of definitions of criminal acts, and especially of participation in crimes. Profiling[33] is easier[34] than investigating strictly described by the legal provisions, and discovering sympathizers or inspirators of terrorism[35] is easier than discovering evidence for described acts of participation.

Obviously, a flexible jurisdiction and the Common Law system can serve more effectively the above late modern demands, than strict codifications.[36] Even in International Public Penal Law, the abandonment of the dogma of criminal liability for specific acts and the use of concepts such as 'rogue' or 'terrorist' states falls against the Rule of Law. The fact that major international statutes codifying crimes include only a minimal number of general rules (General Part), thus leaving free space to jurisdiction, is in accordance with the new tendencies.

In general, the gradual decline of the principle of certainty of law highly contributes to the broadening of the target of the penal control.

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[29] For Jescheck and Weigend (1996: 26), the principle of certainty of law (*Bestimmtheitsverbot*) is in the practice more important than that of prohibition of analogy (*Analogieverbot*).

[30] Kokkinakis v. Greece (1993) at para 52.

[31] See Hudson (1996: 154-155).

[32] See Ashworth (2002: 107).

[33] The first criminal conviction is the important defining the criminal profile moment, according to Soothil, Ackerley & Francis (2004: 401-418).

[34] Even if it is very different than 'face crime'. See Montet, (2002: 7).

[35] Townshend (2002: 118) cites President Bush's Thanksgiving Address to the 101st Division (2001): "America has a message for the nations of the world. If you harbour terrorists, you are terrorists... And you will be held accountable".

[36] For Savona, Manna & Forte (2000: 63-64) the distinction between codification and non-codification has lost importance.

4.2. Actus reus: rather risk, than harm

The organizing point of social defence – and the typical image of *actus reus* – is risk, rather than harm. A majority of the population is involved in conditions (poverty, immigration, culture of violence, racism, fundamentalism, drug use, etc) producing permanent risks. In the Anglo-Saxon jurisdiction the use of proof 'on the balance of probabilities' has expanded. Hence, the criminalization of individual cases 'at risk of committing future criminal actions' is facilitated.[37] Everywhere, late modern societies increase goods accompanied by risks. Factories produce pollution, opportunities for leisure and travel increase risks of airplane or train accidents, new technologies multiply the capacity of weapons and terrorists. There exist conceivable risks, capable of even destroying the earth. Research centres and experts work to calculate risky conditions[38] and dangerous profiles, instead of assessing injuries or property losses.

This, in turn, generates a system enlarging the circle of population under penal control ("not every risk results in harm") and produces new needs for timely prevention and regulation (surveillance, entrapment of suspects, etc.).

4.3 Zero tolerance

The famous legal export product of New York, 'zero tolerance', is an eloquent[39] example of surpassing the traditional limits of the Rule of Law. The transfer of this model was very rapid: first it was adopted by other American States, then by Mexico, Brazil, and New Zealand, and currently some European countries are importing it.

There is an apparent contradiction: late modern societies accept cultural differences, but at the same time a long-term tendency of penal control establishes zero tolerance. As a matter of fact, the coexistence of different cultures often leads to bitter conflicts, which need to be resolved by something more effective than the late modern theories.[40]

Zero tolerance strategy, supported by concepts like 'public nuisance' and images such as 'broken windows', brings with it an annulment of proportionality. In

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[37] See Lea (2002: 166).

[38] See Hudson (1996: 154-156). The way risky conditions, and in general "Risk Society", are influencing Penal Law is examined by C. Prittwitz (1993.81-163).

[39] For Garland (2001: 102), zero tolerance is the term that best captures the new right's ideal. See also Zedner (2002: 347-348).

[40] According to Young (1991: 390, "the late modern world celebrates diversity and difference which readily absorbs and sanitizes; what it cannot abide is difficult people and dangerous classes, which it seeks to build the most elaborate defences against, not just in terms of insiders and outsiders, but throughout the population".

French: 'qui vole un oeuf, vole un boeuf'.[41] This results in excessive punishment, in involvement of incidents of every day life (homelessness, walking outside the pedestrian crossing, or even driving a bicycle without a bell) in rules prescribing heavy penalties and in further models, such as 'three strikes and you are out'.[42] The annulment of proportionality contributes to a confirmation of the initial hypothesis: it shifts the majority of the population, who commit minor offences in everyday life, inside the penal control target.

4.4 The priority of procedural over substantive rules

In any case, the spearhead of the new globalised penal policy turns mainly towards the field of policing and procedural institutions. Unequivocally, in the traditional dogma the substantive rules (defining the crimes and the respective penalties) should have systematic priority. However, according to the new trends, there exist types of crime which appear almost as if they were created to serve criminal procedure.[43] Some provisions (e.g. definition of terrorism) are of very little use to the filling of lacunas. They seem to be redundant, since the respective acts are already punishable on the basis of legislation in force. These thoughts do not take into account the fact that the new substantive definitions (terrorism, organized crime) are merely required to describe the application field of policing and of new investigation measures. Policing becomes an aim in itself, independent from substantive targets and guarantees and disconnected from the needs of criminal procedure.

5. Police and procedural laws

The – inherent in liberal tradition – process values give a high priority to civil rights, in order to guarantee fair trial and acquittal of the innocent. The adversary actuarial values prioritise security, risking infringement of liberties and disproportional or against innocence sentences.

The reform and adaptation of existing procedural laws to the above second model occurs in two ways: the first works by embracing the whole procedural system at once, like turning a switch; the second is gradual and fragmentary. We examine both below.

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[41] Oqueteau (2003: 9).
[42] See Cavadino & Dignan (2002: 57).
[43] Savona, Manna & Forte (2000: 74).

5.1 Change at once

In most penal regimes, heavy procedural measures (like bail) are used against the accused, after charge. These powers can be extended at once with a single change: by substituting the concept of the suspect in general person ('usual suspect') for the corresponding of the 'suspect for the committing of a specific criminal act'. This way the circle of persons exposed is enlarged significantly.

Even this one-step change of the concept - presupposition 'suspect', however, did not exhaust the tendency for the enlargement of the circle. A European instrument, the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters of the European Council,[44] introduced an even broader subject. According to Article 17 para 1, "Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorized to continue …".

Obviously, 'a person who it is strongly believed will lead to' suspects, is not a suspect him/herself. So, everybody can be targeted by an observation, without presuppositions having to do with his own previous behaviour. Given the grave character of such an observation for civil rights, this total opening of the circle conflicts with classic liberal principles.

The adaptation of the new harder investigation measures (such as interception of communications, cross-border surveillance, covert investigations, entrapment, etc.) within the existing law systems could be regular, under one condition: if judicial authorities or prosecutors decided and imposed them. The competence and the terms of reference of judicial authorities, however, already feel the pressure of police competence and powers.[45] The late modern world has realized that while from a legal point of view the prosecution plays the most important role in the preliminary proceedings, in reality the police are more reactive and effective.[46] Therefore, tensions of judicial and police powers in the future are not unexpected.

In the frame of the European Union, for example, the Europol Convention assigns to the European Police Office considerable prosecution and interrogation powers. These powers, concerning 'usual suspects', potentially clash with the rights of many citizens. Nevertheless, a number of privileges and immunities, limiting national judicial control, are raising remarkable issues.

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[44] For this, as well as for the corresponding instrument of the European Union (29 May 2000), see Vermeulen (2000: 182).

[45] This pressure is remarkable in the frame of the European Union: Flore (2000: 96).

[46] See Selih (2000: 101).

Police services have a central position in the penal control system of most countries, especially after the terrorist attacks. Police officers are the main sources of inspiration for the media, creating a kind of partnership and influencing public opinion. This influence is reciprocal, as public opinion in turn reacts it exerts a major impact on criminal justice policy. Undoubtedly, police officers inspire also legislative changes.[47] Lawyers now do not have the monopoly of influence towards legislators, as police institutes conceptualise new issues and reform demands.[48] In Europe, an open question remains whether there will be a European Public Prosecutors Office.[49] In a comparative perspective, it is observed that there is a tendency to limit the prosecutor's functions.[50]

It is an overstatement to say that the European Union and the Council of Europe are restructuring the police of the future, focusing on international activities and leading a homogenizing and converging process, which involves the police, the judiciary and penitentiary services.

This convergence is apparent enough in the case of Eurojust, a body established in order to facilitate the judicial cooperation between Member States of the European Union. Eurojust is linked with national judicial authorities, but also possesses its own investigation apparatus. This ambitious[51] authority has discretionary powers with a serious impact on human rights; among its members, however, there are not only judges or prosecutors, but also police officers.[52]

In the larger frame and landscape of the Council of Europe, the relevant cooperation issues are more complicated, requiring flexible solutions. In some countries of Central and Eastern Europe prosecution is part of the executive,[53] and police authorities possess significant powers until the case is introduced to the court. In most countries, however, this competence belongs to the prosecutor or to the judicial authorities. So, the need for cooperation and communication generate a common concept of acting authority in criminal matters. Article 6 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters[54] replaced Article 24 of the Convention, introducing the following provisions:

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[47] Nevertheless, judges and scholars do not pay adequate attention to the institutional structure of the police (Sklasky, 2005: 1750) and ethnographers do not pay requisite attention to the organisational transformation of the police (Marks, 2004: 1).

[48] "The police have now become leading agents of legislative change": Marcus (2003: 46).

[49] Sceptic v. Gerven (2000: 301).

[50] See Selih (2000: 106).

[51] See Brammertz (2000: 114).

[52] See the critical remarks of Kaiafa - Gbandhi (2002: 13).

[53] The Russian institution of the public prosecutor, 'Procuratura', has had a different beginning and development than the corresponding institution in other European States: Selih (2000: 99).

[54] Signed in Strasbourg, 8.11.2001.

"Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration".

Could a European country declare a police authority as deemed judicial authority for the purpose of Mutual Assistance in Criminal Matters? Articles 5 para 3, 5 para 4 (habeas corpus) and 6 of the European Convention on Human Rights set limits which could raise important issues.

5.2   Specific changes

Important specific provisions, serving the international assistance in serious criminal matters, introduce new measures, viewing major population targets, after judicial authorization or ordered by administrative or secret services. The cross-border surveillance of persons who could lead to the identification or location of suspects[55] and the covert investigation (by officers acting under covert or false identify)[56] facilitate the broadening of the penal control towards everybody.

Surveillance by the police or other agencies and interception of communications, open or covert, generalized in public places or particular and individualized, is the most widespread control measure inspecting, through regular use or through abuse, everybody. The first formally acknowledged forms of surveillance presupposed judicial (in the frame of criminal procedure) or administrative authorization.[57] The reality and the fear of terrorism account for the fact that institutions and jurisdictions already accept or tolerate an unrestrained development of this measure.

Certainly, the dynamic of surveillance is multiplied – and partially beyond any control – thanks to new technologies. In addition to the use of cameras, the retention and disclosure of body samples and the DNA investigation are offering visibility and sometimes proof against anybody. From the procedural and the covert surveillance to the contemporary closed-circuit or generalized systems, the opening of the scope of inspection seems to be unlimited.

European and national instruments establish, of course, a strict regime of procedures and limits for the protection of personal data selected by surveillance.[58] Nevertheless, under the pressure of the essential needs to tackle terrorism, this regime

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[55] Article 17.1 of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters of the European Union (see above).

[56] Article 19.1 of the same (see n. 55) instrument.

[57] The standards and guarantees of surveillance have been developed over a long series of cases before the European Court of Human Rights: Whitaker, in Starmer, Strange & Whitaker (2001: 35-42).

[58] See Whitaker in: Starmer, Strange & Whitaker, (2001: 80-94).

is weakening.[59] Three indications of this weakening are noteworthy. First, the already mentioned enlargement of the concept of 'suspect', including now everybody. Second, the establishment of common offices for the supervision of both the freedom of information and the data protection legislation.[60] Third, the practically uncontrollable capacity of the technical infrastructure used for electronic surveillance.

The use of 'stop and search' powers has increased during the last decades. These powers (other than detention or arrest in order to bring a person before a competent court) are exerted against any person, pedestrian or in a vehicle, for the verification of their identity or when there are grounds for suspicion. The Commission of the European Court of Human Rights considered the police powers to order the applicant's detention pending an examination.[61] The Commission found that there are circumstances of a pressing nature, which justify detention for the submission to a security check.

The exercise of these powers can vary widely in practice according to race or ethnicity. The new, broader, moral economy of the police reinforces a new image of deviant including larger parts of population (on the basis of age, sex, ethnicity, bad reputation of the neighbourhood, denial of cooperation with the police), where offending is a routine.[62] Even worse, reasonable suspicion could affect anyone in major police operations (according to the Greek lay name, 'sweep operations'), where 'zero tolerance' policy is applied. Community policing operations, very popular in some cities, expand the field within which the relevant abuses occur.

6. Epilogue: What about democracy?

Inequalities, the decline of the welfare state and social exclusion are the challenging conditions of late modernity. These conditions reasonably lead to higher rates of crime, as a standard background of everyday life. During the unfolding of globalisation, majorities of people are targeted: terrorist attacks victimize potentially everybody, collective insecurity and fear of crime grow and penal systems are gradually oriented to inspect and control everybody: not only the guilty, or the individualized suspects of criminal acts, or outsiders. The identity both of victims and of criminals is blurred, embracing unknown people: the average citizens.

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[59] See Guideline V, in Guidelines on Human Rights and the Fight against Terrorism (Council of Europe, 11 July 2002).

[60] For an example, where a single office has oversight of both the above fields, see Whitaker, in: Starmer, Strange & Whitaker (2001: 93-94).

[61] McVeigh, O' Neill and Evans v. UK (1981).

[62] See Downes & Morgan (2002: 314).

There are substantive and procedural law systems, both international and national, ready to accept these tendencies. Examples of successful influence include: the decline of the Certainty of Law as a fundamental principle of criminal law; the concern of criminal legislators rather for risks than for acts which produce harm; 'zero tolerance' policies; a paradoxical priority of procedural objectives and laws over substantive ones; the expansion of the field of police and administration in comparison to the field of criminal justice; the enlargement of the concept of the suspect; the development and normalization of surveillance systems; the various 'stop and arrest' operations.

This obscure perspective concerns (also) democracy, not only as a political, but also as a social structure. Unsurprisingly, the discussion on democracy, law enforcement and policing is widespread today. Irrespective of specific conceptualisations of democracy, emphasis is given to the economic development, and in practice politicians are accountable to market forces (Evans, 2001: 93). (Targeted) majorities lose power, electoral institutions lose sense and instrumentality. This decline of political and social reasoning will probably contribute to violent tensions.

Undoubtedly, the gloomy perspective is not the only one. Common conditions and interests for majorities for example, could reanimate democratic figures. Well established social structures, movements, and even the potential of existing institutions continue to provide alternatives and to hold promise for the future.

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Tribal Images, Fashionable Deviance, and Cultural Distinction
Notes on Criminological Change

Ronnie Lippens

1. Introduction

This contribution basically attempts to answer the question: 'Where does new-ness, or change, in criminological theory and research come from?'. The paper originates in a fairly basic desire of its author to provide students with a fairly basic insight into the matter at hand, i.e. the emergence and development of scientific 'newness'. Although the reader will find here references to some of the well-known literatures that may shed a light on the what of scientific, or theoretical newness, the contribution at hand shall approach the problem from a slightly different angle. Here we are not so much interested in the what of scientific or theoretical newness as in the how and why. That scientific or theoretical newness is a matter of structured paradigmatic struggles in scientific communities (Kuhn, 1970), or, in more subtle versions, of 'naturally', more fluidly changing interpretations in interpretive communities (Fish, 1989), is something we won't spend any energy refuting here. There is no reason to. We will, on the contrary, focus on how exactly scientific or theoretical newness ('change') emerges, and how it develops. We will also delve a little deeper into the why question. Let us briefly state the gist of our argument here. We will argue that scientific or theoretical newness, or change – and we'll focus particularly on criminological newness or change – is, first and foremost, all about image. Drawing things together (please keep this phrase in mind) from anthropology, from actor-network theory, and from art history and art criticism, we shall argue, in what follows, that scientific or theoretical newness can be considered as the result of a tribal process of assemblage and fashionable circulation of images, indeed: of *image*. This process of assemblage and circulation, we will argue, is at the very same time also a process of formation of self and community. The formation of self and of community takes place in and through the very assemblage and circulation of image(s). The boundary between self and community, then, we hope to be able to demonstrate, *is* this process of assemblage and circulation, and, as such, that is, because it *is* a process of assemblage and circulation, this boundary is shot through with the potential for 'change' and 'newness'. In other words, change

and newness in science or theory originate in the process in and through which the scientific or theoretical 'self' and the scientific or theoretical 'community' – any particular 'self' and any particular 'community' – are constituted. But we are running ahead of ourselves here. Let us approach this issue from three different angles. Let me, in other words, assemble three images. I'll circulate them, and their assemblage, in the next three sections. We'll then hopefully be able to pull together the threads – *to draw these things together* (this phrase again!) – and see where it takes our (yours and mine) scientific or theoretical 'self' and 'community'.

2. FASHION: The Abbot and 'Noble Simplicity'

Abbot Suger was a peculiar man. Born in 1081 and appointed Abbot of St. Denis (the abbey of St. Denis was just north of Paris), Abbot Suger had a penchant for gold, jewels, and all things shiny and glittering. Light too, lots of it, was high on the abbot's wish list. Now whether or not the abbot's taste for jewelry and suchlike things to some extent expressed something of his essential self, or his sense of community, or whether indeed his taste is only a sign of his *becoming* a different self, or a member of a different community, is of no great import here. We do know that Suger was born to a very humble family and ultimately ended up in those diplomatic circles that were closest to the French king himself. So yes, one might argue that the abbot's taste for gold and silver and gemstones simply expressed something of a nagging desire to transcend embarrassingly humble origins. Or, on the other hand, it might also have indicated something of the aspirations of the emerging, *becoming* parvenu. But that would not lead us very far. The issue is not so much as to whether the abbot's taste, or anyone's taste, for that matter, expresses some essence or betrays some process of becoming or other. One could say that things human that express themselves *as* essence do so through aspiration, that is, they will somehow betray an aspiration to do so, i.e. to express themselves *as* essence. And the other side of this coin is equally arguable, namely, that for anything to become, to aspire towards difference, change, why not 'newness', something of this 'newness' must already be present – let's not use the word 'essence' to denote it – to fuel the process of *becoming* newness. So we won't be wasting any more time on this issue of expressive becoming and later, it will become much more clear why doing so might indeed be a waste of time. Let us go back to abbot Suger instead.

We do know that the abbot was fond of glitter and shiny valuables. He actually made the effort, near the end of his life, to meticulously record, describe, and account for all the valuables he managed to procure or collect for the benefit of the abbey. The phrase 'for the benefit of the abbey' is not coincidental here. Suger himself always adopted a fairly humble, or, if not, a certain temperate lifestyle. No luxury for Suger's own person, then. Moderation, temperance, and a very balanced sense of diplomacy, were his. In his account of the abbey's glittering riches, the abbot made sure he listed and expanded on the very many architectural changes which he had made to the buildings of the abbey, the church, and the estate. Huge

windows, in various shapes, that allowed the daylight to flood inside the church, bathing the many shiny treasures inside in a sea of bright sparkle, for example, were introduced. And wider, more spacious halls and rooms. We know of all these treasures and architectural innovations because the abbot made sure they were recorded and written down. One of the foremost twentieth-century scholars of art history, Erwin Panofsky, came across the abbot's inventory, edited, translated, and annotated it. The information for this section, by the way, comes from a reprint, in *Meaning in the Visual Arts* (1955), of Panofsky's 'Introduction' to Suger's inventory. Little did Abbot Suger know that all the changes he had made to his church and his estate would, much later, lead art historians such as Panofsky to classify the abbey of St. Denis, just north of Paris, as the first medieval gothic building. Suger himself seems to have been unaware of the 'newness' which he expressed/became, and which the ecclesiastical community of monks embodied and lived out within the walls of the estate. But he did know that his project, if ever it was a consciously conceived and planned project, to some considerable extent, went against the grain of the day. For instance, he often uses the word 'modern' to describe his architectural vision. But there is more. The dominant atmosphere in religious communities, at the time, was one that was proscribed by Bernard, later Saint Bernard of Clairvaux. The atmosphere of religious worship, Panofsky tells us, was one of obligatory austerity and asceticism, of dark, moist cloisters and grey shadows on bleak walls. Suger, on many occasions, had to muster all his diplomatic skills – of which he had many, perhaps not by mere accident – in order to be able to proceed with the ongoing production, indeed assemblage, of *deviant knowledge* which he, and his monks at St. Denis, were circulating. Suger's was a kind of knowledge that, at least to some extent, expressed a becoming self as well as a becoming community, or, in other words, became an expressive self and an expressive community of change and newness. And yes, here are the two words again: deviant knowledge. That the abbot's taste for brightness and for glittery gold did tend to be perceived by his fellow clerics – Bernard of Clairvaux amongst them – as deviant, should perhaps come as not too big a surprise, and indeed the importance of the very fact of the abbot's effort to record and, above all, justify his deviancy in a long, annotated inventory, might perhaps go without saying. But why do we call this taste, here, in this contribution, why do we call the abbot's desire *knowledge*? The Abbot would probably have agreed to consider knowledge as a deeply sensual matter, as a matter of the senses, of emotion and of desire. Panofsky, who by the way is not directly interested in the issues that concern us here, tells us how Suger came across translations of the neo-Platonist writings of Dionysius the Areopagite, one of the church fathers who, it was assumed, was the real St. Denis. In there he finds a most appropriate justification for his 'modern' desires: the neo-Platonist doctrine of divine light. "But we profess", he writes in his inventory, "that we must do homage also through the outward ornaments of sacred vessels. (...) For it behooves us most becomingly to serve our Saviour in all things in a universal way", in other words, in and through the circulation (and admiration) of materials that embody a

knowledge that *knows* that universal, divine Truth is in God ("the superessential Lightee") and Christ (the "first radiance"), and that we, devout mortals, must attempt to partake in that divine light, in Suger's words, to get "transported from this inferior to that higher world in an anagogical manner", in and through "the delight in the beauty of the house of God" (Panofsky, 1955: 123-9). And by "the house of God" Suger meant something quite literal and tangible. So, what have we got here. We have a monk, of very humble origins, and perhaps a little "vain" (Panofsky surmises), who, while in high places, assembles very partial bits and pieces of found, indeed stumbled upon fragments of neo-Platonist theology, with gold, gemstones, and flows of sparkling light, as well as with particular desires, tastes, and diplomatic sensitivities, and who then circulates this assemblage, thus expressing/becoming something that might be called newness, newness of self, and newness of community. Whether this process of assemblage and circulation of new, deviant knowledge resulted from Suger's biography or from context, or from both, is not the issue here. The issue is to recognise how, in particular contexts involving particular biographies, 'new' knowledge gets to be assembled from available bits and pieces, embodied, and circulated, and how in and through this very process of assemblage and circulation, self (e.g. Suger's sensuous and therefore contradictory neo-Platonist self) and community (e.g. an emerging community of sensuous, gothic worship) emerge, better still: are constituted, or, as we have argued, are simultaneously expressed and becoming.

Self and community are not eternal. The knowledge assemblages and circulations in and through which they are constituted aren't either. For reasons that are yet to be explored in subsequent sections they are bound to fragment, disintegrate even, leaving bits and pieces to scatter around, possibly to be re-used in other bouts of knowledge assemblage and circulation. It is interesting to note, with Ernst Gombrich (1962), how Suger's gothic knowledge, and how gothic selves and communities, gradually gave way to other, more fashionable forms of knowledge, self, and community. In his classic essay on 'Visual Metaphors of Value in Art' (1962: 12-29), Gombrich tells us how, at the cradle of the Renaissance, in the writings of Leone Battista Alberti, the "mere surface attractions of sparkle" gave way to an emerging knowledge that knows vulgar abundance from "noble simplicity", the fake "sprinkling of gold" from "dignified purity", superficiality from "sincerity", excess from "moral restraint", irrational disorder from rational order, in short low from high (1962: 17ff.). Soon this knowledge, newly assembled from available bits and pieces, and circulating in and between emerging, 'deviant' selves and communities, would end up on canvasses, in architecture, in theological and philosophical tracts, and in the black-and-white, that is: strict and restrained and 'sincere' dress code of a newly emerging cultural elite whose *perspective* (indeed!) on life, whose knowledge of life expressed/became a certain 'newness'. For a while. But that is another story (see e.g. in Lippens, 2004). Let us now go to the tribes of Papua New Guinea.

3. TRIBE: In Papua New Guinea

In her book, *Partial Connections* (1991), Marilyn Strathern, one of the most prominent representatives of what is known as actor-network theory, describes and analyses how tribesmen in the jungle and foothills of Papua New Guinea, when applying or adjusting adornments, used as extensions of the body, do a number of things simultaneously. They would, in assembling and then applying extensions, negotiate tribal custom, or, using our phraseology here, tribal knowledge. They would, in applying these extensions (negotiated embodiments of tribal knowledge), simultaneously assemble their own selves. In other words, tribesmen, when applying extensions, and when circulating them while walking about the village, or, in yet other words, when evoking and mobilising and gauging and negotiating tribal knowledge during such parades, tribesmen constitute both self and tribal community at the same time. The ramifications of this insight cannot be underestimated: self and tribal community emerge in and through the assemblage and circulation of (embodied) knowledge; the assemblage and circulation of tribal knowledge is in turn a matter of self and community, a matter, that is, of gauging and negotiating the boundary between self and community. As this has been elaborated upon elsewhere (Lippens, 2003 and 2005), as well as in the above section, let us now focus on one issue in particular. Just like the embodiments of tribal knowledge, i.e. the extensions that get assembled and circulated, their expressive products or becoming source, that is: self and community, too, are always, and inevitably so, a matter of *partial connections*. This means that knowledge, self, and community (we feel we have now reached the stage where these three words can be uttered in one breath) are always partial, ultimately unstable, and inevitably shot through with the potential for change, for 'newness' to occur. Let us unpack this idea to its very basics.

Picture one of our tribesmen's adornments. It's made out of feathers, pieces of carved wood, and string. It is an assemblage. It's going to be used as an extension. When that happens, it will be part of another assemblage, one that expresses/becomes self and community. But have another look at this tribesman's assemblage. It has been *fashioned,* not unlike Suger's sparkling crucifixes and other adornments, not unlike Alberti's 'sincere' architecture. It has been fashioned out of a number of bits and pieces, out of fragments found or stumbled upon. It is therefore, as any assemblage would be, hybrid, inevitably hybrid. But there's more. Like any other assemblage, it is full of empty spaces, let's call them 'holes'. Indeed, for any assemblage to exist at all, there must be emptiness – holes – around which the assemblage is ... assembled. In short, without hybridity and without emptiness, there can be no assemblage. Assemblages, in other words, by their very nature, are assemblages of hybrid fragments and holes. The holes are absolutely necessary. In a way, it's the holes that keep assemblages apart/together. An assemblage that has no holes in it, is either no assemblage, or an impossible one, i.e. one that somehow would have managed to assemble all and everything. So let us recapitulate, using Strathern's words: assemblages, by their very nature, are assemblages of partially

connected fragments, connected as they are in hybrid assemblages around holes that keep them apart/together. Now we have seen that assemblages, fashioned thus, tend to circulate – as extensions – and, in this very process, constitute self and community. But that means that the outcomes, and in turn again the source of circulating assemblages, i.e. self and community, will themselves, out of necessity, be hybrid assemblages of fragments and holes. The self is, then, an assemblage of partially connected fragments. Let us illustrate. Here are two very differently assembled knowing selves: 1) a critical criminologist, X, is reading Jacques Derrida's *Positions* in 1975; 2) the very same critical criminologist, X, is reading the very same book, *Positions* in 2005. These are very different assemblages. The self as such is partially connected to the community, or better, to the communities it circulates in, and the latter, the communities, are in turn hybrid assemblages of partially connected selves and the holes in-between them that keep them apart/together.

Now let us substitute 'knowledge' for 'extension'. Knowledge, that which circulates as extensions in, through and between selves and communities, or again, that which constitutes, indeed *fashions* self and community, is inevitably hybrid, partially connected, fragmentary, and shot through with holes that keep it apart/together. It may, for a while, constitute selves and communities. But only for a while. Its connections, that is, its internal connections (it is after all an assembled extension), as well as the connections of self and community which it constitutes during its circulations, are always partial, and inevitably so. And it is there, in this very 'partiality', in the hybridity of knowledge and its outcomes, in the 'empty' holes that keep it as well as its outcomes apart/together, that the ever-present potential for change, indeed for newness, resides. Let us now try and answer a number of questions.

Where does scientific or theoretical change, or newness, come from, one might ask? The answer might sound something like this: it comes from the hybridity and the holes knowledge assemblages are made of. The more hybridity, the higher the odds that particular materials, when happened upon, may suddenly 'stick' and cause some disturbance or other, and that, in turn, may lead to change, or newness. The more 'holes', the greater the space for change, or newness, coming from the 'outside', to slip within. Change, and newness, are, as potentiality, already embedded in the hybridity and the holes which knowledge extensions consist of. They lurk in the hybridity and the 'emptiness' of *knowers* who circulate knowledge extensions, and who, on their wanderings through knowledge communities, or, more importantly, across knowledge communities, stumble or happen upon bits and pieces of other extensions which they may decide, or not, as the case may be, to adopt, and thus introduce change, and possibly newness. Indeed, the circulating knower may, at any point, decide to either ignore any disturbance caused by circulating knowledge extensions (or fragments thereof) or use it to adjust the current knowing self, possibly expressing/becoming newness. We will return to this issue later. Suffice to say for now that the potential for change and newness – *deviance*, if you wish – lays inexorably in the porosity that marks the twin results of knowledge

assemblage and circulation, i.e. the knowing self and knowledge community. Change and newness in science and theory therefore is that which needs no explaining. It's what should be expected. The absence of change and newness in and through knowledge assemblage and circulation is what one should be wondering about. When, one might ask, do knowing selves and their knowledge extensions stop circulating (and thus prevent knowers from 'stumbling upon' disturbing knowledge extensions)? Or, even if they do keep circulating, when, and why would knowers prefer to ignore any disturbance? That is the more important question. But before we deal with that issue, let us ask ourselves one more question. If change in science and theory is a matter of knowledge assemblages, or at least bits and pieces of them, circulating and crossing each other, then scientific or theoretical change, possibly newness, is something that *takes place*. It therefore must be particular, i.e. it must be the particular result of particular knowing selves who, adorned with particular knowledge extensions, circulate in particular places at particular times, only to stumble across a particular set of knowledge assemblages that 'happen' to circulate in those particular places and at those particular moments in time. If all these conditions are met, then it will be the particularities of the knowing self, of the knowledge communities involved, and of the knowledge assemblages that circulate, that, together with the particularities of the time and place of the 'disturbance', that will determine whether or not a particular scientific or theoretical change, possibly even newness, occurs. It should be clear that ultimately it is impossible to predict whether or not particular disturbances will end up in scientific or theoretical change. Not just because the particularities of selves, communities, extensions, and times and places are always too vast to even begin to contemplate. But also because, indeed, any such prediction itself can be no more than a particular extension/assemblage, fashioned by a knowing self who, having circulated in or across a particular series of particular knowledge communities, will have come across, in the course of a particular life-trajectory, only a limited number of knowledge assemblages. Any such prediction, in other words, can be no more than the result of a particular assemblage of particular hybridities and holes.

However, having said that, one can say something about all this and indeed many ideas and concepts have been floated in the past few decades to denote the occurrence of scientific or theoretical change. We've touched upon a few of those in our introduction and this paper is not the place to expand on them. Let us just note that there is something *tribal* about scientific or theoretical change. Now this idea – 'scientific or theoretical change is like tribal change, indeed *is* tribal change' – is in itself not all that new (see e.g. Becher, 1989). And Bruno Latour, perhaps *the* foremost of actor-network theorists, once famously exclaimed that, when it comes to science and theory, and modernity as such, 'We Have Never Been Modern!' (Latour, 1993). The production of scientific knowledge, says Latour (who originally came from anthropology), is still a very tribal affair of *drawing things together* (at last! the phrase is Latour's: Latour, 1990), in and by tribal groups of scientists *to-*

gether, in the hope that this process of *drawing things together* and then circulating those things might *draw* the like-minded *together*, on the road to victory. Strathern's tribesmen, Panofsky's Abbot Suger, Gombrich's emerging Renaissance *elite*, Latour's scientists ... 'we have never been modern' when it comes to the process of knowledge assemblage and circulation, certainly not in an age such as ours which Michel Maffesoli recently (1996) called a *neo-tribal* age. Latour's notion of *drawing* things together, just like Strathern's notion of *extension*, has also something of the visual about it. It's not just Suger's knowledge or the budding Renaissance man's, or a Papuan tribesman's, that was or is all about the taste of image. In the final analysis, it seems to be images that circulate as knowledge assemblages, and that, as extensions, in that very process of circulation, constitute knowing selves and knowledge communities who in turn will further assemble and circulate image-extensions. In other words, *image* seems to be crucially important in the assemblage and circulation of knowledge – literally as well as figuratively.

4. IMAGE: Drawing Criminological Things Together Distinctively

The word 'image', in the previous sentence, can be read quite literally. That which circulates as knowledge extensions, says Latour (1990), can be called 'immutable mobiles'. Those are often two-dimensional and very visual hybrids such as textbooks, articles, images, graphs, and so on, *drawn together* from ambition, ideas, motivation, strings of words, desire, experience, insight, ink, paper, and so on. In Papuan jungles they tend to be extensions that are fashioned out of feathers and forest materials. These hybrids are 'immutable' in the sense that they seem to express a certain coherence and stability, but they are highly mobile in the sense that they tend to circulate through networks of actors for other actors to 'happen upon' and, possibly, to pick up. Latour's *immutable mobiles* are *drawn* together (there are certainly connotations here with notions such as *force*). They are then often used, in a process of circulation, to mobilise other actors, i.e. to start drawing things *together*, that is, to act collectively, for example, to maintain or expand an existing knowledge community, or to emerge, in all deviancy, as a separate knowledge community. *Immutable mobiles* are never completely immutable though. Once assembled, once *drawn together*, they will of course continue to circulate as such throughout the actor-network. Simultaneously however, cracks will appear, and will start to cut across the *immutable mobile*, only to scatter its fragments across the actor-network, for others to visibly notice, and to make use of in further bouts of *drawing things together*.

But the word 'image' in the last sentence of the previous section can also be read figuratively. Fashioning knowledge assemblages or noticing them, perhaps even adopt them when stumbling upon them, is also a matter of image. Desire of, or desire for community is always involved in the process of knowledge assemblage and

circulation. Imagine the critical criminologist who, after his initial rejection of Derrida's writings and of 'deconstruction' in the 1970s and 1980s, his enthusiasm about it during the 1990s, and his mixed feelings in 2005, might recall how a measure of *image* was involved in this process of fashioning fashionable knowledge assemblages and drawing together knowledge communities. Suppose he has now reached the following cascade of images when he considers himself to be part of a knowledge community, i.e. an 'us who know a bit about Derrida, but have never been able to ditch all other assemblages stumbled upon, such as Bloch, Levinas, Foucault, Deleuze, and many more, but who firmly realise that we've gotten ourselves into a pretty fine mess, but who have equally realised that this is basically OK, that, in other words, this mess is both proof and promise of theoretical fruitfulness (doesn't Gayatri Spivak come to mind here?), albeit that this notion of 'fruitfulness' is a highly problematic one, that, now we've come to think of it, can also be claimed by the strict Derridians who continue to make assemblages and extensions from bits and pieces of Derrida's writings... yes, that's a pretty accurate *picture* of *us*, those who are in the know. Then, there's the *others*, of course, those who haven't grasped any of this; them, the rest'. Adopting knowledge, maintaining knowledge communities, or *drawing together* deviant *new* ones, to a considerable extent, is also about *drawing together* image, sensuous image. The world of knowledge is the world of tribesmen, gothic abbots, and Renaissance men. Anthropologists such as Pierre Bourdieu (1984) have often analysed the desire that seems to be so conspicuous, particularly in the 'cultured' elites, indeed the 'knowledge class' as they are sometimes called in a somewhat different, more militant vein, to culturally distinguish themselves from others through the manifestation of cultural taste. It's not just 'cultural' taste though. That should perhaps come as no surprise to criminologists who are well aware of the extent to which groups often emerge in and through processes of cultural, moral, intellectual, or social *subjectification,* processes, that is, where images of cultural, moral, intellectual, and social inferiority and superiority are assembled, circulated, adopted, and, as the case may be, rejected. They are very often prepared to mount, as Joseph Gusfield (1986) has been at pains to demonstrate, *symbolic crusades* in order to mark out others and distinguish themselves. In the words of Tony Kearon (2005), the bourgeois has never been truly liberal but, quite on the contrary, always dependent on the desire to distinguish. There is no reason to assume that the image of distinction and the distinction of image would be any less important when it comes to the assemblage and circulation of knowledge, and the establishment, or, as the case may be, the contestation of knowledge selves and knowledge communities.

Now, back to criminology. Take gang life. Let us note how the boundary between 'in' and 'out' is a recurring theme of gang life, where so much of gang members' energy goes towards defining and maintaining correct or stable *knowledge* of signs, practices, methods, threats, defences, and, more generally, behaviours. Or consider the example of a *community* of crack dealers in *El Barrio* (Bourgois,

1995). How much of Primo's, Candy's, and Caesar's (Philippe Bourgois's pro-
tagonists) efforts goes into establishing correct or stable knowledge of life in East
Harlem, into acquiring stable and reliable knowledge about social codes (dress co-
des not in the least) for them to be able to venture into the world of regular em-
ployment, or into attempts to produce correct knowledge about the fashionably
deviant dynamics of the retail crack trade. Or let us take the example of a board of
directors (e.g. ENRON's) where good knowledge about what constitutes 'good'
(i.e. acceptable, or in a sense, internally legitimate) accounts is paramount in any
decision which the board may take. In a situation like this one (the board room
meeting), one has to be either very foolish or very brave (depending on your view-
point) to produce alternative 'good' accounts. Or imagine a professional group of
mediators who spend a lot of time acquiring stable knowledge about criminal aeti-
ology, about 'restorative justice' and about interpersonal dynamics and standards of
professional practice. Imagine how they will tend to demonstrate their 'good'
knowledge of these issues, circulating it amongst their colleagues through talk and
visual display, hoping perhaps (whether consciously or not) to be accepted by their
fellow mediators as 'one of us', or, as the case may be, hoping to be recognised as
an 'innovator' instead, a 'risk taker', or, why not, simply as an 'outsider'. Now
picture yourself a criminology department where faculty as well as students will
tend to be eager to acquire good and stable knowledge about gangs and gang mem-
bers, about crack dealers in *El Barrio*, about ENRON's board room dynamics,
about restorative justice, about mediators and their professional standards, about
who or what counts as 'in' and who or what counts as 'out', and so on. Like the
gang member, the crack dealer, the board member, the mediator, or the tribesman,
the criminology faculty member will venture into the forest of knowledge assem-
blages that are already available in libraries, in scholarly publications, in the biog-
raphies of gang members and board members, in the thoughts of mediators who
have tried to express them during interviews, in what can be observed in
neighbourhoods or read in the press. The faculty member will then select a number
of splinters from these assemblages in order to produce his or her fashionably devi-
ant assemblage. This assemblage in turn will end up circulating amongst the crimi-
nologist's fellow faculty members, or amongst criminologists more generally,
where, in various places, processes of assessment and negotiation of some sort may
then begin in order to ascertain whether, and to what extent, the criminologist is
'one of us' or an 'innovator'. Ultimately this particular assemblage will join the
flood of knowledge assemblages which the world 'out there' is made of. This
criminologist's assemblage will be particular; it will be partial. Its articulation will
depend not just on the few connections he or she has managed to make between a
limited number of materials, but also on the vast and sheer limitless number of pos-
sible alternative connections which he or she, for a dizzying number of reasons, has
been unable to make. And that, i.e. this dizzying number of alternatives, is where
the promise of change and newness lurks. Countless knowledge extensions, marks
of distinction, images of desire, are resting there, as potentiality, waiting to get as-

sembled and circulated. The raw materials for an almost unlimited number of potential tribal knowledge selves and knowledge communities are stored there, waiting to emerge.

5. Conclusion

This contribution set out to say something about the origins of scientific and theoretical change. It has hopefully become clear that here we consider scientific or theoretical newness as the result of a tribal process of assemblage and fashionable circulation of images, indeed: of *image*. This process of assemblage and circulation, as we have argued, is at the very same time also a process of formation of self and community. Now, allow us to be a little self-reflexive here. As such, this contribution cannot be anything else but a tribally fashioned knowledge extension which expresses/becomes a desiring knowing self and a ditto knowledge community. Its destiny is unsure. It'll join the countless other extensions and their fragmented bits and pieces that are already circulating throughout the actor-network. What tribesman will stumble upon it, or upon fragments of it? And what will happen if this stumbling occurs? Indeed, as we have argued, any such prediction itself can be no more than a particular extension/assemblage. Any such prediction can be no more than the result of a particular assemblage of particular hybridities and holes. The ways of tribal image, fashionable deviance, and cultural distinction, that is, the ways of criminological change and newness are ultimately unpredictable.

Acknowledgement

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Images of Violence in Everyday Life[1]

Anthozoe Chaidou

Violence, both in its physical and psychological dimension, implies a threat which tends to exert a psychological pressure and blunting of any resistance by announcing or forecasting impending danger or evil, material or moral harm. In other words, it implies the use of force for the infliction of one's will. In the wider sense, violence can be considered any manifestation of force and/or authority aiming at or resulting in harm against an individual or a group. Violence, however, is a relative and subjective notion – it is methodologically impossible to have a universal perception of what exactly constitutes violence. Usually, it is regarded mainly as a physical infringement, but the semantic framework of the term can be expanded to include any form of action or behaviour perceived as such by the involved parts. For instance, it can be limited to homicide or injury,[2] or it can be extended to verbal insult or derogatory behaviour, or even social discrimination or constraint of rights (such as inequality in education and social rights in general). As a consequence, this plethora and complexity of phenomena, as well as the varying perceptions of violence, remove any common ground, any methodological starting-point for its study.

With regard to the historical dimension of violence, the relations of power and authority which dominate in contemporary society evolved from historical processes of differentiation and transformation, and depend on the existing level of development of a society, as well as on the different social systems. How power relations are defined and which form of sovereignty prevails are determined by the stage of evolution of a society and the established social system.[3] Violence is a social phenomenon and its current forms are the outcome of the historical evolution of a specific society and can be perceived, understood and explained only in relation to the conditions prevalent in this society.[4]

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[1] This is a revised version of the Greek original (published in: *Commemorative Volume in Honour of Prof. Ioannis Manoledakis*, Sakkoulas, Athens / Thessaloniki, 2007). English translation by T. Serassis.

[2] See, for example, the respective Home Office Bulletin (Coleman, et al., 2006, p. 9).

[3] For example, in a society that doesn't recognise proprietorship, the possession of property does not constitute a factor of power (Theunert, 1987, p. 52).

[4] Theunert, 1987, p. 131.

Violence has become an integral part of everyday life. We experience numerous instances which are *ad hoc* evaluated from very important to insignificant. As a result, we may not react to certain instances of violence, or even not be aware of them. Violence can be explicit or implicit and can incorporate any form of coercion in every aspect of everyday life – physical, corporal, verbal, sexual, mental, and so on.[5] Involved in these processes are not only individuals, but also groups or even society as a whole.[6] At the individual level, violence can be either physical (e.g. corporal violence, restraint of freedom) or mental (e.g. discrimination, threats, insult). At the social level, structural violence results from unequal conditions of power in the social system, such as hierarchical relations, role assignment, etc. The former are more clearly observable, while the latter are usually deduced. In any case, the outcome of all forms of coercion is the infliction of harm and pain. The unequal distribution of the means of domination results on the one hand in the predominance of certain groups, and on the other hand in power relations characterised by the potential of violence, even when no actual violence is exercised.

Diachronically, the exercise of violence presents differentiations. Violence, which is founded in the structure of a society and intensifies within it, transforms with social change. Violence directed toward individuals transforms into violence in the social structure, into indirect or anonymous forms. The direct and personal relations of power transform into abstract relations of obedience to a superior institutionalised state domination.

Durkheim makes general reference (1978, pp. 66 ff.) to instances of violence in social life, such as, for example, the roles which are attributed during education and entail a specific form of conduct, the conditions of inequality which are associated with property and income, the dependence of weaker states on stronger ones, and so on. Violence is an inherent characteristic of society, a 'social disease' spreading throughout every field of social action. This is even more apparent if one considers the Weberian notion of the state, or the so common among criminologists perception of the 'fight against crime', which is founded on law enforcement and justice.[7] History also teaches us that violence, either at the individual or the social level, has always served as recourse to the resolution of conflict.[8] The potential of violence has always been connected to power in the Weberian sense, i.e. the ability of an individual, a group, or an institution to impose their interests upon other individuals, groups, or institutions, in spite of their resistance.[9]

Of particular importance is the violence in social structure, which derives from the inequality in social opportunities, and is the outcome of the influence of politi-

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[5] Cf. Krall, 2004, p. 12.

[6] See among others Galtung, 1978, p. 16.

[7] See also Friebel, 1976, p. 113.

[8] Rolinski, 1990, p. 11.

[9] Theunert, 1987, p. 43.

cally and economically powerful groups in a society, aiming at securing and maximising their benefits. Given that within a pluralistic democratic society social opportunities are made available in a certain degree, each increase in power and influence takes place against the interests of other members of this society. The violence which exists in social structure is exercised by institutions of social control, as a rule it is imperceptible, and it usually functions implicitly.[10]

Modern society has been familiarised with violence to an alarming degree. This can be attributed to the technological evolution, as well as the changes in both the way of life and the way of thinking. The mass media, in particular television, have undoubtedly played a major role in this familiarity with violence.

On the one hand we have visible forms of violence, those which can potentially be managed, i.e. measure and record violence, and take any measures available, and on the other hand we deal with latent forms of violence, which lurk in various aspects of everyday life and which are not easily perceptible, either because of indifference or because their true dimensions and consequences are deliberately concealed.

Violence within everyday activity and in violation of traditional conduct norms – which cannot be taken for granted any more – has become a characteristic of modern society: from driving in the streets, with dramatic consequences in many cases, to competitiveness at the workplace, with actions undermining the work and personality of the colleagues, a multitude of phenomena constitutes a mosaic of violence. The extent to which such phenomena violate or even abolish civil rights seems to be of no concern any more. And these forms of violence are even more dangerous because they are often not perceived as such, or – even when they are – there is usually no way of defence and protection against them.

Some of the forms of violence that can be observed in everyday life include family and school violence, violence in the mass media, as well as state violence. Several instances fall into the phenomenon of family violence. Among others, the focus is mainly on corporal violence, both active and passive (when the perpetrator neglects in any way members of the family), sexual harassment, psychological violence, and also financial (when there is economic exploitation of members of the family).[11] Reference in the media is mainly made to children, especially victims of sexual abuse. Reports on family violence concern in most cases sexual abuse of children, particularly the corporal dimension of the violation. Violent acts against adolescents are seldom referred to the authorities or mentioned in reports, mainly because they are usually considered jointly responsible, especially when they have a delinquent or 'anti-social' profile, and the boundary between victim and perpetrator is blurred.[12]

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[10] Rolinski, 1990, p. 15.

[11] See also Bougadi, 2004, p. 90.

[12] Krall, 2004, p. 12.

Equally important nowadays is the phenomenon of school violence. This includes violent acts against schoolmates or teachers, which range from verbal abuse and insults to robberies and attacks (even lethal); but also vandalism, sexual harassment, and self-destructive acts (even suicidal). Several theories have been suggested:[13] Violence is considered an outcome of modernisation, especially the transformation of socialisation. At the macro-social level, the social transformations and the resulting insecurity are to a large extent responsible for social and individual problematic situations, and mental and emotional peculiarities in children and adolescents who often react violently and aggressively in an effort to overcome them. The instability regarding their very life, because of the continuous and increasing mass unemployment, as well as the lack of social safeguards and the growing risks (in relation to health, the environment, etc.), create unstable perspectives and insecurities for young people. In Western countries juveniles have gained their independence, enjoy a more liberal upbringing, in comparison to previous periods, they have more interests and desires regarding their leisure time. In contrast, their relations have become unstable and insecure, and interpersonal communication is increasingly impaired. They may relish the advantages of an affluent society – although not all of them – but this entails the mental and social cost of modern life.

Social disorganisation, in accordance with anomic theory, emerges, with an impact both at the social and at the individual level, the main feature of which is the decline of social order and the resulting crisis. These conditions may drive the individual to a 'deviant' or 'anti-social' reaction. A first form of disruption is caused by the failure of the individual to integrate, due to insufficient social relations. The breaking of social bonds can appear as early as in school years, when the procedures governing performance and integration disrupt individual adaptation, so that common goals and solidarity are absent among the group, mainly because the experiences of failure threaten the identity of the individual and influence the self-esteem and integration with the group.

Additional anomic situations can be caused by strict pressure to adapt. The emphasis on conformist subordination and on duty, in combination with the suppression of individuality, may disrupt the development of individuality and balance and lead to crisis. Individual interests and needs are not fulfilled, not even the desire for maintaining a unique personality. In addition, the risk of violating the rules and conditions of anxiety increase. The scarce opportunities for influence and participation widen the gap and the negative perception of school, its values and rules. They generate feelings of repression, weakness and neglect. Another form of anomic situations relates to the inequalities in education. It results from the distance between goals and means, between needs and available ways for the accomplishment of these needs. For example, the targets that are set at school, the accomplishments that need to be achieved and school success cannot be attained through the means

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[13] See also Holtappels, 2004, p. 29 ff.

and ways approved by the system, because legitimate means are unequally distributed. This kind of socialisation can lead to anomic conditions.

Interestingly enough, although school violence includes a variety of behaviours on behalf of the students, as described above, violence exercised by those in power (principals, teachers, counsellors, administrators) is almost always ignored. For example, teachers often abuse their power at various levels, but this is seldom considered violent behaviour and – perhaps with the exception of sexual abuse – is almost never reported and examined.[14] The relation between teachers and students is characterised by an interaction which often causes conflicts and leads to violent behaviour.

Another type of evident intrusion in everyday life, but rather ambiguous as to its consequences, is the content of the mass media, especially television, due to its immediacy and intensity. Television presents both actual violence (warfare, violent crime, accidents and disasters, etc.) and situations of violence (labour and political conflicts, economic and international conflicts, living conditions in third-world countries, etc.). Televised violence can be connected with an increase in aggressiveness, to the extent that a child perceives it as part of the socialisation and adopts it.[15] The effects of mass media on violent behaviour have been extensively studied.[16] In addition, continuous reports on crime – often inflated and exaggerated – contribute to an increase of insecurity and fear of crime, but also to a demand for stricter measures and the legitimation of a police state. Reporters and journalists often take up a regulatory role, interfering with (or even directing) the investigations, and – in some cases – the judicial process, thus creating perceptions of crime and the criminal and shaping public opinion on matters of violence, crime and justice.[17]

Apart from portraying violence, television and the mass media in general generate violence themselves by distorting, manipulating, blurring, or concealing facts and information. Especially television employs the power of image to present news in a violent way: natural disasters (heat-waves, earthquakes, floods, tsunami, etc.), social 'threats' (criminality, terrorism, immigration, hooliganism, etc.)[18] are some of the favourite subjects which properly dramatised create an environment of violence and fear. One of the side-effects of such an environment is a reactive and hostile approach toward social phenomena, particularly when vulnerable groups (foreigners, youngsters, poor and homeless people, etc) are concerned, often of a vio-

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[14] For instance, although several studies deal with violence by female students, there is no discussion on violence by female teachers (Krall, 2004, p. 13).

[15] This can occur in relation to the wider cultural context and the existing social conditions (legitimation of violence, decline of values). See also Dimitriou, 2003, pp. 193 ff.

[16] See, among others, Theunert, 1987, pp. 44 ff.

[17] Cf. Dimitriou, 2003, pp. 193 ff.

[18] Cf. Dimitriou, 2003, p. 194.

lent nature.[19] There exists an interrelation between mass media, public opinion, aggressiveness and collective violence. Television, but also radio and newspapers can create a collective predisposition, by conveying violent and aggressive messages.[20]

Even more problematic appear to be other devices of our everyday life, in particular the telephone and the computer.[21] One example of intrusion of privacy is the expanding surveillance of citizens, a violation greatly facilitated by modern technology. Another issue is the recording of biometrical[22] and other personal data, which can become a powerful weapon of social control. Personal data has become a commodity and a growing number of companies provide – even on the internet – almost every form of personal data (financial, health, criminal, etc.),[23] which can be exploited in any legal or illegal way. The state does not fall short of employing such methods. For example, in Greece, a judicial (or even non-judicial) authority can collect and process personal data (including sensitive data) for the needs of investigation and prosecution, without the prior consent of the Data Protection Authority, which is supposed to be the safeguard in such procedures.[24] Technology can facilitate the violation of privacy and often the citizen becomes a victim of actions which in extreme cases totally destroy private life; in addition it reinforces social control, thus strengthening and reproducing the state apparatus.[25] Control becomes easier, more straightforward and feasible at all levels.

The ability of the modern state to collect information and punish seems to deeply penetrate the social structure. Control is based mainly on observation, surveillance and inspection, rather than on physical repression.[26] According to Gary Marx (1989d, p. 33) we have been led to a 'transparent' society in which procedures that used to be protected – even thoughts and feelings – have become visible. In general, there is great concern among citizens about modern technology and its (arbitrary) use. Even when employed as a preventive measure in everyday life – as in traffic control, passenger and luggage screening at airports, CCTV in streets, buildings and establishments[27] – the minimum necessary guaranties for the protection of the citizen are often not met. Technology can thus become a means of supervision, surveillance and control.[28]

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[19] Manoledakis, 2003, p. 66.

[20] Senghaas 1971, p. 49.

[21] See Marx, 1989(b) and 1993. See also Weitemeier, Große, 1997, pp. 335 ff.

[22] Such as fingerprints or palm prints, eye iris recognition, D.N.A. analysis. See also Marx, 1989(c).

[23] Marx 1989(a), Chatzidis, 1998.

[24] Nouskalis, 2003, p. 9.

[25] See Chaidou, 2003, p. 95.

[26] Marx, Reichman, 1984, p. 444.

[27] See also Alexiadis, 1990, pp. 10 ff.

[28] Chaidou, 2003, p. 97.

Violence is connected with the state monopoly of coercion, vested with the authority of law, which can lead to a *bellum omnium contra omnes* ('war of all against all').[29] The power and authority of law are by definition legitimate, since the issue in question is the enforcement of law and order. The state needs violence for the establishment of its structures and for the eradication of resistance against its decisions. Power is firmly associated with violence.[30]

The discussion on the notion of violence takes place in the triangle citizen – fellow-citizen – state. Three dimensions can be distinguished: violence as physical power and force, violence as an insult, and sovereign or state violence. From ancient times, violence has been viewed as a relation of power which is imposed by the dominant ones on the weaker ones. Only in modern times, the French revolution challenged this relation, by way of the ideal of people's sovereignty. In this respect, violence stems from the people.[31] As for the state monopoly of violence, law and its administration are privilege of the state – any form of retribution is forbidden.[32] The state employs violence as defensive, administrative and correctional:[33]

Defensive – within the borders the state is legitimised as the sole regulator; outside them are the 'foreigners' with which there is always the possibility of conflict.

Administrative – the main form of state violence, it regulates social life by means of bureaucracy and preventive repression, with regulatory frameworks of discipline, and intervention in everyday activities. The state manages space and time, controls education, health, relations, employment, and so on.

The state on the one hand forbids and punishes violence – at least in its explicit forms – but, on the other hand, it possesses the monopoly over violence and employs it in several aspects of everyday life. Besides criminal law, the state exercises its sovereignty through the legal system and the bureaucracy in which latent forms of violence can be found. Citizens are faced with a gigantic legal framework, characterised by extreme complexity and thus impossible to be familiar with and comprehend, which is usually imposed in a violent way. Those in a disadvantageous position, socially and financially, experience state violence more intensely.[34] The three fundamental principles which should govern the use of violence – legality, necessity, and proportionality – have been violated. On the basis of these three principles the exercise of violence (by the agencies of formal social control)[35]

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[29] Horn, 1978, p. 34.

[30] Rammstedt, 1978, p. 74.

[31] Krall, 2004, p. 10.

[32] Dimitriou, 2003, p. 153.

[33] Dimitriou, 2003, pp. 155 ff.

[34] Schüler-Springorum, 1990, p. 55.

[35] Sofoulakis, 2002, pp. 648 ff.

should be provided for in law, should be justified for reasons of public interest, and there should be a proportional relation between the sanction and the served public interest. The respective constitutional restrictions regarding the intervention in private life apply both to the agents of public authority and to any private agent that performs similar tasks under any capacity (such as private security).[36] The expansion of the state monopoly does not only entail an increase in drastic forms of violence (these can eventually be abolished, as in the case of death penalty); it is more evident with the increase and intensification of the intervention in social life, especially what was traditionally considered private space. These forms of intervention are becoming more refined, invisible, and inconceivable. This is mainly due to the perfection of legitimising techniques, as well as the greater effectiveness of the means of violence which the state, as a legitimised and institutionalised authority, possesses.[37]

These relations of violence can be traced in various agents of authority, such as the social control system (e.g. the police), education, the church, health, and so on.[38] It depends on the prevailing social condition, whether these relations are considered authoritative and to what extent certain actions are seen as violent.

Further examples of overt or covert violence can be found in various movements promoting nationalism, racism, anti-Semitism, autocracy, fundamentalism, and so on; in labour conditions; in social exclusion; even in international politics and the economy.

In spite of methodological problems, there has been extensive research and theorising, both at the individual and social level, on the causes of violence. Various theories (from biological and psychological to sociological and political) have been employed to explain and manage phenomena of violence. Nevertheless, apart from the success or failure of these attempts, violence remains a complex phenomenon which needs a 'broad-spectrum' approach, focusing on the framework within which violence emerges and its effects on social structure, particularly when violence originates from the state itself. The analysis then turns to situations that relate, among others, to inequality and social change. When members of society are influenced to such an extent that their material and spiritual fulfilment is less than expected, phenomena of violence tend to occur. It is, in other words, a process of violence on the basis of existing social conditions, a violence that reacts to poverty, insecurity, hunger, death, etc. and a regulatory violence, involving issues like social and national identity, gender, age, and so on. In any case, when we discuss violence as a social phenomenon, the social and political issues should be taken into consideration. The causes and effects of violence, as well as its management cannot be

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[36] Manoledakis, 2005, pp. 723 ff.

[37] Theunert, 1987, pp. 54 ff.

[38] Cf. Dießenbacher, Schüller, 1993, p. 34.

separated from the social, cultural, political, and economic dimensions that constitute the framework within which violent phenomena emerge. The perplexity of violence calls for a versatile analysis at various levels.

In conclusion, it should be pointed out again that contemporary societies are characterised by various occurrences of violence, either explicit or implicit, which are defined as such according to who is involved and what their effects are. Images of violence are constructed, like other images in social life, and the emphasis of both academic discourse and social reaction (formal or informal) falls upon those cases which fit better in the general picture. In this context it is more probable to label as violent a riot or even a demonstration than the social conditions which deprive large parts of the population even of the basic means.

There is familiarity with violence in everyday life, mainly because it is not identified as such, either because of its 'invisibility', or for the sake of a superior goal, such as security, order, or public interest. Citizens accept the restriction and violation of fundamental rights, without perceiving such actions as a form of violence. They have been convinced by the state, the mass media and the various 'experts' that all these things happen for the benefit of society, the prevention of evil, the protection from a bigger hazard.

Above all, there is no concern as to the framework within which phenomena such as terrorism or youth violence occur. Measures are taken, both repressive and preventive,[39] which violate fundamental rights[40] and cause great harm in our cultural and legal tradition, as it has been formulated in the Western world over the last centuries. State violence is legitimised, racist reactions are justified, large segments of the society are excluded, marginalised and stigmatised on the basis of their race, religion or social status.

The man (or woman) in the street is so accustomed to violence that he/she is willing to resort to it as a solution to everyday problems and conflicts, in an attempt to protect his/her private sphere.

Privacy, one of the pillars of Western liberal democracy, is being sacrificed for the sake of law and order. And the members of society are willing to accept these continuous restrictions and violations, together with several other episodes in their everyday life, since they do not fall into the official definitions of violence; they are not part of the image presented to them.

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[39] Recent examples include the so-called 'biometric' passports and identification cards, as well as the European arrest warrant. See also the ruling of the German Federal Constitutional Court (BVerfG, 2 BvR 2236/04 / 18.7.2005).

[40] See Manoledakis' critique on the issue of terrorism (2003, p. 66).

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Images of "Crime"
from Kindergarten to High School:

Development and Differentiation of Concepts of Crime
and Criminals in the Early Life Course
among Young People in Germany

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Introduction

*"A crime is a sin consisting in the committing
by deed or word of that which the law forbiddeth,
or the omission of what it hath commanded"*

This definition stems from the 27th chapter of the book "Leviathan or the Matter, Forme and Power of a Common-Wealth Ecclesiastical and Civil", one of the most important texts in the field of political theory and the theory of law and state.

Although more than 350 years have passed since the English philosopher Thomas Hobbes (1588-1679) forwarded this definition of crime in his famous treatise, based on a rather pessimistic anthropological view of humankind ("homo homini lupus") and therefore explicating the fundamental need to end the war of each against other by the big "superpower" Leviathan (1st. edition 1651), it seems still up-to-date. For even nowadays adults and juveniles alike when asked about "what does crime mean?" frequently answer that question in a very similar way. Crime in their opinion is what is forbidden or what is punished. This linkage, however, does not really illuminate the underlying concept of crime in substance, because such a kind of explanation bears just a tautological structure: What crime is, has to be punished and what is punished, is a crime. Here exactly lies the main difficulty of the whole topic: A social agreement is suggested by the apparent unanimity of the answers about benchmarks of justice and injustice, but those are not represented in the social discourse.

One of Europe's leading market-research and public opinion firms, the Allensbach Institute for Demoscopy, has documented that the opinions and conceptions about justice and injustice, good and evil, normality and deviance have increasingly varied over times within German society. This is one reason why it is becoming more and more necessary to set the discussion about crime images on a scientific agenda, with the aim to analyse similarities and differences between people's perceptions and the law.

There are typical questions like: "what does crime mean?" or "what kind of cognitive and emotional associations can be subsumed under this term?" They are as difficult to answer as the other question, which standards might have to be imposed to the legal definitions of punishable behaviour (acts or omissions) or to the moral convictions and attitudes of the society.

Up to now social research has focused particularly on comparisons and differentiations between criminal law and deviant attitudes or behaviour (e.g. Rüther, 1981a; 1981b, Fabricius, 2000). These approaches have yielded a lot of interesting results. They were confronted, however, with the problem that standardized surveys are usually not able to sum up all aspects of subjective crime concepts; especially the pathways and reasons why these concepts change throughout the lifecycle.

This is the reason why we selected another approach in a new research project at the Institute of Criminology of the University of Tübingen. In order to get a fundamental understanding of implicit theories young people adhere with respect to crime, we turned to a qualitative methodology by directing our attention to children and juveniles. We examined concepts of crime and their development in the early life course of several individuals. Hereby we considered special factors which are to be considered to influence the socialisation process of children's and juveniles' images of crime.[1]

We base our presentation here on publications about research of other scholars, which we supplement with data from our own research project in order to illustrate the children's and juveniles' perspectives. The scientific research and theory building in the field of the development of subjective and implicit crime theories is quite a young approach, although an increasing scientific and public interest has appeared within the last few years.

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[1] Our method applied open group discussions with 5- to 15-year-old children and additional detailed interviews with single students, teachers and parents. We asked the following introduction question to 44 groups of children of different age, education and cultural background: What does "crime" mean to you or how do you understand "crime"? Our goal was to understand how they construct their images and concepts of crime and criminals and who or what has had the greatest impact on the development and internalisation of these concepts. The project has been promoted since January 2005 by the German Research Foundation (Ke 275/13-1).

Since specific theories of crime-concepts are not available so far, it is useful to embed the research in the domain of moral socialisation. Moral socialisation theories offer different sets of pathways to show how people internalise their moral knowledge and identity. Due to the relationship of morality and crime conceptions we assume that the development of images of crime follows similar pathways.

The relationship of morality and crime conceptions

Of course morality and justice are not congruent. While morality provides the orientation framework for the distinction of good and evil, the function of the justice system is to establish as clear cut as possible boundaries between permitted and prohibited acts. But many scientists assume the existence of an obviously close relationship between morality and crime conceptions.

Lösel and Schmucker (2004: 906) point out that penological norms are even based on moral conceptions, which are deeply embodied in the society. Therefore criminal offences are always, like the other side of a coin, offences against moral values. Kunz (2003: 1) sees the link between morality and images of crime in a similar way. He casts into doubt the formal or legal definition of crime by the law, and wonders whether we should use our own moral guidelines to establish a set of terms about what should and should not be punished.

Although the theories of moral development do not have a specific focus on concepts of crime, it becomes more and more clear that these theories – dealing with concepts of good and bad behaviour – have a lot in common with young people's construction of images of justice and crime. This justifies our working hypothesis that images of crime arise more from the conceptions of good and evil than from law and order.

Moral Socialisation Theories

The most popular pioneers of developmental psychology whose work remains relevant to contemporary theories of moral socialisation are Piaget and Kohlberg.

Piaget (1932/1980) focused his studies on the moral behaviour of children in order to learn more about their beliefs about right and wrong. He figured out that children achieve their images of the world as a result of social interaction with the environment while going through specific stages. These stages are completed in a fixed order.

Kohlberg (1971) relied on the same interview technique as Piaget but used stories called moral dilemmas to learn how concepts of right and wrong behaviour changed during the developmental phase. He found out that the process of attaining moral maturity was more gradual than Piaget had suggested. Piaget's and Kohlberg's theories promoted a lot of further research and theory building (see Murray 2002).

To have some reference guidelines for the development of crime images it seems useful to refer to different theory sets of socialisation, which derived from their fundamental theoretical framework. The following four models are not described extensively in this text but focus only on the core statements.[2]

Conditioning Model (The social learning approach)

According to this model norms are valid, if they are strengthened by sanctions. Norm conformity results in positive and norm deviation in negative sanctions. The corresponding idea of man is: homo oeconomicus.

The theoretical base of this approach is Kohlberg's (1971) description of the pre-conventional stage of the moral development: People act in conformity with norms to avoid punishment and to satisfy their needs and wants. Radical behaviourists think that norms and values do not have an independent existence. In this tradition moral behaviour is conceived as the result of a cost-benefit analysis. As e.g. Skinner (1974: 193) formulated: "Nobody acts because he knows and feels his behavior right; he acts because of the contingencies which have shaped his behavior." In other words, man's behaviour is conditioned. The corresponding educating style to this model is conditioning by punishing norm deviations and rewarding norm conformity.

Superego Model (The psychoanalytic approach)

In this model it is assumed that the individual internalises originally external norms in form of a superego, which controls all actions. This superego develops through the identification with superior and powerful parents as representatives of the state. The relative powerlessness of young children due to the natural hierarchical relationship between adults and children leads finally to the internalisation of the parents or of the state's set of norms.

In this context Kohlberg (1971) speaks about the morality of constraint: For most children at the age of 10, adults decide about what is right and wrong and that this is the way things are. This view does not consider and interpret other aspects of the broader context in which actions occur. Norm infringements in this case are punished by strict internal sanctions, e.g. bad conscience and feelings of guilt. To this model belongs the authoritarian style of education. A strong and threatening father especially punishes failure.

Model of the oversocialized Man (The sociological approach)

Along this model the central motive of the norm adjustment is the fear of love withdrawal. Parsons (1964) describes socialisation as a process, during which the human organism is culturally shaped by the attitude of others. The physiological

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[2] For more details see: Nunner-Winkler, 1992: 254ff.

and the emotional dependence of the child promotes his readiness to internalise external expectations and standards. This assumption takes place in a way that the norm fulfilment becomes an important personal need.

One example of such successful processes is the identification with certain sex roles expectations. Kohlberg's description of the conventional stage has a certain affinity to this model. Because of a good-boy or good-girl orientation, right behaviour means acting or living up to what is expected.

Model of voluntary commitment (The philosophical approach)

This model has had only little influence on the discussions and research in the social sciences. In contrast moral-philosophical approaches see the voluntary commitment as a constitutive variable for moral acting. Only Kohlberg's description of the post-conventional level of the development of moral judgement can be consulted here. According to this model, it is possible that individuals ask for the reasons, why norms are valid. The acceptance of the correctness of certain actions can become the motive for moral behaviour. According to Kohlberg, only few people reach the particular point of view, in which universal rules of justice prevail.

Sometimes this perspective is called moral flexibility or moral relativity and means – expressed metaphorically – rules are no longer carved in stone. They are estimated as general guidelines, which have to be interpreted in the context of actions (see Murray, 2002).

Although she expects that the model of voluntary commitment becomes more important, Nunner-Winkler (1992: 257f.) suggests that none of these models alone can explain everything. Because of the world's complexity and variety, we have to accept that there are different paths of moral learning. Damon's (2004: 54) research comes to the same conclusion: moral identity grows up in thousands of small steps, influenced by social feedback loops from both inside and outside the family, by observations of other people's behaviour and expectations, by thinking about one's own experiences, by cultural or religious aspects and mass media.

Images of Crime and Criminals

There are many different images of crime all of which depend on the level of analysis. Both the societies "objective" and the individual's "subjective" conceptions of crime are constantly in a state of flux. That is why definitions of criminal acts have to be permanently renewed.[3]

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[3] As a result of extensive discussions in the 1970 and 1980s about the labelling approach as antipol to aetiological approaches most criminologists nowadays highlight relevance of processes of definition and construction of "crime" to the analysis of deviant behaviour and criminality (see Kerner, 1994; Hess/Scheerer, 1997).

While definitions of crime enforced by assertive and strong leaders on the societal macro-level are already well explored, we have only little knowledge about the construction process and the relevant influence factors on the individual level.

In accordance with the published research in the field of moral development, scientists now agree that there cannot be monocausal explanations for the development of images of crime. The drastic experience that could explain everything does not correspond with reality's complexity. However, according to Weyers (2003: 137) the motor of the development lies not in the individual *or* in the environment, but in the *interaction between* the individual and the environment.

Therefore, the environmental factors of influence and their interaction will be described in the following subchapters. Due to the research of moral development, which comes close to the construction of good and evil and therefore to images of crime, a special influence is subordinated to the factor *age.* In addition we discuss factors like *parental education,* direct and indirect *affect (or experience), peer pressure* and *culture/religion* and their respective influences on the images of crime.

Age-Dependency of the development of crime images

Some of the scholars studying the field of morality assume that there is some substantial "thing" in human beings, which begins with birth,[4] and then has a quasi innate possibility or capacity – dependent on certain conditions – to grow and to differentiate during childhood and adolescence.

Ernst-Joachim Lampe, penologist and anthropologist, thinks that humans are by nature empowered with a set of fundamental legal convictions. With growing age these convictions mature due to specific cultural influences, until they are finally, at least under normal societal circumstances and among average people, to a large extent congruent with legislative definitions.[5] Other scientists stress – based on the research of Piaget and Kohlberg – the importance of interaction with the social environment as the main part for the development of an understanding of right and wrong. This conception could or could not be equal with law and order.

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[4] The "nativists" assume that moral behaviour is part of the emotional disposition, which is inherent in our species.

[5] He referred to first results of a project about the development of norms concerning object acquisition in 3- to 13-year-old children, carried out by the German Institute for International Educational Research (DIPF) settled in Frankfurt and Berlin. This study intends to make a contribution to the topic of possession from a child's point of view. The aim is to examine the developmental sequence of object acquisition, by analyzing normative structures and behavioural norms, which form the basis for the development of legal norms (see Weyers, 2003; Sujbert, 2004: 1).

First contact with moral rules[6]

According to social learning approaches, children acquire their behaviour standards and value conceptions through observation, imitation and reward. Due to this processes children also learn moral rules early in life.

Already at the age of 2.5 years children point out rules to other children when they notice offences against morality or against social conventions. Although children aged between 3 to 4 are still not able to distinguish precisely between moral and conventional issues, the beginning process of social construction becomes visible when offences against moral standards are especially called "bad" or "evil" (see Weyers 2003: 125).

The following excerpt illustrates the distinction that children make between moral and convention issues. The excerpt is taken from an interview with a three-year-old girl regarding her perceptions of spontaneously occurring violent acts at her preschool (from Nucci et al., 1983).

> **Moral Issues:** *Did you see what just happened?* "Yes. They were playing and John hit him too hard." *Is that something you are supposed to do or not supposed to do?* "Not so hard to hurt." *Is there a rule about that?* "Yes." *What is the rule?* "You're not to hit hard." *What if there was no rule about hitting hard; would it be all right to do then?* "No." *Why not?* "Because he could get hurt and start to cry."

> **Conventional Issue:** *Did you see what just happened?* "Yes. They were noisy." *Is that something you are supposed to do or not supposed to do?* "Not do." *Is there a rule about that?* "Yes. We have to be quiet." *What if there were no rule; would it be all right to do then?* "Yes." *Why?* "Because there is no rule."

These statements show the existence of a delimitation between moral and conventional issues. Nunner-Winkler (1999, 2001) posits that the process of learning first or simple rules is completed at the age of 4 or 5. In administering little picture stories, which set out conflicts between moral standards and personal needs, she observed that children at this age are aware of simple moral rules like one shall not steal, one shall not lie or one shall not hurt others. They also consider these rules as being universal and authority-independent and even different from conventional rules.

The first results of our own research project dealing with children's and juveniles' perceptions and concepts of crime, confirm Nunner-Winkler's results: Children at the age of 5 years already have a simple, but clear conception of good and evil and a quite exact knowledge of moral rules. These conceptions are probably independent of sex and ethnical affiliation. The statement of a kindergarten child is exemplary and illustrating:[7]

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[6] Because Kindergarten children usually do not know the word "crime", interviewers had to operationalize this term by bad, evil or deviance.

[7] The following excerpts are translations of originally German language statements.

> **5-year-old girl:** "These bad guys do everything: They steal, paint pictures on the street and steal bicycles. That's the way bad guys are." *And what is really bad?* "When someone trips somebody or throws a stone at them, and when someone takes something away from a kid without asking."

This excerpt illustrates the fact that the girl does not differentiate between moral ("one shall not steal") and conventional rules ("one shall not paint pictures on the street"). However, when particularly talking about *really* bad acts children at the age of 5 years clearly indicate only moral offences.

We can notice that social and moral knowledge about justice and injustice are already organized as frameworks or scripts at the age of 5 years, but they have to be differentiated during the socialisation. One's essential philosophy of life and basic beliefs usually develop between the age of 5 and 15 years (see Petermann et al., 2004; Schüle, 2004: 35).

The personalized evil

Although children's concepts of good and evil are strongly shaped by their own observations and experiences, often mythic elements become visible. Gaps of knowledge are filled in with one's own fantasy and arranged considerations. Magical thinking is not abnormal. It is so to say an age-appropriate form of intelligence, with which children try in an active and creative way to understand and to explain their environment. Children believe in the power of fantasy and in their witcheries. Their fantasy creates monsters and robbers; and in fantasy they are also able to destroy these creations (see Weymann-Reichardt, 2004).

It is not the representations in the mass media, but children's books, that seem to be responsible for the image, which younger children have in their heads. Children's books describe and illustrate fairy tales and bad figures. The bad guy's profile corresponds frequently to a resolute bad man, mostly a stranger, who is not familiar with the victim and whose life-style contradicts usual expectations.

For children crime often has faces. It is personalized and oriented to persons or figures e.g. the famous German robber Hotzenplotz, which is associated with fear and threat through lots of fairy tales.

For many children – both boys and girls – the "robber" embodies absolute evil. In our group discussions we noticed a deep fear of the robber, the stranger, who entices children from their parents and kidnaps them. A large number of children mention that they sometimes have nightmares about robbers and kidnappers. This fear is not only present at night but sometimes emerges also during the day, which certainly has an impact on perceptions and behaviour, as the following excerpt illustrates:

> **5-year-old girl:** "Sometimes I am afraid that a robber comes and wants to kill me. Then I quickly run home."

Children can describe their images of evil in great detail and in a concrete way. However, they mostly have trouble justifying or figuring out their positions in arguments. To the question, why the robber is evil, they frequently answer in a tautological way also in case of repeated demand: "because he is evil". On the one hand, children obviously are missing relevant experience; on the other hand, due to their age they do not go into depth when they think about this topic.

Most younger children assume one can recognize criminals by face or outside appearance.

> **5-year-old boy:** "Robbers always have a black beard and pistols and knives. And they carry everything in a sack."

> **7-year-old boy:** "If a man is bad, then you see it in his face. And therefore he is armed."

With the advance of age the children can already imagine that someone does not always carry his bad intentions openly. Therefore a bad guy can not be recognized at first sight. However they do not want to commit themselves:

> **10-year-old boy:** "A criminal does not look like somebody who lives on the street. I believe that they look a little normal. It depends if they have just become a criminal or have already been one for eternity. Those who have been a criminal for a long time look strange. They are always doing strange things. And the one who has just become a criminal knows how to control himself."

The first definition of "crime"

By their 10th year children have taken a difficult developmental step: They have to give up the clarity and well-defined moral position, which they had already at the age of 5. Instead they have to create a more ambivalent and complex image of good and evil as well as normality and crime.

The following excerpt from an interview with a kindergarten teacher describes the difficulty of this process of integrating, relating and readjusting and also permitting of exceptions of the rule. The interview was part of our own research project.

> **Kindergarten teacher:** "It is like this: Children at the age of five, six, seven have a fixed moral representation of the world. And then they have to learn the ability to make finer moral differentiations."

At the age of approximately 10 years children usually can give definitions of crime, which come close to reality. Like adults, most 10 year old students are inclined to describe and define crime indirectly with examples. The following discussion cut-outs demonstrate this:

> **10-year-old girl:** "I believe criminality is when for example a robber kidnaps somebody or somebody does something very very bad like when somebody throws you through the window or something like that."

> **10-year-old boy:** "Criminality is when you for example kill your archenemy, that is criminal. If you kill me now then you would be a criminal and you must go to prison."

It is remarkable that children at the age of 10 – which means prepuberty – still report mythical elements. But the image of crime becomes more and more dominated by classical offenses such as murder and kidnapping. The focus of everyday conceptions of crime lies in dangerous offences characterized by physically attacked and seriously injured victims. Environmental and white-collar crime only plays a subordinated role. Children only mentioned these types of crime in cases of strong personal affect or a strong presence in the mass media. For example, in a group discussion a girl reports that a transmitting pole was established in direct proximity of her parents' house. She assumed that there is "radioactive contamination" which causes cancer, learning inability etc. From the girl's point of view setting up such a mast is a crime.

Adolescents' images of crime

During adolescence the pattern or way of thinking about moral issues is assumed to develop from a rather simple egocentric orientation to a more complex social orientation. Later on in young adulthood, this moral orientation should end up in rather abstract values or moral principles.

At the age of approximately 15 years people's remarks dealing with crime become more elaborated and less dependent upon their parents' influence. Not only is moral knowledge established at this age, but also moral motivation (see Nunner-Winkler, 1999: 293ff.). In contrast to the moral knowledge, moral motivation is no longer universal, but the result of a differential learning process, in which consequences are also included by rule infringements.

> **14-year-old Italian boy:** "You have to know that you are not allowed to do it. And I also know then that I am not allowed to hurt somebody because I don't want to be shot by somebody."

> **16-year-old German girl with Russian descent:** "I wouldn't say that it's criminal if someone does something against his parent's wishes. That's not crime I think. If someone is bad to the teachers in school that's also not a criminal, but what takes place in public or has something to do with the police and what is legally forbidden that is a crime."

This description of children's and juveniles' images of crime gives an idea of the whole issue. A remarkable fact is that with the advancement of age, the conceptions of crime between persons of the same age tend to differ more and more. The process of the appropriation of basic beliefs is finished at the age of 15, yet diversity remains. Several studies dealing with adults' or university students' images of crime confirm these results (see e.g. Rüther, 1981a, 1981b; Fabricius, 2000; Kania, 2005).

The role of parental education

There is a wide consensus among scientists about the way children develop their initial moral convictions. They do not "learn" their first moral beliefs through direct, explicit instruction but through assumption and internalisation of social standards from adult models with which they themselves identify with. Usually children observe them in daily handling and copy their behaviour later on (see Petermann et al., 2004: 225).

Socialisation theorists have viewed moral internalisation as stemming primarily from parents' influence on children through their parenting practices, disciplinary strategies and parenting styles. Ideally, parents and educators explain moral concepts through detailed instruction and concerning fairness. If parents recognize standard-conformal behaviour, a moral-conditioning process takes place. Social learning concepts show on the basis of experimental social research that norms and moral behaviour are learnt through positive or negative reinforcement.

Children learn particularly through social interaction with authority and experience presenting persons that certain actions are not permitted and therefore bad. Keller (1982) could show that family interaction processes determine conditions and development processes of moral cognitions.

A girl from a 7th class remembers:

14-year-old girl: "My little cousin is now two years old. When he slaps one just for fun one must say no. So he knows that it is wrong, that you cannot slap people. And I know this from my parents."

Weyers (2003: 126ff.) underlines the important role of parents for the development of children's moral consciousness, too. His research is based on interaction between himself and his daughter. He noticed that his daughter oriented her statements usually to the comments of her parents.

For example she does not agree with a man, who just wants to kiss a strange woman on the street; but she accepts that a woman would like to sit down next to another woman on the same bank in a park. Weyers stresses that the parental benchmarks were absorbed, but the reasoning was different from the parents' reasoning due to a childlike way of thinking. In addition parental orientation is expressed through the fact that many – often quite rhetorical – questions are asked to the parents ("that is bad, isn't it?" or "one may not do that, right?").

For an attachment to norms and moral behaviour it is necessary to know the rules *and* to understand the reasons why the rules are valid. Although there is a fast development of the rule knowledge (cognitive) and the value dimensions (affective: e.g. "robbers are bad"), the development of understanding the validity of norms is difficult and long-lasting.

Not only moral reasoning but also moral behaviour of children is closely linked with the relationship to their parents. Döbert and Nunner-Winkler (1983) specify

this with the following statement: The readiness of a child to do something properly is promoted substantially by an affective warm and cordial relationship between parents and child. Such a relationship is conductive to the child's core confidence.

While a supportive and non rigid education style is helpful for the internalisation of norms, an authoritative and force-focussed child rearing style prevents a lasting internalisation. Also love withdrawal as a mean of education leads, as empirically proven by Gilligan, to behaviour problems (see Damon, 2004: 54; Rössner, 2004). That means an insufficient affective parent-child-attachment or a heavily disturbed social environment leads to an unsatisfying development of the "I" as well as – like Freudians would express it – to an insufficient interior representation of social laws. Cognitive theorists like Piaget, Kohlberg and Damon agree with this as they generally have proposed that the hierarchical nature of parent-child relationship could constrain a child's development (e.g. authoritarian father).

As mentioned above the interaction processes within the family creates an interpretation framework for the orientation in social situations. The first images of good and evil are built in this context. But the influence of parents decreases with the advancing age of children and must leave the floor to other influences, especially the peer group and the mass media but also their own affect.

Direct and indirect affect

In the last decades, there has been a noticeable increasing crime rate, concerning particularly brutal violent acts among children and young people. With this trend the probability rises that children tend to get in touch with crime either directly or by observation. Consequently norm-learning could be mediated through these pathways, too.

Direct affect

Numerous studies have documented that young children have ample social experiences with physical and psychological harm, fair distribution and the violation of rights through their experiences of rules, rule violation, misdeeds and peer conflicts. These types of experiences are hypothesised to lead to the construction of moral concepts. More specifically, the experiences of children as participants in moral conflicts and as victims and observers of moral transgressions lead to the construction of abstract notions of fair and unfair, right and wrong (see Smetana, 1999).

Rüther (1981c) assumes that a subset of the images of crime results from direct affect: While serious offences such as murder and homicide are labelled by persons and mass media as a crime, personal negative affect plays an important role particular with easier offences, e.g. within the field of bodily injury, theft or damage. The affect is estimated as a substantial motor for the construction of their own crime image.

Two consequences have to be taken into consideration by talking about affect. On one side personal affect can facilitate sensibilization towards crime phenomena. On the other side, one should not underestimate that there exists some risk that one

may get used to certain a crime level and consequently blunt criminal actions. In a group discussion a girl expresses this:

> **14-year-old girl:** "And when you first see someone getting hit then it seems abnormal. First it seems bad. Later on one gets used to it and so it doesn't seem so bad any longer. When one is confronted with it and sees it all the time in school, then it's clear one begins to think it's normal."

The children's attitude concerning crime also depends on other people's reaction to deviant acts. A high school teacher told her point of view:

> **Teacher:** "Fighting comes impulsively. Hiding is not planed. One is quickly ready to stop the fight and have the kids shake hands, when I start my activity. Then the fight is quickly over."

Personal affect therefore leads to internal argumentation about right and wrong behaviour, and may accelerate the developmental process. The conclusions, which become relevant for one's own attitude, depend to a considerable degree on other factors, e.g. the reaction of the teachers. In addition not only direct but also indirect affect is relevant: In the scientific community the indirect affect through the influence of the media is out of question. Media research brought out several thousand surveys, which cover this topic. Kania (2000) emphasizes the fact that the mass media is important and responsible for images of crime: Conceptions of crime are shaped each day by newspapers, radio news, cinema movies and particularly by films on television.

Indirect affect

Altogether the topic "crime" is very amply represented in the media in Germany. In some private TV channels the rate of crime related telecasts even reaches about 20 per cent of the total of telecasts (see Pfeiffer et al., 2004: 420). There is a strong tendency to present reports about crime in a dramatized way. This seemingly goes up to a kind of manipulation of the viewer, and has foreseeable consequences. Due to the convincing medial representation, and by a concurrent lack of personal experiences in their own living environment, many viewers have a serious and partly even extreme false impression of the crime rate, combined with a comparatively high fear of crime.

In a study, in which 200 viewers and media persons in charge participated, Kania (2000) found out that the estimated rate of murder is extremely overrated by many participants (7% of the asked persons thought that there are more than 1 million murders per year in Germany[8]), while the clear-up-rate is heavily underestimated. The results of a survey carried out by the Criminological Research Institute of Lower Saxony (KFN)

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[8] According to the German Crime Statistics (PKS) there are about 2500 homicides (murders and manslaughter) per year in Germany.In absolute number in 2002: 2664; in 2003: 2541, including attempts. The number of completed homicides were considerably lower: 914 in 2002, and 820 in 2003.

confirm these results, indeed not in the same drastic way. Asked for the increase of the crime rate between 1993 and 2003, the participants over-estimate the crime rate by 21 per cent, within individual crime fields this tendency is much more pronounced. Thus the over-estimation is for auto theft with 400 per cent, for completed sex killing with 475 per cent (see Pfeiffer et al., 2004: 417).

Our own study can show that children and young people attain a considerable amount of their knowledge about crime from the television, particularly by police reports and court-shows. Although children are in virtual contact with crime through newscasts and the newspaper, some students disbelieve the informational and educational function of the media.

> **14-year-old boy:** "From the newspaper I think we learn nothing about crime, rather we learn what is brutal. But this says nothing about what is not permitted. If someone does not know anything about crime then he wonders is it allowed or not. He doesn't know. Then he has to ask his parents."

Obviously the mass media are not the best advisers to make clear what is right and what is wrong. In this regard another media form should be put to test. Computer games work in a similar way. Pfeiffer (2003: 12) speaks with the request to be more aware to the problematic of "medial estrepement" with at least one fifth of the 12 to 17-year-old boys who are concerned with this leisure time behaviour. For some of them excessive force scenes may have a modelling function on their own behavioural pattern.

Therefore we assume that for some children the subjective crime conceptions are affected much more strongly by the media than by real crime.

Peer Pressure

The strong emotional connection between children and parents can continue into adolescence. However, usually a separation from the parents' control and influence takes place; and in this phase, the relationship with the peer group becomes more important. The members of the peer group become the main interaction partners particularly during the leisure time (see Mansel and Hurrelmann, 1991). Peers are important for the internalisation of values and norms, thus socialization at this stage follows norm orientation of peers.

According to Backmann (2003), the social conditions and the respective social environment are very important upon children's attitudes towards crime and sanctions: for instance, the kind of leisure contacts as well as the frequency and the amount of alcohol, cigarettes and drugs consumption, which takes place within their respective circle of friends.

From a social learning point of view every member of the peer group has the possibility of orienting and identifying himself with conforming or deviating persons (see Lamnek, 1999: 186).

Depending on how the mutual responsibility is determined, friends can promote deviant behaviour and attitudes as well as offences against the law (see Reich, 2005; Tremblay, 1995).

To that extent it appears easily to explain that individual or subcultural norms and moral conceptions exist, which are only to a small degree congruent with the law. However that contradicts Lampe's (2002: 415) perception, who stresses – as mentioned above – that according to his opinion there is a high agreement between the childlike opinion about the law and the norms of the penal code.

Cultural and religious influences

The development of moral consciousness is rooted in culture and education, says Weyers (2003: 136). Culture contributes to the process of moral development through delivering specific roles, social rules, activities and convictions. Yet the moral codes of most cultures are not completely different. Most children condemn deception and fraud, hard-heartedness, theft and vandalism in a similar way. According to Damon (2004: 56) this could refer to a universal sense for moral beliefs.

Yau and Smetana (2003) emphasize that children all over the world distinguish morality and social convention in similar ways, too. But some cultural differences in children's justifications of norms and conventions have been observed. For example, Israeli, Arab as well as African children have been found to affirm the importance of customs and tradition to a greater degree than do European and American children. Another example: Korean children's justifications have demonstrated a greater understanding of social status than US children.

Results from our own study show that there are no significant differences in children's conceptions of good and bad between different ethnic groups in kindergarten. However, differences do develop within the context of socialization and internalization of subcultural features. Partially these differences are already implanted early on in childhood, as the following quotation shows:

> **7-year-old Turkish girl**: "That's a theft." *Should he have done that?* "No otherwise Allah will kill him, if this really happens." *Does Allah kill every thief?* "Yes. Allah kill all bad guys." *Are all Christians bad people?* "Many are." *And Muslims?* "No, no Muslims, no."

Like culture the religion has an important influence in early life course among young people. If religion teaches and supports right conformity, which is not the case in each religion, this can have a positive impact on conceptions of crime and contributes to a normative adapted life (see Kerner, 2005).

Children have a lot of religious images in their heads. The children's conception of good and evil is accompanied by a very clear imagination of God. This construction is fundamentally different from adults' images. Often it is based on archaic dream images, which consist of religious narrations, fairy tales and fables.

Our own study confirms that the religion plays a very important role for the development of the limit between good and evil. However it is combined with mythic aspects, which also circulate within peer groups and which the educators and parents do not register in their consequence at all. Thus a boy reports:

7-year-old boy: "God sees something good in everyone. Hopefully by me, too. Is that right that there is a slide from heaven to hell? That's what the children in kindergarten say. There is a black hole with monsters, isn't there? Bad people slide into it and their souls are eaten. Is that right?"

To the question, whether he already asked his parents, whether this is true or not the boy answers no. He would not speak about these themes, neither at home nor with his kindergarten teachers; only with his friends.

With advancing age the religious and mythic aspects in the image of good and evil break down more and more for most German students. Although 15-year-old students know – or have heard about – the Bible's Ten Commandments or the Koran, they do not mention these religious rules as relevant guidelines: In the case of doubt the law of the state is more important than religious laws, because the violation of religious rules does not result in direct sanctions and therefore the federal law has priority.

The value of the religion decreases during the stages of socialisation. Reasons or argumentations of the juveniles rarely have a religious background, but probably this is not the case with every religious group.

Conclusion

After this "tour d´horizon" we can sum up eventually that, extrapolating from our research subjects to the general situation, children of different cultural and ethnical origins have a well constructed and in substance similarly developed conception of justice and injustice already by early childhood. In some minor points these images deviate from each other, but in core items (meaning some selected offences as for instance in the assessment of fraud, theft, vandalism) a high degree of agreement is visible.

Thus also our part of contemporary research in this field of study supports the assumption that there is still a rather well established moral foundation among people at large, despite moral disorientation and the purge of values that seem to characterize modern societies. Children and juveniles construct their images of crime in different directions depending on their collective and idiosyncratic experiences, which are shaped by several external influences. Hereby social learning processes exert a considerable and lasting influence.

When children grow up, the originally prevailing mythic and religious elements as well as the parental education lose influence on the development process of the

images of crime. Conversely, the integration into their peer groups and the immersion into many if not countless hours of divergent media consumption gain lasting influence and add stark effects upon the dominating images of crime in the next age stages. In further research the interaction of external influences, which are combined with an internal readiness to distinguish between justice and injustice, requires increasing attention.

For a meaningful concept of crime prevention and moral education it seems of utmost necessity to synthesize the described research and point out in detail, how children and young people come to create and to fully internalise their images of crime and criminals. In the next step of work to be done it has to be unveiled more cogently than hitherto possible which effects these crime conceptions exert on moral motivation and legal behaviour of (young) people under sometimes very adverse conditions of late modern states and societies like our own.

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Men's and Women's Theories
about the Causes of Crime

The Influence of Severity and Type of the Offence
on Intentions to Punish

JÖRG HUPFELD

Introduction

For several decades scientists have devoted considerable attention to public opinion on crime, punishment, and justice. Knowing more about these topics does not only serve scientific interests, it is also of practical importance. Criminal law and crime related opinions of the public are inseparably connected to each other. Utilitarian justifications of criminal law are based upon the assumption that legal punishment has an effect on the public's view about right and wrong. In psychological and criminological literature the reverse effect is stressed as well (McKillop & Helmes, 2003: 210ff.). Firstly, public opinion on justice *eventually* finds its way into law (Lloyd-Bostock, 1992; Tomaino, 1997) and, secondly, the views of the public *should* be considered in criminal legislation and judicial decision-making (e.g., Green, 1996). Because "the criminal law commands the respect of the community it governs, the law's moral credibility itself provides a reason for law abidingness" (Robinson & Darley, 1998: 443-444). And one important precondition to law's moral credibility is the concordance between criminal law and public opinion. Here the questions arise as to whether men and women have different opinions that should be taken into account and in case of such differences what changes have to be expected if more women would work as criminal-court judges.

While political scientists were very engaged in the investigation of differences between men and women in policy preferences and voting behaviour, criminologists paid substantially less attention to possible differences in crime related attitudes (Applegate, Cullen & Fisher, 2002: 89; Hurwitz & Smithey, 1998: 90). Although several studies have included sex as an independent variable, only a few

authors have paid particular attention to gender issues. The present empirical and theoretical approaches shed little light on the extent and nature of a possible gender gap. For example some research shows that gender is unrelated to punitiveness (e.g., Quimet & Coyle, 1991). Several studies show that men are more punitive than women (e.g., Blumstein & Cohen, 1980; Grasmick & McGill, 1994; Hurwitz & Smithey, 1998; Sessar, 1992). Evidence also exists, however, that women are more punitive than men (e.g., Haghighi & Lopez, 1998). The existing research suggests that women in general – but not always – seem to be less punitive, especially if they are asked to sentence specific offenders. In response to global crime related questions men and women often do not differ significantly (Applegate et al., 2002; Sprott, 1999). But even with respect to specific criminal cases it is unclear when and why women and men differ in their opinions. The present paper will try to give some answers to these questions. Starting point of our considerations is an analysis of the impact of causal attribution on punitiveness. There is a strong and well-established connection between people's beliefs about why someone engages in criminal behaviour and how people think about punishment (e.g., Roberts & Stalans, 2000; Sims, 2003). Including attribution theory and moral theory in our considerations we will try to explain some gender related differences in the causal attributions of criminal behaviour (property crime and bodily harm) and punitiveness and show some first empirical results.

Structure and Impact of Subjective Theories of Crime

Several studies have been conducted that concentrated on the dimensionality of subjective theories about the causes of crime. For example Erskine (1974) was able to differentiate between seven general causal factors (breakdown of family life, bad environment, leniency of laws, drugs, mental illness, permissiveness in society, as well as poverty and unemployment), Furnham and Henderson (1983) extracted six factors (defective education, mentally unstable, temptation, excitement, alienation, and parents), and Oswald & Bilsky (1991) extracted four different factors (destructive motivation, lack of planning and perspective, societal factors, and marginal position in social life). In general one can say that the results support Reuterman (1978), who drew the conclusion that subjective theories about the causes of crime are both complex and multidimensional. However, it is difficult to draw a conclusion that goes beyond Reuterman's general statement. To some extent this might be due to problems concerning methods of explorative factor analysis. It is hard to compare different results, because the number and interpretation of the resulting factors depend on the items that are factorised, the population that has been investigated, and, last but not least, on the researcher's methodological habits. Nevertheless, it seems to be possible to find some structural similarities. In accordance with Weiner (e.g., 1986) all the different causes people might regard as more or less important can be classified according to very few general dimensions. These dimensions are: locus of causality, controllability, and stability (see Table 1).

*Table 1: Dimensions of causal attributions*

Dimension	Range of dimension
Locus of causality	Internal cause located in the person/actor ↔ External cause located in the environment
Stability	Enduring, stable cause ↔ Unstable, variable cause
Controllability	Cause is under personal control ↔ Cause is uncontrollable

In his later work Weiner (1995: 13) mentioned that it also might be useful to differentiate between controllability and intentionality. Vallerand & Richer (1988) and McAuley, Duncan & Russell (1992) could show that this incorporation of a fourth dimension can be justified empirically.

Referring to this general theoretical framework, even results that are based upon different populations and items reveal very similar structural properties (Bilsky, Hupfeld & Oswald, 1990; Oswald, 1994). Obviously subjective theories about the causes of crime are primarily structured according to the locus of causality. Within most of the different factorial results there is a quite clear distinction between dimensions that sum up internal causes, and dimensions that consist of external causes. However, the associations between factorial results and the other causal dimension seem to be rather ambiguous (Bilsky, Hupfeld & Oswald, 1990). This instance might be due to the fact that the placement of an explanation in terms of causal dimensions may vary greatly from person to person and from situation to situation (Weiner, 1983). It is a difficult task to imagine how the attributors perceived their own causal attributions in terms of underlying dimensions. For example "unemployment" might be seen as a controllable or as an uncontrollable cause of criminal behaviour. A third party's interpretation (e.g., a researcher's coding) might substantially miss the attributor's understanding; a fact that often leads to an effect Russel (1982: 1137) called the "fundamental attribution researcher error". Direct assessments of attributions according to causal dimensions that are based on the subject's own perceptions seem to be much more reliable and valid than importance ratings of different potential causes or post hoc codings of open-ended attributions (Russell, 1991; Russell, McAuley & Tarico, 1987).

Despite these methodological difficulties research supports the conclusion that the different causal dimensions mentioned above play an important role. According to Carroll & Payne (1976) sentencing decisions (or intentions) are primarily based upon judgements of future risk and the perceived blameworthiness of the perpetrator. While the judgement of future risk should be based on the perceived stability of the causes of crime, the judgement of blameworthiness should be based on the dimensions of locus of causality and controllability. However, according to Shaver (1985) the model should be modified. Especially the judgment of blameworthiness is, at least, influenced by the attribution of intentionality as well (see Figure 1).

Figure 1: Attributional framework for sentencing decisions
(based on Carroll & Payne, 1976 and Shaver, 1985)
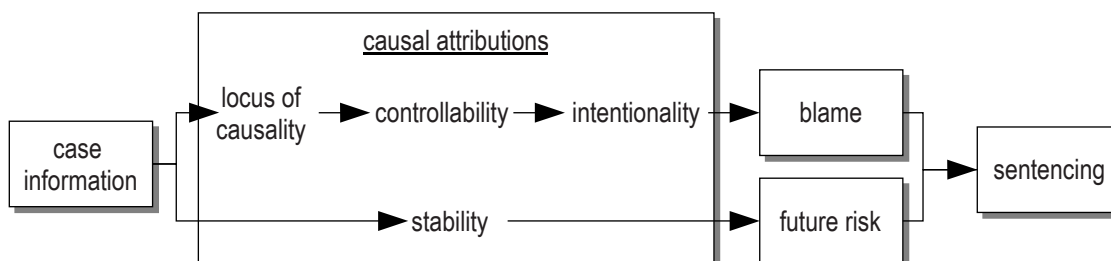
Most of the hypotheses that derive from attribution theory have been validated empirically. The more people stress stable, internal, controllable causes, or attribute intentionality, the more punitive are their responses to delinquency (e.g., Carroll & Payne, 1977; Ewart & Pennington, 1987; Hupfeld, 1996; Sims, 2003).

Type of Crime

A number of studies have included several respondent characteristics and other influencing variables (e.g., Furnham & Henderson, 1983; Gudjonsson, 1984; Hardiker & Webb, 1979; Hollin & Howells, 1987; Reuterman, 1978; Reuterman & Cartwright, 1976). However, as Hollin & Howells (1987) criticized, most of the investigations treated crime as a global construct. The authors supposed that lay explanations for delinquency might be offence-specific. According to schema theory, different types of events should activate considerations of knowledge about the specific kind of situation that "leads to the rapid generation of one or more attributional hypotheses" (Carroll & Wiener, 1982: 235). And in fact, Hollin & Howells (1987) could show that the importance of several attributional scales varied for different types of crime.

Unfortunately, seriousness of the offences covaried with the different offence types Hollin and Howell described in their questionnaire. As Austin, Walster & Utne (1976) remarked, the observation of a criminal act gives rise to a feeling of distress because this act is regarded as a violation of fairness and equity. Distress can be eliminated and equity can be restored by punishment that corresponds to the proportion of harm or damage the perpetrator is held responsible for. However, attributions of responsibility or blameworthiness are influenced by the seriousness of the crime. The more serious the crime is, the greater is the observer's distress, the greater is the need to hold a concrete person responsible for the harm instead of some external circumstances, the more difficult it will be to accept excuses and justifications and the greater will be the blame that is attributed to the perpetrator (e.g., Walster, 1966; Shaver, 1970). Because of this interdependence of seriousness of crime and causal attributions we don't know yet to what degree the empirical results of Hollin & Howells (1987) really prove an influence of the quality or *type* of

crime or whether they demonstrate an influence of quantity, as reflected by *seriousness* of crime.

Respondent Gender

Do subjective crime theories depend on the gender of the judging person? If we have a look at the different investigations, this seems to be one of the most frequently asked questions. For example in Reuterman's (1978) investigation, women tended to explain crime more often by a lack of parental care and the misuse of drugs and alcohol. Furnham & Henderson (1983) found that women preferred explanations, which referred to the delinquent's socialisation in the home and the school. Even Hollin & Howells (1987: 207) found that "there were indicators of gender-differences in importance ratings". In their study, women rated the alienation scale and the excitement scale as more important than did men. The first scale consisted of external causes (e.g., unemployment, unequal distribution of wealth & income, and police prejudice), the second combined three more or less external (easy opportunity, bad examples, temporary insanity in crowds), and two ambiguous causes (enjoy the excitement and kicks, impress friends & peers). All in all, the different results indicate that women tend to prefer more external causes than men do. However, this gender-related effect seems to vary with the type of crime (Hollin & Howells, 1987: 206).

But how can those gender-related main and interaction effects be explained? Some theories concerning moral development and justice ideologies might give an answer. Based upon the work of Chodorow (1978) Carol Gilligan (1982) points out that two different dimensions of moral development are set by early social influences. Whereas development of girls is directed towards attachment and the achievement of satisfying community, development of boys is aimed at autonomy, demarcation and equality of power. Referring to this consideration, Gilligan developed her thesis of a female ethics of care and a male ethics of justice. According to this theory, moral considerations within an ethics of care concentrate on personal interdependence and responsibility, whereas moral considerations within an ethics of justice concentrate on formal rules and abstract rights. There has been an extensive debate on whether those two moral orientations are gender-specific or whether they are gender-related. Actually, recent investigations show correspondingly that most men and women can and do use both orientations. Nevertheless, there seem to be some gender-related differences. While women prefer an ethics of care, men in general prefer an ethics of justice (e.g., Gilligan & Attanucci, 1988; Lugt-Tappeser & Jünger, 1994; Lyons, 1983). As Kathleen Daly (1989) supposed, those differences in moral reasoning should correspond with different modes of responding to crime. While considerations according to an ethics of care depend on the specific context and try to fit in with the offender's needs and potential of rehabilitation, an ethics of justice is concerned with aggregate and depersonalised justice, and punish-

ment reactions that are aimed at retribution, general deterrence and the symbolical reassertion of the violated rules. But differences in moral orientation should also go along with differences in the assessment of the offender and the causes of the offence. An ethics of care must go along with the readiness to take the other's (wrongdoer's) perspective, whereas an ethics of justice is more likely related to a perspective that is taken by an independent observer (Hupfeld, 1996, 2000). According to the well known actor-observer effect (Jones & Nisbett, 1972; Storms 1973) care oriented persons should trace back an offence to less internal, and less stable causes, and should attribute less controllability and intentionality than persons who rely on an abstract and depersonalised ethics of justice.

But the extent of a person's readiness to take an orientation that is focused on the harm doer's perspective might depend on the type of offence. Particularly men's and women's evaluations of offences that go along with bodily harm might differ systematically. There are several reasons to suppose that women evaluate those acts as more severe than men do. For instance women are - at least on average - inferior in physical strength and so their vulnerability is larger. Furthermore they show less direct aggressive acts (e.g., Eagly & Steffen, 1986) and evaluate even the display of anger more negatively than men (Davis, LaRosa & Foshee, 1992). Therefore they should evaluate bodily harm as less normal and less excusable. But evaluating an offence as more severe and less excusable will make it more difficult to take the harm doer's perspective and focus on his individual needs. Similar assumptions can be made on the basis of the work of Jones & McGillis (1976) about the attribution process in person perception. The more uncommon an action is evaluated the stronger is the tendency to attribute internal causes and intentionality. Therefore one would expect that women should attribute more internal causes, controllability, and intentionality in a case of bodily harm than in a case of property crime. In other words, those gender-related differences that have been mentioned above should at least decrease or even reverse in the case of bodily harm.

Empirical Study

In order to test our hypotheses we conducted a first empirical study. A sample of 297 students of law (155 women, 142 men) from the universities of Hamburg, Hannover and Bern participated in our experiment. Approximately half of them (147 students: 72 men and 75 women) answered a questionnaire including four descriptions of property crime. The others (150 students: 70 men and 80 women) answered a questionnaire including four descriptions of bodily harm. In each questionnaire the four delinquent acts differed from one another in degree of severity. For each of the different offences the participants made their causal attributions. Because of the difficulties that emerge when researchers try to imagine how the respondents perceive their own causal attributions, we decided to use a modified version of Russell's (e.g., 1982) Causal Dimension Scale (CDS). This measure was

designed to assess how the attributors themselves perceived their causal attributions in terms of locus of causality, stability, controllability, and intentionality. The measure consisted of nine semantic differential scales. Locus of causality was measured by three scales, whereas stability, controllability, and intentionality were each measured by two scales. All of them were nine point Likert scales, ranging from -4 (internal, stable, controllable, intentional) to +4 (external, variable, uncontrollable, unintentional). In addition to the CDS, the questionnaire included ratings about the seriousness of the offence, and the appropriate severity of punishment. Seriousness ratings were done by means of an eleven point Likert scale, ranging from 0 (slight and insignificant offence) to 10 (very severe and grave offence). The intention to punish was also measured by means of an eleven point Likert scale, ranging from 0 (exemption from punishment) to 10 (very severe punishment).

Results

Six test scores were obtained for each subject: attribution scores of locus of causality, stability, controllability, and intentionality, as well as scores of the perceived seriousness of the offences and the appropriate severity of punishment. All test scores based upon the averages of the ratings across the four offences each participant had been confronted with.

Table 2: ANOVA Results for Attributions, Perceived Seriousness and Intention to Punish by Offence Type and Respondent Gender

Dependent Variable	Source	$F_{(1, 293)}$	η^2	Significance
Locus of causality	Offence type	12.81	.042	***
	Gender	7.96	.026	**
	Offence type * gender	15.94	.052	***
Stability	Offence type	.01	.000	n.s.
	Gender	8.22	.027	**
	Offence type * gender	.03	.000	n.s.
Controllability	Offence type	14.35	.047	***
	Gender	8.38	.028	**
	Offence type * gender	15.82	.051	***
Intentionality	Offence type	3.42	.012	(.066)
	Gender	1.80	.006	n.s.
	Offence type * gender	4.32	.015	*
Seriousness of the offences	Offence type	5.06	.017	*
	Gender	5.97	.020	*
	Offence type * gender	12.25	.042	***
Intention to punish	Offence type	3.737	.013	(.054)
	Gender	7.10	.024	**
	Offence type * gender	8.09	.027	**

*p < .05; **p < .01; ***p < .001.

In a first step, the mean ratings for the six scales according to the type of crime and respondent gender where compared in a two by two factors between subjects MANOVA. The multivariate analyses revealed highly significant main effects for gender ($F_{(6, 288)} = 8.71$; $p < .001$) and for offence type ($F_{(6, 288)} = 4.84$; $p < .001$) and a highly significant interaction effect between gender and offence type ($F_{(6, 288)} = 6.58$; $p < .001$). In order to obtain a more discriminating picture we conducted the respective univariate analyses (ANOVAs). The results are summarized in Table 2.

Although all the significant effects with regard to the different test scores were rather small (η^2 between 1.5 % and 5.2 %)[1], most of them showed very similar patterns. As table 2 indicates, there were significant or marginally significant main effects for gender and offence type. In general, women attributed less internal causes, less stability, controllability and intentionality. Furthermore, they regarded the different offences as less severe and were more lenient than men. On the other hand in cases of bodily harm students generally attributed more internal causes, more controllability, marginally more intentionality, regarded the offences as more severe and were marginally more punitive. But with the exception of stability attributions all the main effects must be interpreted in the light of significant interactions between gender and type of the offences. As post hoc comparisons indicated, men's and women's assessments with regard to the four cases of bodily harm were almost identical. They were equally punitive ($M_{male} = 3.34$, $M_{female} = 3.38$), estimated the offences as equally serious ($M_{male} = 4.87$, $M_{female} = 5.06$) and showed no significant differences in regard to attributions of locus of causality ($M_{male} = -.44$, $M_{female} = -.58$), controllability ($M_{male} = -.90$, $M_{female} = -1.05$) and intentionality ($M_{male} = .59$, $M_{female} = .47$). However, in cases of property crime women attributed less internal causes ($M_{male} = -.49$, $M_{female} = .32$), less controllability ($M_{male} = -.93$, $M_{female} = .01$), less intentionality ($M_{male} = .56$, $M_{female} = 1.11$), regarded the offences as less severe ($M_{male} = 5.09$, $M_{female} = 4.03$) and were significantly more lenient than men ($M_{male} = 3.54$, $M_{female} = 2.34$). Figures 2 and 3 illustrate this general interaction pattern.

Bivariate analyses indicated that all causal attribution scores as well as the perceived seriousness of the offences were significantly correlated with the intention to punish. But because the different predictors were correlated as well, the question concerning the independent contributions in determining the intention to punish arose. In order to answer this question, we conducted a hierarchical regression analysis with the intention to punish as a dependent variable (see Table 3).

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[1] Eta-squared (η^2) is a measure of practical significance. It is the proportion of the total variance that is attributed to an effect.

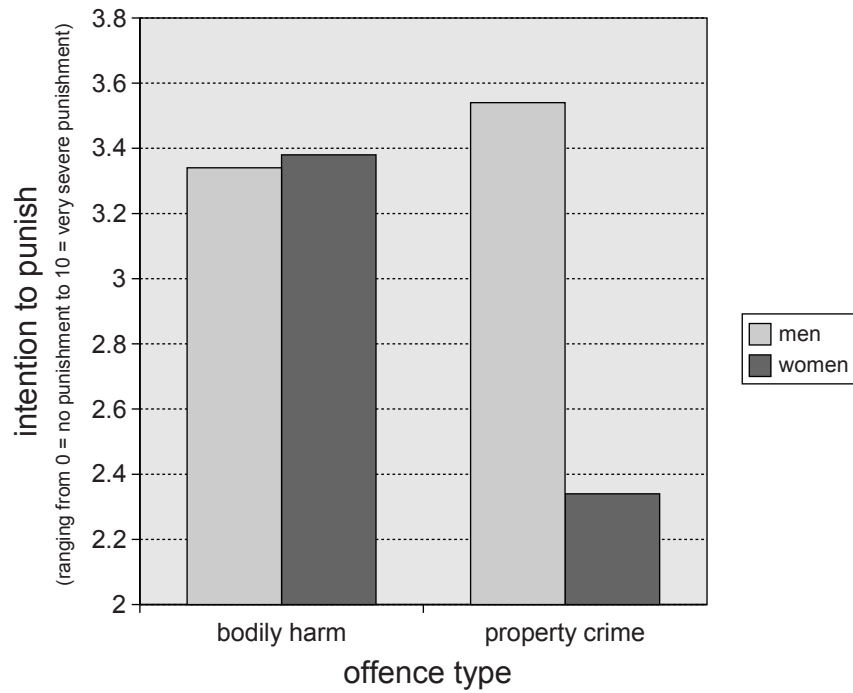*Figure 2: Intention to punish by offence type and respondent gender*

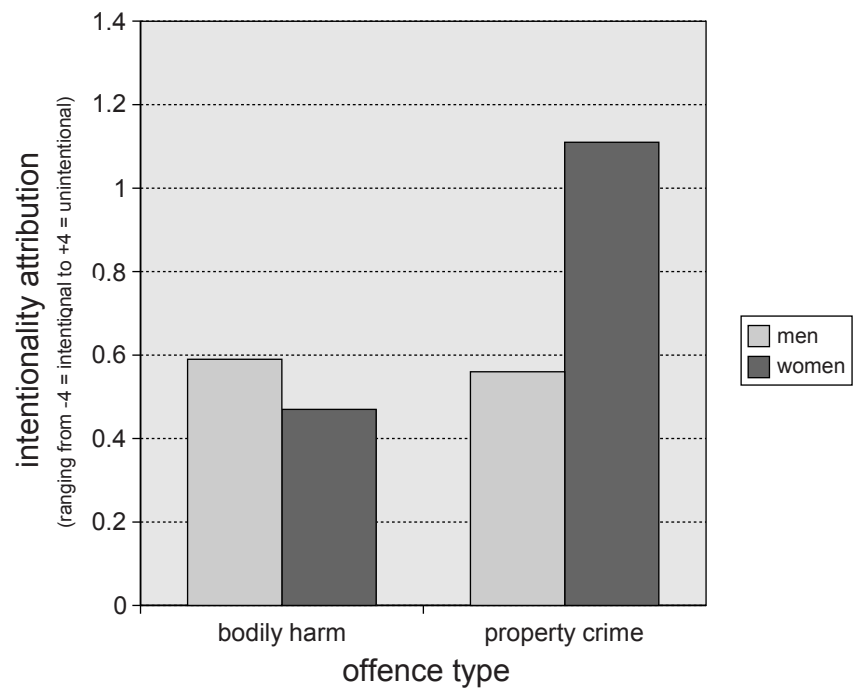*Figure 3: Attribution of intentionality by offence type and respondent gender*

Table 3: Summary of Hierarchical Regression Analysis
for Variables Predicting the Intention to Punish

Variable	B	SE B	β
Step 1a			
Seriousness of the offences	.80	.05	.66 ***
Step 1b			
Locus of causality	-.47	.12	-.27 ***
Stability	-.55	.11	-.30 ***
Controllability	-.12	.07	-.09
Intentionality	-.22	.09	-.14 *
Step 2			
Seriousness of the offences	.60	.05	.56 ***
Locus of causality	-.18	.10	-.10
Stability	-.50	.09	-.28 ***
Controllability	-.01	.06	-.01
Intentionality	-.09	.07	-.06

Note: $R^2 = .43$ for step 1a; $R^2 = .27$ for step 1b; $R^2 = .54$ for step 2.

$*p < .05. **p < .01.$

In step 1a we entered the variable "seriousness of the offences" into the model. The results showed that the regression weight was highly significant and that 43% of the variance in the intention to punish was predictable from the perceived seriousness of the offences. The higher the seriousness ratings were, the more severe were the preferred sanctions. In step 1b seriousness ratings were excluded and all attributions were included as predictors. The model now accounted for 27% of the variance in the intention to punish. With the exception of attribution of controllability all regression weights were significant. The more the offences were traced back to internal and stable causes and the more intentionality was attributed – that means, the lower the test scores were – the more severe were the preferred sanctions. In a final step (2) we entered all variables. The total model accounted for 54% of the variance in the intention to punish. The increments of change in R^2 in comparison to models 1a and 1b were significant (ps $< .05$). Furthermore, the decrease of standardized regression weights from steps 1a and 1b to step 2 showed that the perceived seriousness and the attribution variables shared some common amount of variance with the dependent variable. However, the perceived seriousness of the offences was still the best predictor. Only stability attributions made a significant additional contribution to the prediction of punitiveness.

Discussion

The results of this study generally support our theoretical considerations. Most of the predictions concerning gender related effects could be confirmed empirically. In accordance with Gilligan's (1982) and Daly's (1989) theory about gender related

differences in moral orientation, men and women differed in their subjective theories about the causes of crime. However, these effects mainly occurred within the subjects' theories about the causes of property crime. Here women traced the offences back to less internal causes and attributed less controllability and intentionality to the offenders than men. Obviously the effects were at least partially mediated by differences in the perceived seriousness of the offences, which proved to be the most influential predictor of punitiveness. Insofar our theoretical considerations and the empirical results might be of scientific value and help to understand some of the mixed gender-related results.

But what can we say about the practical meaning of the results? Applegate et al. (2002: 98) point at the relatively small but potentially important gap between men's and women's attitudes toward crime and punishment. They guess that women may exert a humanizing influence on correctional and crime policymaking as they take a greater role in public policy making. In the light of the here proven interaction between gender and offence type one might be less optimistic about the potential humanizing effects. But even with regard to property crimes gender only accounted for approximately ten percent of the variance in punitiveness. As Hurwitz & Smithey (1998: 105) already mentioned, men and women are not radically divided in their attitudes toward crime. What we find are some systematic differences of degree, but these gender related differences are much smaller than the differences within both gender-groups (see Fig. 4).

Figure 4: Illustration of overlap between punitiveness distributions
with regard to property crimes (gender effect: $\eta^2 = .10$)
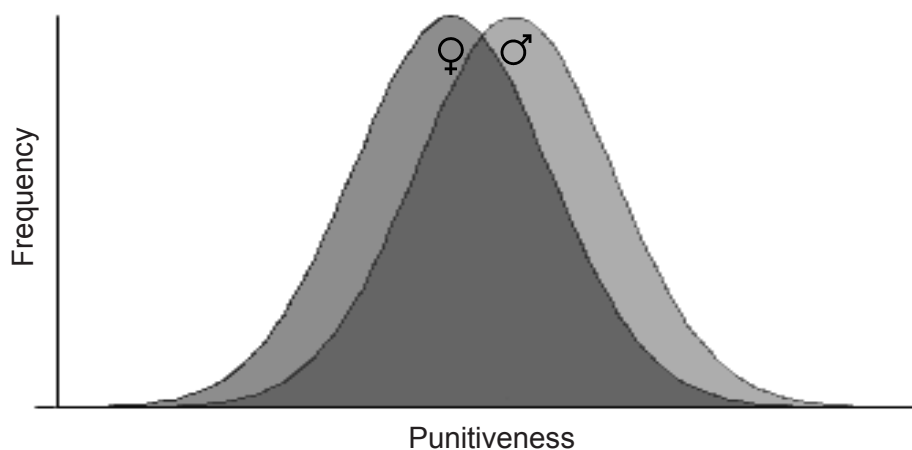
Although our sample of law students may not be representative for the whole public the effect sizes are in line with previous research (e.g., Applegate, Cullen & Fisher, 2002; Hurwitz & Smithey, 1998). If we have a look at the overlap between

men's and women's sentencing preferences in all the different studies there seems to be no need for special considerations of male and female wishes for punitiveness in criminal legislation and judicial decision-making. The huge differences within both groups may at first glance represent a greater problem with respect to the law's moral credibility. But contrary to widely held assumptions the concordance between individual outcome preferences and actual outcomes (severity or leniency of legal punishment) has relatively little impact. What matters is the concordance between fairness claims of the public and actual legal procedures (e.g., Tyler, 2001). Public trust in legal authorities is primarily encouraged when they make decisions through procedures that members of the public view as fair. And those people who trust in legal authorities and regard them as legitimate are, as a consequence, more law-abiding (e.g., Paternoster, Brame, Bachman & Sherman, 1997; Tyler, 1990; Tyler & Darley, 2000).

Coming back to the outcome-aspect let us finally make some remarks about the call for female court-judges in order to exert a humanizing influence on judicial decision-making. Within our sample of law students relatively small but consistent differences between men and women occurred. But only a few of those students will opt for a job as a criminal-court judge. As Oswald & Drewniak (1996) and Hupfeld (2000) could show, the general differences between men and women diminish and seem to disappear due to self-selection and job related socialization if we have a look at crime related attitudes and actual sentencing behaviour of male and female court judges. Certainly women *should* take a greater role in public policy making and *should* have unconfined admission to all occupational areas and all positions. But this is a matter of fairness and justice. It must not and possibly should not be justified by some potential changes that might occur if women participate in a specific societal domain. We should remember that about one hundred years ago almost the same putative gender differences justified women's exclusion from law studies and the vocational field of criminal law in several European countries (c.f., Hupfeld, 2000).

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The Selective Perception of Domestic Violence

Michael Bock

1. Human perception is culturally enriched

One only sees what he is carrying inside. This popular saying describes in a highly striking way some fundamental facts of human perception. What we see, even what we hear, we virtually do not observe in a physical way, but rather by mediation of our culture. For instance, things we see contain reference-correlations that hint at practical accomplishments. A door handle, a table, a book, a TV screen. Looking at these objects, our consciousness represents the transactions, the accomplishments, the working-correlations that are connected to these matters. However it is not only practical correlations of utilization that co-determine our seeing and hearing. When Matthias Claudius says "the forest stands black and silent" he is expressing that natural phenomena or a special appeal to our aesthetic feelings, which might cause emotional sentiments or bring forth spiritual moods. All this can happen spontaneously – literally speaking from out of the blue – but it can also be produced, arranged and organized with intention. One fixes the Christmas tree, puts on the Christmas oratorio, places the goose in the oven and seeks to create a complex mood, referring to many memories. And if the Christmas spirit will not arise, this only proves that that one is not always able to rule our feelings or even our consciousness which now and then plays evil or funny tricks on us. Even on Christmas one only sees what he is carrying inside.

Unfortunately this also affects sectors we do not normally feel happy about. Our consciousness, which also treasures images of people, is often rather infected with prejudices and stereotypes.[1] The less we know about somebody, the stranger he appears to us, the more our consciousness is willing to – under the immediate pressure of a direct confrontation – to replace the lack of knowledge by the supposition that this person will be just the same as we know from other types of his kind, skincolour, nationality or religious belief. These might occasionally be very vicious attributes. Like this our sensual perception is permanently surrounded, primed, enriched and filled by a steady stream of inner experiences. Psychiatrists refer to this

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[1] See for example Estel, Bernd: Soziale Vorurteile und soziale Urteile. Kritik und wissenschaftliche Grundlegung der Vorurteilsforschung. Opladen 1983.

as "hyperthym". The relieving effect of hyperthym, which often goes unrecognized in our daily lives, comes to the fore in cases of unwelcome social stereotypes. In other words, we recognize the normally relieving effects of these processes mostly in reverse, namely, by travelling to countries with strange cultures in which the impressions that are added from our inner to our outer perception will not match, which thereby leads to the fact that even the most simple things cause exhaustion. On the other hand, we try to see things as we are used to seeing them – in spite of contradictory facts – because this reduces stress and the hard work of change and reorientation.[2]

2. Main features concerning the "structure of plausibility" in the topic of domestic violence

Therewith we have already entered the subject. Moreover, our glance at human behaviour, which we label violent or criminal or threatening, is not a physical reflection of this very behaviour in our eyes, but here it is also valid that the eye of the beholder is enriched by what he carries concerning experiences, suppositions and fears as well as prejudices and stereo-types. At this point I do not intend to evoke the impression of everybody being – to any extent desired – able to invent for himself whatever thought is necessary for the decorated supplement of our sensual experiences. No, here socially relevant crystallizations and institutionalizations do exist, to the extent – as we know from the song written by Matthias Claudius – that there are fairly stable cultural codifications of what one considers likely and plausible in a certain sector. However, this so-called "structure of plausibility" is indeed something quite sturdy, as it is resistant to those who want to see, listen and argue against the rules of its customary reading.[3] If we thus proceed from the base that violence and especially domestic violence is a matter of a gender specific codification of behaviour, we mean that this codification constituted structure of plausibility even has a special resistance because, in regard to gender specific codifications of this sort, we are concerned with a very sensitive core of our personality. This leads to the fact that our mechanism of protection and defence is correspondingly strong.

It is indeed entirely obvious that, in regard to these codifications, we do not only have to deal with individual psychic forces but that the gender specific codification of domestic violence has socially and institutionally become reality in a fairly drastic way: the inner-psychic representation of images and imaginations finds outside support in buildings and signboards of auxiliary facilities, in floors of official agen-

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[2] See, for a striking example, Festinger, L./Riecken, H. W./Schachter, S.: When Prophecy Fails: A Social Study of a Modern Group that predicted the Destruction of the World, Minnesota University Press 1956.

[3] Berger, P. L./Luckmann, T. : The social construction of reality, New York 1967.

cies, in budget amounts, in political promulgations, in alterations of enactments, in application formulas and in duty instructions.

With regard to the contents, the case of domestic violence is relatively simply. The iconographic significance of the Mother Mary as an incarnation of remittance, love, warmth and security has had an outrageous meaning for the shaping of our understanding of feminine nature. It may thoroughly be that the direction culture and religion took in this regard took was – though in an unspecific way – traced out by phylogenetic paragons. In the expression "children and woman first" might originally be found a successful surviving expedient in order of precedence. During the middle ages the role of women received a special increase with the knight mutating to a gentlemen and *minnesang* was stylized as an ethical ideal. Also in this respect the civil society inherited the court-like society. Women and violence were hereby strictly separated.

The cultural penetration of modern feminism has increased gender-specific codification. In opposition to the previous images of women having negative sides – beginning from biblical delivery via medieval trial for witchcraft up to the novels of the civil age, in which women were seen as the seducers, integrants, witches and poisoners – these negative features are now successfully stigmatized as prejudices and therewith delegitimized by feminism. Simultaneously, women were collectively stylized as the real victims of world history, whereupon both views are by all means connected. The less the victim is by their own behaviour, the clearer is the victim's role as a pure innocent martyr. The universal und collective attribute of female victimization in general could hardly be demonstrated any more clearly than with reference to the unbelievably huge number of women suffering as victims of domestic violence. The topic of domestic violence has served in a way as a synonym for the universal and collective slavery of women, who all suffer from – if not implicitly physical violence – the psychical and structural violence of the patriarchate.

Woman and victim and correspondingly man and culprit incurred in this way an inseparable symbolic relationship. Being victim or culprit is hereby not only one feature among others characterizing single experiences of single women and men, but it creates, as one says in the sociology of devious behaviour, a master status,[4] meaning a dominant feature which outweighs and colours all other features and takes possession of the chains of association. Details may gradually vary but we are all conditioned with a qualified reflex rousing inner pictures and imaginations, associations, memories of movies, newspaper reports and the like, in which the woman serves as the victim and the man is the culprit as soon as one mentions violence in general or domestic violence in particular. This is especially the case if it remains unclear as to the distribution of culprit and victim in a certain situation or concerning a certain couple because nobody was there to witness the scene, or if a certain behaviour is denied, or if one tries to give it a determined meaning, then the

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[4] Becker, Howard S., Outsiders. Studies in the Sociology of Deviance, London 1963.

chance of the version in which the woman is the victim and the man the culprit increases to the point that it is socially mandatory.

3. Complications

3.1 Good and evil

We still have to take notice of some complications although they do not affect the main issue at hand. From time on in every society there has been a distinction between a good and an evil sort of violence. The good sort of violence is directed at an outside enemy or one who disturbs the internal society. This violence is executed by soldiers, policemen or special agents. Violence thus has to be seen in a normative context, because the same action can be forbidden murder or justified death-blow. It is now a rather interesting observation that in a characteristic way the gender specific codification of violence has kept up with this distinction during the last years.

Whereas the evil as well as the good sort of violence has been more or less a male monopole, the good sort of violence is now increasingly conducted by women. Heroines such as Xena, Lara Croft or Charlie's Angels, but also a new great deal of female inspectors found on our televisions, speak a distinct language. Moreover, if aggressive female behaviour is shown – like a box to the ear or kicks against limp husbands, the murder of a vicious child-molester or home-tyrant or the skilful kick into the aggressor's testicles – violence is always shown in a context that appears good, at least justified and intelligible. The ugly, not excusable and freely chosen kind of violence is in return reserved for men. In our media rascals and villains practicing violence are almost only represented by men. And then it becomes exactly clear that within the main codification woman – victim and man – culprit it is also decided about the question of what matter in case of an exception has to be true. If it is evident that a woman has shown violent behaviour, if thus a cognitive dissonance with regard to the main codification arises, explanations have to be found as to why this unlikely case could occur. She acted under pressure, the case had to be an exception, the victim deserved it, she had to save the children under her custody and so on. Also psychopathological defects have to be taken into account. Then it is just a monster and not a woman. Things are the same in the case of the opposite exceptional situation: if a man becomes a woman's victim. He then has deserved it, perhaps he is a masochist, he surely has provoked her, most likely he has given her a reason through his boozing or adultery. Both cases give reason to transform the unexpected cases with ornamental accessories, by adding possibilities of interpretation in a way that the great line is kept,[5] stating that women are victims and men are culprits. The exceptions prove the rule.

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[5] For the cognitive mechanisms at work see Festinger, Leon: A Theory of Cognitive Dissonance, Evanston 1957.

3.2 Self- and extraneous perception

And yet another complication has to be observed. It is not only a fact that we look at extraneous behaviour with the help of those patterns of interpretation we are wearing in our hearts, but this also is true in regard to our own behaviour. Things we do and events that happen to us appear in our own eyes in the light of the meaning we give to this very behaviour and experience. If incidents are gender-specifically codified, they have, even in our own experience, bad chances for being recognized and classified correctly if they are unexpected and in this manner do oppose a person's gender identity. But since woman and victim match in a perfect way, for women it is not difficult at all to look at themselves as victims of male violence, even if they do not make these experiences public because the existence of the relationship and much more would be endangered. Hence for men it is already difficult in regard to their self-perception to admit to that they themselves have become a victim of a woman's violence, because it painfully irritates the gender identification, to which it definitely does not belong to become – as a man – a victim of a woman's violence. At this point of dissimulation and reinterpretation a result is singularized as an exception. One simply and unpretentiously inhibits and forgets or one escapes into depression, addiction or even suicide. The victims themselves as well as their potential addressing partners have to enter into self-reflection or communication and to develop empathy – not only in relation to the (male) victim digesting events that are even harder to harmonize with the male gender-role – but, in relation to the (female) culprit they also have to give into the fear and defence causing idea of a female aggression. As such, the complete force of cultural grown and, via socialization inflicted gender-role stereotypes, stand against the self and extraneous perception of men suffering as victims of female violence.

3.3 Experts and amateurs

And yet another complication has to be considered. It is not the case that the selective view on domestic violence can only be found among amateurs. We also find it among so called female and male experts, judicial and sociological representatives alike. Even the experts do not have at their command the objective view on the facts of domestic violence, while not only the amateurs are laboured under a misapprehension in their subjective prejudices and stereotypes. No, particularly the experts have a highly selective perception, which partly is caused by their education but partly also by an experience of life which always inclines in contact with a certain kind of victim – the female. This means that their experience is, based upon source material, also partially selective. In addition, the female experts are mostly stamped biographically and existentially by the feminist-movement, communalized in suitable networks and they occupy positions already contenting in their description and dedication to explicitly and exclusively help women and control men. So

the male and female experts are indeed predestined to look at domestic violence with a selective glance, because these cultural pre-shapings have, in a certain way, materialized in their biographical and working existence.[6]

4. Deficiencies and mistakes in perceiving domestic violence

We now slowly approach the purpose of the entire exercise. The pure fact that everyone only sees what he is carrying inside is in most cases widely trivial and indeed insignificant. And that is when facts we see are not disputed, do not excite anybody, do not lead to unjust or scandalous consequences. But this is different with regard to the selective looks on domestic violence anchored in the hearts. Because this issue is not only highly emotionally charged, but also because we are at least approximately able to compare what kind of an image the highly selective view reveals and what kind of an image the less selective view reveals. I say deliberately "approximately", for there is no non-selective view at all. But we are able to compare results of research which are not distorted or obliterated by many or few gender-specific interpretations. And if science is about to have any enlightening sense one at least generally has to be willing to accept that the highly selective view of domestic violence – and namely also the one of the experts – might be brutishly incorrect leading to results that one can not really want to maintain. If we now, armed with these pre-considerations, look at the social research base in regard to domestic violence it strikes us that we have to deal with two different types of empirical inquiries leading to the devious results that researchers fight about. On the one hand there are inquiries in the so-called clear-sighted sector, which are called "clinical" studies or "criminal-studies". These studies report – just like official criminal statistics do – on the base of altogether relatively few cases generally about clearly higher quotes for men as culprits and women as victims of domestic violence.[7]

What is measured in these studies is in fact a very "late" result of various appraisal and assessment procedures. A victim must have valued a certain "culprit's" behaviour subjectively as "violence", maybe even as "crime", and the victim must have, after balancing the pros and cons, decided to inform his social environment, a helping organisation or even the department of criminal prosecution about the incident.

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[6] Bock, Michael: „Natürlich nehmen wir den Mann mit". Über Faktenresistenz und Immunisierungsstrategien bei häuslicher Gewalt; in: Siegfried Lamnek/Manuela Boatcă (Hrsg.): Geschlecht – Gewalt – Gesellschaft; Opladen 2003, S. 179-194.

[7] See instead of many others Schweikert, B.: Gewalt ist kein Schicksal. Ausgangsbedingungen, Praxis und Möglichkeiten einer rechtlichen Intervention bei häuslicher Gewalt gegen Frauen unter besonderer Berücksichtigung von polizei- und zivilrechtlichen Befugnissen; Baden-Baden: Nomos 2000. For completely different results see Amendt, Gerhard: Scheidungsväter. Institut für Geschlechter- und Generationenforschung, Bremen 2004.

The other type of empirical inquiry operates with the earliest possible point of time for measuring. The aforementioned behaviour is here a) measured independently from the fact of being regarded (from the victim's or culprit's point of view) as "violence" or "criminal", and b) even extolled independently from the fact if the victim confided his experience of being victimized to the social environment, the helping-organisations or the department of criminal prosecution. These international existing inquiries are a matter of the so-called *dark sector (Dunkelfeld)* interrogations in which aggressive behavior is measured.[8] Generally these inquiries operate with a scale, the so called "conflict tactics scale" (CTS).

This scale contains a list of aggressive ways of behaviour presented to the questioned persons for answering. It encloses all grades of intensity in rising order beginning with verbal berating and insults (left our here) via slightly physical aggressions such as nudging or slapping in the face up to severe forms of physical aggression like scalding, beating and the use of weapons. Over the course of time the scale of the studies have been enriched with additional questions such as the consequences of the injuries, the motives involved or questions as to who started the aggressive action.[9] In relation to this research institution meanwhile compressed descriptions[10] do exist, as well as an empirical meta-analysis of the British criminologist John Archer.[11]

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[8] An outstanding example is Terrie E. Moffitt/Avshalom Caspi/Michael Rutter/Phil. A. Silva: Sex Differences in Antisocial Behaviour. Conduct Disorder, Delinquency, and Violence in the Dunedin Longitudinal Study. Cambridge, UK: Cambridge University Press 2001.

[9] The research continues. An additional confirmation of the hitherto existing findings results from Barbara Krahé: Aggression von Männern und Frauen in Partnerschaften: Unterschiede und Parallelen, in: Siegfried Lamnek/Manuela Boatcă (eds.): Geschlecht – Gewalt – Gesellschaft, Opladen 2003, p. 369-383. Besides that, differentiate instruments of evaluations are developed (Fals-Stewart, W./Birchler, Gary R./Kelley, L.: The Timeline Followback Spousal Violence Interview to Assess Physical Aggression Between Intimate Partners: Reliability and Validity, in: Journal of Family Violence 2003, p. 131-141) as well as different types of violence among partners are distinguished (Ridley, Carl A./Feldman, Clyde M.: Female Domestic Violence Towards Male Partners: Exploring Conflict Responses and Outcomes, in: Journal of Family Violence 2003, p. 157-169).

[10] Straus, Murray A.: The controversy over domestic violence. A methodical, theoretical, and sociology of science analysis; in: Arriaga X. B. & Oskamp S. (eds.): Violence in intimate relationships, Thousand Oaks, CA: Sage 1999, p. 17-44; Fiebert, Martin S.: References Examining Assaults by Women on their Spouses or Male Partners: An annotated Bibliography. Department of Psychology, California State University, Long Beach 2001; Lenz, H. – J./Meyer, C. (eds.): Männliche Opfererfahrungen. Dokumentation einer Tagung der Evangelischen Akademie Tutzingen vom 1.-3. März 2002 in Heilsbronn (Tutzinger Materialen Nr. 88), Tutzing 2002; Sticher-Gil, B.: Gewalt gegen Männer im häuslichen Bereich – ein vernachlässigtes Problem!? Beiträge aus dem Fachbereich 3 der Fachhochschule für Verwaltung und Rechtspflege (Polizeivollzugsdienst), Volume 35, Berlin 2003; Siegfried Lamnek/Manuela Boatcă (eds.): Geschlecht – Gewalt – Gesellschaft, Opladen 2003; Kelly, Linda (2003): Disabusing the Definition of Domestic Abuse: – How Women Batter Men and the Role of the Feminist State. Florida State University, Law Review –

Accordingly women and men display the CTS operationalized aggressive ways of behaviour almost equally, women even a bit more. Varieties in the research's design of the analysis included altogether 82 inquiries conducted in comparison only few deviations of this entire report.[12] In the noticed offences there is predominance for women (62% of the reported cases were women).[13] Another important report was that in most cases the violence was executed mutually by both partners.[14]

Both types of research measure "violence" at different points of time. So it is not to be wondered at, that they also result in gender-specific deviant quotes of culprits and victims. This is because women and men perceive, due to the above-mentioned different sociability of victim's experiences with gender-roles, objective equal behaviour differentially and assess it in a different manner.

Indeed for most female victims the step into communication and public is not easy. Shame about what has occurred in the partnership and fear of an uncertain future also restrain many women from this step. But if they finally overcome their hesitations (or if they consider it advantageous because of strategic reasons), this "outing" for women often means an improvement of their material, psychic, social and legal situation. This is why they, more often than men, choose to go public, searching for help among "experts" and courts. With men the entire situation appears totally different. Most male victims are already prevented by their gender-role-identity to see themselves as victim's of a (their) woman's violence, because this is not consistent with cultural codification of respected male identity. The own selective view makes it impossible for men to define a victim-experience as one and call it by its name. But even if they take the hurdles, they do neither find communicative resonance nor social or legal support. Nobody believes them; they are laughed at, in their social environment, at experts of both gender and at the court, because the eyes and hearts of the alien observers are ruled by imaginations and pictures that portray domestic violence as male violence. It is not understanding that male victims will find: on the contrary, the different sounding cultural codification produces the suspicion of having become a victim by one's own fault, having "deserved" it, while concerned men may choose between the roles of the "rascal" and the "fool". Men fear this kind of secondary victimization and the loss of a respectable male identity regarding themselves and their person.

Summer 2003; Lamnek, Siegfried/Ottermann, Ralf: Tatort Familie. – Häusliche Gewalt im gesellschaftlichen Kontext. Leske + Budrich 2004.

[11] Archer, John: Sex differences in aggression between heterosexual partners: A meta-analytic review; Psychological Bulletin 2000, p. 651-680.

[12] Archer, John (cf. note 11), tables 3 and 6, pages 657 and 660.

[13] Archer, John (cf. note 11), tables 4, 5 and 7, pages 658, 659 and 661.

[14] Evidence at Archer (cf. note 11), p. 653 f.

5. Critics and anti-critics

Against dark sector studies heavy scruples have already been advanced. This is in so far not surprising as these studies deeply affect the empirical and moral basement of an only on female victims and male culprits focused violence-preventing policy. Critics pass sentence mostly on the measure instrument, that is, the CTS (conflict tactics scale).[15]

Traditional criticism is that whereas women use aggressive ways of behaviour only in their defence or CTS would not consider this point as well as the degree of the caused injuries. But there is still another much more deeply rooted level of critics. CTS measures only aggressive acts but not violence itself. Only the subjective interpretation and attribution of aggressive acts as violence manufactures violence out of only physical and insofar trivial events. Only women would use this interpretation for their victim-experiences and because of this, only women can actually be suitable victims.[16] This interpretation is in so far right, as the victim-experience of women indeed becomes visible even with a cultural pre-formed look, as well in self-perception as in extraneous perception. But it is very easy to recognize that this argument is not suited to neutralize or minimize the findings of CTS. Because even if men did not call or asses the corresponding occurrences as "violence" or "crime", because among them the cultural codification does not provide for it, it does not mean that a) men do not interpret these occurrences at all and b) that they do not however feel these occurrences as massive violations of their physical and psychical integrity.

It has to be added that certain phenomenon of the exercise of power, such as the so called "psychic" or "structural" violence, which no doubt escape CTS, are by no means distributed obviously to the debit of women. Nobody can deny a woman's ability to tighten access to food, communication or sexuality, cut off contacts, damage the partner's reputation, hit him in the centre of his identity, humiliate and degrade him. Especially for women the police and the court are at their disposal. Systematic experience-research investigations of this phenomenon however are not acquainted.[17]

The methodical problem, that we know little about the way in which men digest[18] their victim-experience or how they deal with the special scenarios of psy-

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[15] For a detailed, even controversial, discussion concerning this question look into the literature cited in note 10.

[16] Hagemann-White, C.: European Research on the Prevalence of Violence against Women, in: Violence Against Women 2001, p. 732-759.

[17] Cf. however the "qualitative" study of Schenk, S.: Gewalt gegen Männer in heterosexuellen Partnerschaften – Deutungs- und Verarbeitungsmuster; Pädagogische Diplomarbeit an der Universität Münster 2002.

[18] At this point it has to be hinted at the utterance of therapeutical working authors, like those found in the volume of Lenz, H.-J./Meier, C. (eds.): Männliche Opfererfahrungen.

chic or structural violence of their female partners, is a part of the social problem itself. Because for men not only the institutional aid-centres are missing, but even the verbal re-assurance in a public discourse, in which one can socially anchor his experiences and simultaneously seize, name and understand and assimilate them. Men form of resonance in which they can transfer their suffering into language and communications. Thus the special force of the CTS-results becomes obvious. Because within answering these completely on behaviour reduced incidents the cultural selections interfere a lot less, the results reflect even more brightly the reality instead of what the concerned persons think about it or take it for.

However one may, using serious sources, say that the fact that domestic violence is "male violence against women and children" is an artifact of culturally pre-shaped selection and perception and because of this is nothing else but a myth that does not withstand reality. I myself do not at all, as already mentioned, consider the objections against CTS striking. But in the last analysis things do not depend upon this fact at all. Because even highly-reputed feminist female scholars, who interpret the state of research in a different way and favour instead studies of CTS rather the inquiry of Tjaden & Thoenness,[19] express on the state of research a substantially more differentiated and moderate approach. They accept, strictly speaking, that one has forgotten the male victims and that they deserve the same care, protection and compassion as the female victims.[20] And even if one takes the numbers of the bright-sighted sector from the police intervention-projects as a basis, one can see, that men become in a relevant degree victims of domestic violence and that a completely institutionalized ignoring of this phenomenon is neither empirically nor morally justified. If one proceeds from 50% or 20% of male victims is of little importance for the practical postponed questions – as long as one considers them at all.

6. Feedback between images and reality

For a better understanding of the experience-research findings I briefly want to put them in a greater criminological context, because they then start to speak in another way. Just like in other respects in the field of delinquency, namely in the case of domestic violence, the devious action of the individuals and the social re-

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Tutzinger Materialien Nr. 88, Tutzing 2002; Heinrich-Böll-Stiftung (ed.): Mann oder Opfer? Berlin 2002. Stanko, Elizabeth, A./Hoedell, K.: Assault on men. Masculine and Male Victimization; British Journal of Criminology 1993, p. 400-415 should be mentioned here, were it was shown that male victims view their experiences as victims from the beginning in a "male-frame" (see p. 403 ff.).

[19] Tjaden, Patricia/Thoennes, Nancy: Full Report of the Prevalence, Incidence and Consequences of Violence Against Women, National Institute of Justice, US Department of Justice 2000.

[20] See, for example, Gloor, D./Meier, H.: Gewaltbetroffene Männer – wissenschaftliche und gesellschaftlich-politische Einblicke in eine Debatte, in: Praxis des Familienrechts Volume 3, 2003, p. 526-547.

production of normative expectations are connected in self-reinforcing feedback-loops.[21]

Especially the supposedly reliable numbers about the exclusive concern of women are politically exploited by experts, media outlets and different representation boards and academies through to soccer clubs. By their intervention the majority of the entire theme is connected to archaic emotions of anger, indignation and revenge. To this the suited pictures and cases are added. Tears, blue eyes, disconcerted kids, knightly policemen and concerned moderators arrange an archaic myth, in which good and evil are clearly defined and clearly divided. Evil men terrorize and beat good women.

Fully automatically political pressure and the need for action arise, because scandalous conditions have to be removed. Laws have to be passed or enforced, intervention-projects have to be initiated, plans for action have to be defined and implemented, the curricula of social professions and the duty-instructions of the police have accordingly to be rearmed for the content of the myth can definitely gain a footing in the heads and hearts of those who at last decide about the alternatives of shrugging or investigating, suspending or indicting, acquitting or convicting. They have to know where evil can be found and what it looks like, and to convey upon it its righteous penalty. And decisive for the efficiency of this mechanism is the circumstance that it is not a question of having this or that opinion, but of looking deeply into the psychic apparatus and in the gender-roles in which emotions are anchored.

So in the end it is not surprising that male victims can not, even in regard of themselves, admit the truth of having become a victim of a woman (inner hurdles). They anticipate the lacking communicative, social and legal resonance, running a possible utterance of their victim experience idle or even letting it fall back on themselves (extraneous hurdles). On its way to the clear-sighted sector they are filtered at this or that spot so that we again receive a gender-specific obvious clear-sighted sector, and there we have a perpetual motion, in which numbers and a myth about men and woman reciprocally urge one another on.

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[21] Hess, H./Scheerer, S.: Was ist Kriminalität? Skizze einer konstruktivistischen Kriminalitätstheorie, Kriminologisches Journal 1997, p. 83-155. The use of this very theory in the field of domestic violence uses the labeling approach once again, which possibly possesses in the area of gender-specific discrimination a much higher potential of explanation as in the area of class-specific discrimination (cf. Bock, Michael: "Natürlich nehmen wir den Mann mit". Über Faktenresistenz und Immunisierungsstrategien bei häuslicher Gewalt, in: Siegfried Lamnek, Manuela Boatcă (eds.): Geschlecht – Gewalt – Gesellschaft, Opladen 2003, p. 179-194).

7. Counterproductive effects of a violence-preventing policy only addressed to female victims

The actual violence-preventing policy is not only selective in a sense that it fades out male victims and female culprits, but it is highly counterproductive in its effects even there, where it is indeed working. This is mostly true in cases of focusing on lasting effects. Measures of crisis-intervention are at this point definitely not sufficient or often have exactly those counterproductive effects, because they intervene with a great deal of intensity and with mostly destructive consequences into a complicated psycho-social event which mostly has a long prehistory. The problems involved, which in the last analysis escalate into grave forms of physical aggression or depressed scenarios of psychic or structural violence, are rooted in psychic features (such as: low self-confidence, need for control, "negative emotion"),[22] in determined patterns of behaviour (such as: destructive communication-types, learned pattern of violence), and in situational debit-factors ("life-events", alcohol), as well as in the lack of constructive overcoming strategies.

All this cannot be opposed with isolated repressive measures like reprimand of housings or criminal prosecution. The problematic pattern of female and male behaviour can effectively only be changed if the joint "history" of a conflict relationship is also jointly worked on. That it will not be possible in many cases is one thing, another thing is, if one pursues strategies, which systematically prevent this.[23]

All efforts for prevention and all forms of "systemic" therapy or mediation will most probably be nipped in the bud from the outset or will be made impossible, if a singular gender-division among the involved "experts" is from the beginning arranged between an evil male culprit and a good female victim, and if this group sees it only as their task to make this arrangement also legally and socially mandatory.

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[22] This construct existed according to the famous Dunedin-Study (cf. note 8) with men and women, as well as with culprits and victims of partnership-violence in like manners. Compare Moffitt, Terrie E./Robins, Richard W. Caspi, A.: A Couples Analysis of Partner Abuse with Implications for Abuse-Prevention Policy, in: Criminology and Public Policy 2001, p. 5-36.

[23] "Intimate relationships are dynamic and reciprocal, inherently ambivalent, often conflicted and contradictory. If they are abusive, certain behaviour or responses in one partner provoke a violent reaction in the other. Thus violence is a relationship issue, not a male issue. To presume that intimate violence is a one-way street or unidirectional… is a conceptual fallacy" (Lupri, Eugen: Institutional Resistance to Acknowledge Male Abuse. Paper presented at the Counter-Roundtable Conference on Domestic Violence, Calgary, Alberta, Canada, May 7, 2004, unpublished).

The existing help and counseling institutions show considerably different intervention concepts, but the official "line" of daily policy in this area is as ever rather doctrine and ideologically singularly addressed to the segregation and punishment of men, while a preventive need in regard to women is generally not even in the slightest degree considered.

The consequences are within sight. In the case of both partners entering into new partnerships the same mechanism will occur, because the existing measures of violence-prevention can only produce female winners and male losers, but no process of learning partners.

8. Conclusion

Men become, to a much larger extent than is customarily assumed, victims of their female partner's aggressive behaviour. The predominant image of domestic violence originated in a cultural pre-shaped look, the one-sidedness of which has only been slowly acquainted and will be even more slowly corrected. Men do not perceive themselves as victims or they stay silent because of fear of stigmatization and mocking. Female and male experts in social institutions and in the departments of criminal prosecution do not reckon with male victims and therefore do not see them at all or even hold them responsible for their own fate. This leads to a fatal circulation: because even fewer men than women find their way into communication, into social institutions or to justice. Statistics of these institutions show almost only female victims, leading to the fact stereotypes are reinforced with then leads to the fact that male victims would rather stay silent than expose themselves to the danger of a "second victimization".

Also not adequately considered are elderly citizens or children who fall victim to female "violence". Due to space constraints they have not been specifically mentioned in this paper, but the results in this regard complete the picture that altogether a gender-specific violence-preventing policy rules our society, in which male victims and female culprits are systematically faded out.[24] The selective view, which only notices men as culprits, has fatal consequences for children who are mistreated by their mothers, because in this regard neither they nor their fathers have a chance against the prejudices of the institutions in charge of granting attention to their grief. Indeed, every male and female police-officer knows how hard it is to withdraw a woman with children from circulation, because this easily may involve a difficult tail of juvenile help and child protection that one does not feel equipped for and in charge of. In the case of suspicion, arresting the man saves the need for trouble with those in command and with the lawyers. In this regard it is striking that the legislature overlooked mistreated children in their vio-

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[24] Cf. Müller, Joachim: Kinder, Frauen, Männer – Gewaltschutz ohne Tabus, in: Siegfried Lamnek/Manuela Boatcă (Eds.): Geschlecht – Gewalt – Gesellschaft, Opladen 2003, p. 507-532.

lence preventing laws as well as in regard of intervention-projects. Thus with maximum excitement and concern the atrocity of "domestic" violence and measures of abolition are proclaimed, though only women are referred to as victims, while children and other persons living in the same "home" are not.

From Crime Science to Detective Fiction
The Case of Agatha Christie

Daniel M. Vyleta

1. Crime Science and the Detective Novel

Once Sherlock Holmes arrived in Karlsruhe, he made his way through the thick throng of people towards the court building. Around him there milled a feverishly excited crowd that awaited the verdict with impatient suspense. Then, from somewhere over there, came a muffled moan that said 'guilty', and travelled on through the crowds. … Sherlock Holmes shook his head. Behind his angular forehead, strange thoughts. Up there a man found guilty of a capital crime, down here thousands of people who awaited the fate of the one who fought for his life in the criminal court's high-ceilinged auditorium.[1]

Connoisseurs of Sir Arthur Conan Doyle's *oeuvre* need not fear: the quote is not from some obscure and long lost story that would narrate the detective's German exploits. Rather it is part of the many hundred imitations of Conan Doyle's creation that flooded the continent in the early decades of the twentieth century. Here, at least, the author, Albert Lichtenstein, made no attempts to hide the story's true provenance, excusing his choice of main character by stating that Holmes was 'after all the most famous type [of detective],' and would therefore best suit his purposes.[2] In fact the story was part of a scholarly work on crime fiction entitled: 'Of the nature and origins of the present-day detective novel'. It was published in Munich in 1908 as part of a series entitled *Grenzfragen der Literatur und Medizin* – "Topics that border literature and medicine". What exactly was it doing there?

The short answer is that the author thought the overlap between medicine – especially psychiatry – and crime fiction significant, and also maintained that good crime fiction had an educative role to play. It could lay bare the criminal's psyche,

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[1] Albert Lichtenstein, Vom Wesen und Werden des heutigen Kriminalromans, Grenzfragen der Literatur und Medizin, Heft 7 (Munich 1908), 52. All translations are my own unless otherwise indicated.

[2] Ibid.

explain his actions with reference to his mental organisation and, given the close relationship of crime and degeneration, explain to the reader those degenerative states that fall under psychiatry's area of expertise (ethical and mental underdevelopment, epileptic equivalents, states of unconscious action)…[3]

A page later he states:

Here I locate the educative value of detective fiction: that it demonstrates in what sort of web of accusations and evidence one can get caught up, how stupidities and hasty acts that everybody commits from time to time can grow into crushing proof of one's guilt. […] Before a major trial that decides over life and death, give every juror, every judge and prosecutor a good crime novel, so that they learn something about the defendant's psyche.[4]

What is striking about these two proposed benefits of reading crime fiction,[5] is that they stand rooted in quite distinct and frequently opposed conceptions of criminality. The first quote speaks of the close connection between degeneration and criminality: its roots lie in a criminological science that describes the criminal as physiologically or psychologically different from the main population and that was dedicated to identifying and cataloguing this difference. The second quotation is concerned about the errors of the judicial system, caused by an inadequate interpretation of both witness statements and material evidence, and a flawed psychological evaluation of the defendant who is here implicitly held to be a "normal", rational actor. This view of crime owed much to an Austrian scholar named Hans Gross who, just before the turn of the century, had inaugurated a science he called 'criminalistics'.

The story of criminology is well known and will require but a bare sketch: throughout the nineteenth century attempts had been made in various European countries to point to organic origins for criminal disposition.[6] In the 1870s a version of this line of thought found coherent theoretical expression in the work of Cesare Lombroso who proposed that criminals were evolutionary throwbacks who could be identified through a number of anatomical and psychological markers.[7] The details of Lombroso's work were quickly dismissed in most countries apart from his native Italy, and models in which the forces of milieu and heredity inter-

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[3] Ibid, 49.

[4] Ibid, 50.

[5] One should take note, however, that according to Lichtenstein bad crime fiction can have quite the opposite effect, that is to dull the minds of the great unwashed masses. Cf. ibid., 47.

[6] On the history of nineteenth century criminology pre-Lombroso, see: Daniel M Vyleta, 'The Cultural History of Crime,' in: Stefan Berger (ed.), The Blackwell Companion to Nineteenth Century Europe (forthcoming: London 2005), Richard Wetzell, Inventing the Criminal, 17-72.

[7] On Lombroso, see: Mary Gibson, Born to Crime, Cesare Lombroso and the Origins of Biological Criminality (Westport, Ct. 2002).; David G Horn, The Criminal Body, Lombroso and the Anatomy of Deviance (London 2003).

acted to produce criminals – above all, perhaps, the theory of degeneration – became prominent.[8] By the early years of the twentieth century, a "medicalisation" of the discourse of crime was taking place: doctors, especially psychiatrists, were replacing jurists as the primary experts on the issue of crime.[9] From this perspective, the article's exploration of the 'border topics' between medicine and detective fiction is perhaps less astonishing than it at first appears.

The discipline of criminalistics originated in a critique of the criminological assumption that criminals were necessarily 'different' from the main population and reflected anxieties about the pit-falls of a judicial system that relied on laymen both for its evidence and for its verdicts.[10] Consequently it concentrated on the process of investigating crime, including both the securing and evaluation of physical evidence and the psychological assessment of witness statements, court-room dynamics and suspect interviews. The introduction to the 1911 English translation of Hans Gross's *Criminal Psychology*, first published in Graz in 1898, put it thus:

> The psychology of the judge enters into the consideration as influentially as the psychology of the offender. … There is the problem of evidence: the ability of a witness to observe and recount an incident, and the distortions to which such report is liable through errors of sense, confusion of inference with observation, weakness of judgement, prepossession, emotional interest, excitement, or an abnormal mental condition.[11]

In other words, Gross's psychology amounted to the 'phenomenological' study of normal, rational actors, whose desires, emotions, and physical responses to anxiety etc. could be interpreted given the right observatory experience. Criminals and non-criminals were here subjected to the same gaze and assumed to be subject to the same rules of psychology. If the ideological preoccupations of criminology communicate a bourgeois attempt to control society by "othering" undesirables in a manner Foucault has described,[12] the criminalistic project was fuelled by anxiety about its inability to control the judicial process and highlights the dichotomy between the bourgeois expert who was capable of rooting out crime thanks to his spe-

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[8] See especially: Robert Nye, A. Nye, Crime, Madness and Politics in Modern France, The Medical Concept of National Decline (Princeton 1984), 98 ff.

[9] See: Richard F Wetzell, 'The Medicalization of Criminal Law Reform in Imperial Germany', in: Norbert Finzsch & Robert Jütte (eds.), Institutions of Confinement, Hospitals, Asylums, and Prisons in Western Europe and North America 1500-1950 (Cambridge 1996), pp. 275-83.

[10] No academic history of 'criminalistics' exists to date, though a number of scholars have worked on various forensic and identification technologies that belong to this field of inquiry. For an anecdotal survey of criminalistics, see: Jürgen Thorwald, Das Jahrhundert der Detektive, Weg und Abenteuer der Kriminalistik (Zurich 1964).

[11] Hans Gross, Criminal Psychology, trans. Horace M Kallen, introd. by Joseph Jastrow (London 1911), p. x.

[12] See especially Michel Foucault, Discipline and Punish, trans. A. Sheridan (New York 1977).

cialist education and the ignorant masses whose clumsiness and misperceptions fostered criminal activities.[13]

In his study of detective fiction and its relation to medicine, Lichtenstein overtly acknowledged his acquaintance with and debt to Gross's work. He did not, however, resolve the tension between the two conceptualisations of criminality that he invoked: it remains unclear whether the proper subject of the detective yarn is the abnormality of the detective's antagonist, or the depiction of the intricacies of the investigative process, psychological and other. His own attempt at a fictionalisation of the famous Hau trial with which I started the paper further illustrates this conceptual confusion. In the first half of this fictional critique of a real court case, Sherlock Holmes proves mathematically that the accused could not have committed the crime by analysing the trajectory of the gun shot he is meant to have fired, by calculating the discrepancies of time resulting from the suggested escape route and by unmasking a key witness as unreliable.[14] In the second half Holmes provides equally impressive arguments for the defendant's congenital abnormality: he stands revealed as a degenerate who cannot be held responsible for his acts.[15] One is reminded of the summing up delivered by Dmitri Karamazov's defence council, Fetyukovich, in Dostoevsky's *Brothers Karamazov*: the esteemed Fetyukovich proves first that his client simply *could not* have murdered his father and then, that even if he *did* murder him, that it wasn't his fault.

If Lichtenstein's account is confused, it may nevertheless be worthwhile trying to trace the connections between fictions of crime and the two sciences of crime sketched above. From its very beginnings criminology displayed an interest in using fictional accounts of crime for its own ends. Already in Lombroso one finds a tendency to scour the world of literature in order to use its descriptions of deviants as evidence for various proposed theories. This step was possible due to a dual assumption: the first, that fiction could and wished to reflect reality as it truly was, and second, that a writer's intuition could apprehend scientific truths about man even if they had no rigorous scientific framework for whatever they intuited. Lombroso's author of choice was Zola: his naturalism, explicitly conceived as a quasi-scientific review of the ills that shaped contemporary French society and tied to a materialist anthropology, constituted a neat equivalent to Lombroso's own project. Indeed the two authors were using similar sources – e.g. phrenology and degeneracy theory – for their respective intellectual projects. Eventually direct exchange between the two authors took place. Thus *La Bête Humaine* (1890) reads like a primer for a whole host of criminological theories, while in turn serving as illustra-

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[13] One should note, in passing, that Gross did accept that certain criminals – above all habitual petty criminals and vagrants – were degenerative. See: Hans Gross, 'Degeneration und Deportation', in: Gesammelte Aufsätze Vol. II, 70-76.

[14] Lichtenstein, Vom Wesen, 56-8.

[15] Ibid, 58-60.

tive evidence in several of Lombroso's late works, most notably his *La donna delinquente* from 1893.[16]

Moreover, it was something of a psychiatric and criminological sport around the turn of the last century to diagnose famous literary figures who were involved in crimes (and sometimes their authors, who were not) according to the new medical insights into deviance. Ibsen, Schiller, Goethe and others were subjected to this strategy, with experts quarrelling over whether *The Robber*'s Karl Moor was paranoid or merely degenerate, and whether his brother could be technically classified as a 'moral idiot'.[17] Even the potential abnormality of Jesus was queried in this fashion, whose behaviour was deemed sufficiently deviant to warrant such an investigation.[18] Freud's comments on Oedipus and Hamlet do, of course, also belong in this tradition with the important difference that they did not serve to mark these characters as substantially deviant from the behavioural norm.[19]

None of these texts belonged to 'whodunit' fiction proper. Above all this might have been a function of the genre's tendency to focus upon a rational investigator whose antagonists were apprehended not due to the diagnosis of their anthropological or psychological abnormalities, but through inductive logic that relied on their being rational actors themselves. One can feel this tension running through Lichtenstein's article: he is pleased to note that Poe was a 'psychopath' and an 'epileptic' and that Dupin, too, could be classified as a sick man; similarly pleased to classify Conan Doyle's 'Mariarty' [sic!] as a 'born criminal'.[20] When it comes to discussing why Conan Doyle and Poe's fiction serve as genre models, however, this abnormality is carefully ignored. Indeed, it is the 'Purloined Letter' that is held up as the paradigm example for detective fiction, precisely because it hinges on a piece of psychological analysis – here, however, we cannot but note that the psychology in question (Dupin's assessment of his adversary's mind and consequent identification of his most likely hiding place for the stolen letter) is the sort of ap-

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[16] Cf. Cesare Lombroso and Guglielmo Ferrero, Criminal woman, the Prostitute, and the Normal Woman, trans. Nicole Hahn Rafter and Mary Gibson (Durham, NC 2004), 163. The same work contains several references to Zola's treatment of prostitution in Nana.

[17] Erich Wulffen, Kriminalpsychologie und Psychopathologie in Schillers Räubern (Halle 1907); review of ibid. by Paul Näcke in: Archiv für Kriminalanthropologie und Kriminalistik Vol 27 (1907), p. 347. See also: Paul Julius Möbius, Über das Pathologische bei Goethe (Leipzig 1989); Martin Richard Möbius, Steckbriefe, erlassen hinter dreißig literarischen Übelthätern gemeingefährlicher Natur (Berlin 1900); Wilhelm Weygandt, Die abnormen Charaktere bei Ibsen (Wiesbaden 1907); Erich Wulffen, Ibsens Nora vor dem Strafrichter und Psychiater (Halle 1907).

[18] Schäfer, Jesus in psychiatrischer Bedeutung (Berlin 1910).

[19] Sigmund Freud, The Interpretation of Dreams, trans. Joyce Crick (Oxford 1999), 201-4.

[20] Lichtenstein, Vom Wesen, 18.

plied, everyday psychology Gross described in his *oeuvre* rather than the psychology of pathology.[21]

It should here be noted that the lack of compatibility between criminological knowledge and early detective fiction not primarily a function of the need to make crimes accessible for the reader, i.e. the need to avoid the use of specialist knowledge that would debar the readers from the feeling that with enough thought they could have anticipated the solution themselves. This only became crucial in the 'clue-puzzle' literature of the 1920s onwards in which readers were actively invited to shadow the investigative process and challenged to beat the detective to "it". In an earlier tradition expert knowledge was permissible – indeed central to the genre – albeit expert knowledge that was primarily of a criminalistic kind. Rather, the problem was that once a reader was trained in the anthropometric/psychiatric gaze required of the criminologist, there would be no sense of mystery left: in this epistemological regime crimes could be solved with no reference to all the details and clues that defined the detective as one who can see order in chaos. In other words, the solution to the case could not already be announced in a suspect's anthropological deformities that belonged to a closed semantic system in which the same symptoms always pointed to the same criminal typology.[22]

The tension between wishing to accommodate contemporary psychiatric and criminological knowledge and being unable to do so because this would derail the genre conventions on which the fiction was built, shows up in various stories and novels themselves. In Conan Doyle, for instance, it is noticeable that those yarns which are specifically dedicated to the introduction of a master criminal – who is often described in physical and psychological terms that make a criminological "reading" plausible – are consistently stories that do not contain a real puzzle element. This is true for the 'Final Problem' (1891), as it is for 'The Adventure of Charles Augustus Milverton' (1899) – both are at heart suspense and adventure stories, since there can never be any doubt about the identity of the villain. There do exist a few exceptions in which credible attempts were made to tell "proper" detective stories that were compatible with a criminological understanding of criminals such as Sangiacomo Olivieri work that was modelled around Lombroso's theories. These, however, were too stale to ever stand a chance of becoming mainstream fare. Crime fiction only learned how to effectively co-opt a criminological

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[21] Ibid., 9-11.

[22] Ronald R Thomas' Detective Fiction and the Rise of Forensic Science (Cambridge 1999) argues in a series of case samples that criminological knowledge was appropriated by nineteenth century detective fiction. In my view, his study conflates criminological and criminalistic knowledges and thus obscures their epistemological differences. It also overestimates the degree to which continental criminological tropes were received and accepted in nineteenth century Britain. For a discussion of the epistemological underpinnings of nineteenth century detective fiction (especially Poe and Conan Doyle) see also: Lawrence Frank, Victorian Detective Fiction and the Nature of Evidence, The Scientific Investigations of Poe, Dickens, and Doyle (New York 2003).

perspective in the so-called 'psychothriller'. This subgenre emerged in the work of 'Anthony Berkely' [Cox] a.k.a. Francis Iles in the early 1930s and came into its own in the 1940s and 50s in the work of such writers as Margaret Millar.[23] Here the criminal's identity was not the central mystery; rather the writer's project was precisely to explore his/her psychopathology, thus converting the whodunit into the whydunit.

Criminalistics – that knowledge of crime which focused on the investigative process – was naturally far more compatible with the mystery, because both focused on *clues*. That is not to say that the fictional appropriation of specialist criminalistic knowledge was an entirely smooth affair. Mistakes – frustrating to Gross and his followers[24] – were made: Sherlock Holmes in 'The Adventure of the Norwood Builder' dismisses fingerprints as useless,[25] and as late as 1923 Agatha Christie's *Murder on the Links* mistakes dactyloscopy for the Bertillon identification system.[26] Despite such blunders it was enormously popular in crime fiction from the turn of the century onwards to include highly technical criminalistic knowledge.[27] This was primarily knowledge to do with murder weapons, crime sites and material evidence and was not infrequently gleaned from the pages of Gross's publications themselves.[28] His books had quickly been translated and disseminated throughout most of Europe during the opening decade of the twentieth century, even as English (and some French) detective fiction flooded Germany and the Habsburg Empire. Poisons, gunshot analyses, blood-splatter patterns; the importance of accurate sketches of the crime scene; electrical gimmicks and the powers of suggestion – they all made it into fiction, in more or less accurate fashion. Sometimes this love for criminalistic expertise did in fact overtake the formal conventions of the detective yarn and came to dominate the fiction: the best example for this are the novels by R. Austin Freeman from the 1910s. Freeman inverted the structure of the mystery story: the first part depicted the crime as it was being committed; in the second part it was solved with the help of a wide varieties of

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[23] Stephen Knight, Crime Fiction 1800-2000, Detection, Death, Diversity (New York 2004), 100-1, 146 ff.

[24] Gross overtly critical of detective fiction thinking it disseminated myth and misinformation. Cf. private letter cited in Lichtenstein, Vom Wesen, 48-9.

[25] Cf. Ian Ousby's discussion of the use of science in Holmes stories in: Bloodhounds in Heaven, The Detective in English Fiction from Godwin to Doyle (Cambridge, Mass. 1976), 152-5.

[26] Agatha Christie, Murder on the Links (1923) in: The Complete Battles of Hastings Vol. 1 (London 2003), 200.

[27] This goes as far back as Conan Doyle's 1887 A Study in Scarlet, in which Holmes is credited with the authorship of criminalistic works of a nature that Gross and followers would soon make it their business to produce. One should also note that there is a direct reference to Gross in Arthur Conan Doyle, 'The Adventure of the Dancing Men' (1903).

[28] Cf. Martin Green, Mountain of Truth, The Counterculture begins, Ascona 1900-20 (London 1986), 21.

technical analyses, utilising anything from anatomical expertise to the criminalistic technology of reconstructing the murderer's soles from footprints he had left behind.[29] It was not until the rise of clue-puzzle mysteries that this sort of appropriation of criminalistic expertise went out of fashion, because it stood in the way of the reader's participation in the mystery: the expert in cigarette ashes and criminal cant was to be displaced by one whose expertise focused on the hearts of men.

2. Agatha Christie's Clue Puzzles and Crime Science

One might well ask at this point whether there was any interaction between the two types of knowledge about the criminal as crime fiction continued to develop, as well as what role the *psychological* ideas of Gross's programme might have played on the fictional stage. Both questions are large ones, and I will here address them by considering the work of Dame Agatha Christie. The choice is not entirely random: Christie wrote over long decades and perfected a genre which on the surface was least likely to utilise criminological or technical forensic knowledge. She started her writing career at a time when English scholars were still very busy digesting both continental criminology and criminalistics: their serious reception dates from the teens of the twentieth century, and Christie made her novelistic debut shortly after, with a novel she wrote during the Great War. Christie also has the additional benefit of having provided us with her own musings on crime fiction as well as on the nature of criminality in her *Autobiography*, published in 1977 but compiled during the 1950s and 60s.

In fact, Agatha Christie's *An Autobiography* is not coy about her opinions concerning the nature of crime. Somewhat surprisingly, perhaps, the book would lead one to expect her to favour a criminological approach to writing of criminality, perhaps something along the lines of the above mentioned psychothrillers. 'As a result of writing crime books one gets interested in the study of criminology,' she states in the opening of a key section that outlines her beliefs concerning the motivations and characteristics of criminals.[30] Here she states unequivocally that there exists such a thing as a "born" criminal, and that such born criminals are primarily to be found among murderers:

> There seems to be no doubt that there are those, like Richard III as Shakespeare shows him, who do indeed say: 'Evil be thou my Good. [...] I can suspend judgement on those who kill … I am willing to believe that they are made that way, that they are born with a disability, for which, perhaps, one should pity them; but even then, I think, not spare them … We have taken the lives of wolves in this country; we didn't try to teach the wolf to lie down with the lamb.[31]

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[29] R Austin Freeman, The Singing Bone (1912). Earlier work by Freeman already employs lots of criminalistic detail, without yet inverting the story structure.

[30] Agatha Christie, An Autobiography (London 1977), 452.

[31] Ibid., 453.

Interestingly she goes on to describe those 'tainted with the germs of ruthlessness and hatred …' in terms reminiscent of Lombroso's atavistic criminal, i.e. as primitive throwbacks who are unsuited for civilisation ('what we regard as defects were once qualities. … the evil man nowadays may be the successful man of the past') before recommending that medical experiments may be the best way for society to put such man-beasts to wholesome use.[32]

Significantly, however, Christie did not practice what we here find her preaching. After all the Queen of Crime is famous not for psychothrillers but for the clue-puzzle, that most English of detective genres that crucially depends on the identification of a criminal simply on the basis of facts that are openly accessible to the reader, as well as on the accurate evaluation of motive, i.e. on a sort of psychology that assumes rational self-determination and hence is quite distinct from the psychiatric search for deviance that dominated criminology post-Lombroso.[33] In order to examine this apparent discrepancy further, we need to consult Christie's stories. I will here primarily focus on those written in the 1920s and 30s though some reference to later works will be made.

Working through Christie's fictional output with an eye towards her position regarding criminological and criminalistic knowledge, one notes several tendencies. The first is a penchant, ritually repeated, to mark criminals as anatomically or psychologically deviant in the abstract. Hardly a work of Christie's does not have a character float the possibility of a "homicidal monomaniac", usual as a red herring.[34] In the novels and stories from the 1920s the spectre of degeneracy, or traits of hereditary "weakness" are routinely raised.[35] As Freudian language became more and more widespread throughout Britain, references to "neurosis" also became more and more frequent in Christie's work.[36] Poirot himself repeatedly and from as early on as 1923, refers to a 'deformation of the grey cells' that marks

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[32] Ibid., 454.

[33] For discussions of the construction and markers of Christie's version of clue-puzzles, see: Dennis Porter, The Pursuit of Crime, Art and Ideology in Detective Fiction (New Haven 1981), 134-47; Stephen Knight, Form and Ideology in Detective Fiction (London 1980), 107 ff.; Pierre Bayard, Who killed Roger Ackroyd?, The mystery behind the Agatha Christie mystery, trans. Carol Cosman (New York 2000), parts I and II.

[34] E.g.: The Big Four (1927) in: The Complete Battles of Hastings Vol. 1, 360; Peril at End House (1932) in: ibid., 563; And then there were none (London 2003 [1939]), 72, 135, 144, 165; The ABC Murders (London 2001 [1936]), 80; Lord Edgeware Dies (1933) in: The Complete Battle of Hastings Vol. 2 (London 2004), 84.

[35] E.g.: The Mysterious Affair at Styles (1920) in: The Complete Battle of Hastings Vol. 1, 98; The Murder of Roger Ackroyd (London 2002 [1926]), 42, 368.

[36] E.g.: Peril at End House, 548; Death on the Nile (1937) in: Poirot in the Orient (London 2001), 399; Five Little Pigs (London 2001 [1941]), 43, 115. See my comments on Freudian language towards the end of this paper.

murderers.[37] Christie was thus partaking in a pop-scientific version of the criminological knowledge of deviance that we also find expressed in her *Autobiography*. At the same time it is acknowledged, however, that this congenital deviance has no bearing on the detective process: 'It is the affair' Poirot states in *Peril at End House* (1932) 'for the doctor', not the detective.[38] In other words, the clue-puzzle is not affected by these hidden anthropological factors.

Secondly, there is a dismissal, from Christie's second novel onwards, of physical clues and hence of criminalistic expertise pertaining to these. Not fingerprints and blood tests but 'psychology' is what solves crimes, as Poirot (and in slightly different language Miss Marple) reiterates time and again.[39] Scholars have on the whole been dismissive of the claim, pointing out that nothing comparable to clinical psychological analysis ever takes place in Christie's work.[40] Indeed the word 'psychology' seems to have a somewhat unstable meaning here: at times, for instance, it refers to the mental disposition – the temperament if you will – of a given racial group. Slavs, 'Latins', Gypsies and above all Jews are singled out in a variety of novels and judgement is passed about their "natures".[41] Elsewhere the word 'psychology' can stretch to refer to the powers of heredity to shape disposition within a specific family.[42] Most frequently, however, 'psychology' refers to the study of motive and motivation via close observation, i.e. to a 'normal-psychological semiotics' in Gross's phrase.[43] In *Five Little Pigs* (1942/3), for example, the entire novel is structured around the premise that the various witnesses' true feelings about the murder victim will be involuntarily disclosed in their respective accounts of the events surrounding the crime, and hence that these can be reconstructed by an attentive reader.[44] Within this understanding of the term there is a certain amount of tension as to whether one is assessing a specific personality or universally human psychological traits that are simply refracted differently through

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[37] Murder on the Links, 221; The Mystery of the Blue Train [1928] in: Poirot, the French Connection (London 2003), 326. Other characters also voice comparable opinions, e.g. that crime is a matter of 'internal gland secretion'. Lord Edgeware Dies, 85.

[38] Peril at End House, 530.

[39] For the emergence of this theme, see: Murder on the Links, 179, 211.

[40] See: Stephen Knight, Form and Ideology, 111.

[41] E.g.: The Mysterious Affair at Styles, 15, 112, 123; The Murder of Roger Ackroyd, 209; Lord Edgeware Dies, 100; Death on the Nile (1937) in: Poirot in the Orient, 365; They Do it with Mirrors (1952), in: The Miss Marple Omnibus Vol.2 (London1997), 600, 628-31.

[42] The Mysterious Affair at Styles, 166; Murder on the Links, 303.

[43] Hans Gross, Criminalpsychologie (Graz 1898), 51.

[44] Five Little Pigs, 56, 62, 73, 86, 96. In The Big Four (1927) the premise is inverted and it is the criminals struggle to reconstruct the personalities of the Poirot and Hastings; once again their exertions mirror the reader's own endeavour (409, 437, 451).

an individual.[45] Either way, most of Christie's plots hinge on the discovery of dissimulation, or play-acting of some kind or another. Within the genre of the "Manor House Murder" this is hardly suprising – after all at least one person on the novel's list of interviewees always has to be lying – but it is worth noting that this is also one of the key roles "psychology" plays in Gross's *oeuvre*.[46]

Hand in hand with this endorsement of a psychological model reminiscent of the Grossian mode, there goes, in Christie's detective fiction, an overt hostility to a clinical psychology that threatens to reduce culpability to a matter of biological or psychological accident. This is most evident, perhaps, in *They Do it with Mirrors* (1952) that is set in a psychiatric hospital for juvenile delinquents, though earlier works such as *Murder at the Vicarage* (1930) already anticipate this derision.[47] There are exceptions, of course. It is pretty clear, for instance, that one is meant to think of *And then there were none*'s Judge Wargrave as 'morally insane' (a late nineteenth century notion) who, from early childhood, was possessed by a 'mania' to kill.[48] In most novels her genre however demands that 'everyone is a potential murderer', an idea that she makes explicit in her final Poirot novel, *Curtain*, in which both Hastings and Poirot are seduced to kill someone (the latter successfully).[49] Similarly, *Murder on the Orient Express* (1934), in which all witnesses are also culprits, strongly invokes this idea.

How then is one to explain the discrepancy between Christie's private preoccupations about criminals whose deviance was physiologically rooted and her fiction that relied on the psychological normality of its culprits? Was Christie simply a victim of her genre, forever condemned to ridicule her private beliefs, or was she aware of the tension between rival models of criminality and able to put it to use for her own ends?

One sort of answer to these questions can be provided through a close study of the 1936 *The ABC Murders*. *The ABC Murders* is a remarkable book because its theme – serial murder – seems to immediately challenge at least two key genre conventions of the clue-puzzle: one, that the act of murder and the process of inves-

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[45] See, for example: Murder on the Links, 234; The Murder of Roger Ackroyd, 124-5; Lord Edgeware Dies, 9-10, 99; Five Little Pigs, 56, 96. Occasionally there are also allusions to judging individual psychological reactions according to the person's class and gender. Cf. Peril at End House, 575; Five Little Pigs, 147, 230.

[46] On the links between this model of psychology and the bourgeois concept of the autonomous self, see: Stephen Knight, Form and Ideology, 124.

[47] Cf. ibid, 124-30. They do it with Mirrors, 532, 614; Murder in the Vicarage (London 2005 [1930]), 56 ff.

[48] And then there were none, 301-3. They do it with Mirrors also at times implies that the juvenile delinquents, while not responsible for the murder, are "naturally criminal" (649); The Mystery of the Blue Train includes a throwaway line that the criminal is a 'killer by instinct' (368).

[49] Curtain (published in 1975, but written in 1946). Cf. Pierre Bayard, Who killed, 113 ff. See also Death on the Nile, 249.

tigation be consecutive rather than overlapping, and two, that murder is committed for some commonsensical reason everyone can understand, i.e. almost invariably out of greed.[50] Indeed, in two scenes Poirot is confronted with an "alienist" – i.e. a psychiatrist; Christie's use of the antiquated term is itself interesting – who waxes lyrical about the inner, if perverse logic, of 'mania'.[51] In order to add to the sense that the book signals a departure from the genre, Christie juxtaposes the third person narrative of the suspected killer, the epileptic Alexander Bonaparte Cust, with the first-person investigative account narrated by trusty Hastings. This third person narrative leaves little doubt as to the suspect's confused mental state. In truth the man has nothing to do with the killings that are perpetrated by a psychologically normal actor who wishes to obscure his motive for doing away with a rich brother by committing an apparently senseless series of murders. The suspect, Alexander Bonapart Cust, is merely a stooge who, through the powers of suggestion, has been talked into believing himself guilty and thus has been turned into the perfect scape-goat by the cunning murderer.

What we have here, then, is above all a game with reader expectations. Christie was relying on the fact that (like herself) readers were aware of criminological narratives of abnormal murderers – however bastardised – and used these preconceptions to veil the true crime which is discovered by Poirot's criminalistic method of inquiring into normal psychological motives for crime. In other words, Christie here *enacts* a dynamic that usually is merely *described* in many of her other novels: usually it is other characters who float a theory of a 'homicidal maniac' that the reader recognises as part of contemporary parlance but also has every reason to distrust, since it is never the detective who voices this suspicion. Here, by contrast, it is the reader him/herself who is seduced into believing in a criminological account of the ABC killings.[52] At the same time, for aficionados of the genre, the prime suspect's abnormality is itself a hint that he *cannot* be the murderer, precisely because if he were this would violate the very fabric of the clue-puzzle mystery. In clue-puzzles all irrational acts must be proven to have rational purpose after all. This logic is already present in Christie's debut novel in which the seemingly irrational hatred one character bears for another is actually a clue to her complicity with (and love for) the murderer.[53]

We find, then, that Christie is aware of the tension between criminological narratives such as those she voices in *An Autobiography* and her genre's demands, and

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[50] Cf. Porter, The Pursuit of Crime, 196; Knight, Form and Ideology, 114, 124. The ABC Murders makes this disruption of the genre explicit. At one point Poirot complains that the rules of questioning no longer apply if the murders are committed by a maniac (64).

[51] The ABC Murders, 80-2, 125-6.

[52] Less overtly, A Pocket Full of Rye (1953) and A Caribbean Mystery (1964) emulate this strategy.

[53] The Mysterious Affair at Styles, 98.

not above making them the centre stage in the cat and mouse game between author and reader that characterises the genre. [54] At the same time, however, we find Christie carving out a space for herself in which a certain kind of criminal abnormality can be reconciled with the normal psychological semiotics required of the clue-puzzle. This is achieved through a quasi-Freudian gloss that permeates *The ABC Murders* and many of her other novels. The perpetrator is normal, but he is characterised by an 'inferiority complex' and an emotional immaturity that other Christie's killers share.[55] There is, in other words, a childhood story to be told about many of Christie's killers that sheds light on their fall from grace. At the same time, the epileptic Alexander Bonaparte Cust is explicitly marked as a victim of his overbearing mother – i.e. his abnormality is both congenital and acquired in childhood. Quasi-Freudian themes thus allow Christie (who elsewhere was not above ridiculing Freudian insights even as she plundered them[56]) to create culprits who were both "normal" and "abnormal" and to place them into a continuum that connected them, however tentatively, to a true deviant such as Cust. *Curtain*'s killer provides another good example: on the one hand his mind is systematically associated with Poirot's own, as he is locked in a deadly combat of wits, on the other a childhood narrative is inserted late in the book that highlights once again the presence of a dominant mother along with the child's delicacy and physical handicap.[57] Once again Christie thus creates a murderer who walks the line between pathology and normalcy, even as the book affirms the notion that all persons are capable of taking another person's life.[58]

3. Conclusion

This paper has tried to relate the narratives of crime endorsed by detective fiction to two rival conceptions of criminality that emerged in the Fin-de-Siècle. It has argued that detective fiction could only make limited use of criminological knowl-

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[54] I.e. the clue-puzzle asks readers less to investigate the crime that it posits as its central mystery, than to decode the means by which the author tries to trick them and thus solve the mystery through their superior expertise of the genre and its possibilities.

[55] The ABC Murders, 75, 308-12; Five Little Pigs, 335.

[56] E.g.: Peril at End Hose, 581, 623; Death on the Nile, 224, 253, 325. Another good example for this dual dynamic is Five Little Pigs in which a witnessed is playfully (and wrongly) marked as a 'repressed spinster' (43) but Poirot's solution to the riddle makes use of an associative technique that engages the 'subconscious mind' (323).

[57] Curtain, 745.

[58] There was yet another way in which Christie bridged the gulf separating abnormal criminals and the genre convention that designates everyone to be a potential murderer: habit. In her novels she repeatedly invokes a psychological mechanism through which those of normal psychological disposition become habituated killers once the initial moral inhibitions have been surmounted. For its most explicit exposition, see *Lord Edgeware Dies*, 162.

edge, while it absorbed aspects of criminalistic knowledge very rapidly. It has further argued that the use made of 'psychology' in clue-puzzle fiction such as Christie's novels should be understood in criminalistic terms. Using the example of Agatha Christie, this paper has also suggested that with the growing dissemination of popular versions of criminological knowledge, this knowledge could itself be utilised as a plot device in detective fiction. Finally, it has shown that Freudian language could be used to mediate the gulf separating criminalistic and criminological conceptions of criminals. How this gulf was mediated in other fields and genres – e.g. by police professionals, and judges, in newspaper reports and cinema – awaits further investigation.

The Ideological Underpinnings of Prisons and their Inmates from Charles Dickens' Novels to Twentieth-Century Film

Jan Alber

1. Introduction

According to O'Sullivan, fictional prison narratives may generate "social and cultural understandings of the legitimacy or illegitimacy of prison as a form of punishment" (2001: 330). In this paper, I will analyse the representation of prisons and their inmates in Charles Dickens' novels and prison films of the twentieth century because, as I will show, the ideological (pro- or anti-prison) underpinnings of such narratives centrally correlate with the way in which they represent the prison and its population.

An investigation of Dickens' novels and prison films of the twentieth century is important because they significantly influence the cognitive categories of their recipients and thus the popular understanding of the prison. For example, Dickens' novels, in which prisons proliferate, must have been a major influence on the 'normal' citizen's image of the prison because they addressed a mass audience long before film arrived. Poole points out that serial publication ensured Dickens' novels "a cultural currency greatly in excess of its merely literary reputation" (1983: 150).[1] Similarly, with regard to prison films, Wilson and O'Sullivan argue that they simply

> [...] cannot assume that the general public have more access to and interest in factual information about the nature of prison rather than its fictional representation. If anything, the reverse is likely to be true. Given this assumption, we need to consider the possibility that fictional representations of prison are an important source of these ideas and understandings. (2004: 14)[2]

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[1] Smith also speaks of "the importance of Dickens' contribution to society's system of circulation", and believes that his novels "do not simply reflect reality, they *constitute* reality" (2003: 5; 14, emphasis in the original, J.A.). One might actually refer to Dickens' novels in terms of the Hollywood movies (or perhaps TV series) of the Victorian age.

[2] For similar views on the influence of prison films on popular views of the prison see Cheatwood (1998: 209-10); King (1999: 165); Mathiesen (2000: 143-44); O'Sullivan (2001: 318) and Mason (2003: 278-79).

This paper is structured as follows: in section 2, I shall provide a definition of the loaded term 'ideology'; in sections 3 and 4, I will then analyse the images of prisons and their inmates in Dickens' novels and prison films of the twentieth century. In section 5, I will summarise my findings with regard to the political instrumentality of these narratives.

2. What is Ideology?

Althusser argues that ideologies are imaginary "world outlooks" that do not "correspond to reality" and always exist "in an apparatus, and its practice, or practices" (1984: 36-40). In his reading of Althusser, Hall additionally points out that we are usually unaware of the workings of ideology and (wrongly) assume that we are free subjects:

> We are not ourselves aware of the rules and systems of classification of an ideology [...]. We experience ideology as if it emanates freely and spontaneously from within us, as if we were its free subjects, 'working by ourselves'. Actually, we are spoken by and spoken for, in the ideological discourses which await us even at our birth, into which we are born and find our place. (Hall 1985: 106-9)

Similarly, James Kavanagh (1995: 311) and Ann Kaplan use the term 'ideology' not to refer to "beliefs people consciously hold but to the myths that a society lives by, as if these myths referred to some natural, unproblematic 'reality'" (Kaplan 1983: 12-13).

As I will show, prison narratives promote ideological beliefs. First, they may participate in a philanthropic discourse that critiques prisons by presenting (or constructing) them as unjust institutions, while prisoners are depicted as the poor and innocent victims of a fundamentally evil society. Second, prison narratives may participate in a conservative (or reactionary) discourse of subtle pro-prison propaganda which constructs prisoners as irreclaimably depraved criminals who threaten the safety of law-abiding citizens, thus arguing that prisons constitute a societal necessity.

These two ideological positions are of course theoretical abstractions or 'ideal types' in the sense of Max Weber (1922: 190-91). The representations of prisons and inmates in prison narratives tend to be more ambiguous and have to be located on a scale between these two ideological extreme points, i.e. the radical discourse that locates the evil in society, and the conservative discourse which insists on the evil in human nature. The following statement by Bell Hooks about films in general obviously applies to prison novels and films as well. According to Hooks, a "film may have incredibly revolutionary standpoints merged with conservative ones. This mingling of standpoints is often what makes it hard for audiences to critically 'read' the overall filmic narrative" (1996: 3). Such statements presuppose that today, we are not infiltrated by the one and only 'false consciousness'; rather, various ideologies may exist at the same time. Indeed, according to Hall,

> [...] the notion of *the* dominant ideology and *the* subordinated ideology is an inade-
> quate way of representing the complex interplay of different ideological discourses
> and formations in any modern developed society. [...] They [...] often draw [...] on a
> common, shared repertoire of concepts, rearticulating and disarticulating them with-
> in different systems of difference or equivalence. (1985: 104)

Even for a late Marxist like Eagleton, the term 'ideology' no longer refers to the pernicious legitimating strategies of the dominant class but to "a realm of contestation and negotiation, in which there is a constant busy traffic: meanings and values are stolen, transformed, appropriated across the frontiers of different classes and groups, surrendered, repossessed, reinflected" (1991: 101).

At this point, I would like to note that I do not think that narrative structures, tools or techniques, i.e. purely formal features, are *in themselves* bound up with a certain ideology. Like Cohn (1995a; 1995b), I have my doubts about the linkage of certain narrative features to structural attributes of the penitentiary idea as epitomised in Bentham's *Panopticon* (1791). Critics like Hale (1982: 50; 62), Seltzer (1984), Bender (1987; 1995), Miller (1988: 24) and Jarvis (2004: 173), on the other hand, think that a connection between the formal features of novels and films and pro-prison ideologies exist. For example, Seltzer believes that the omniscient narrator of novels like Dickens' is an authoritarian tyrant and argues that

> [...] the most powerful tactic of supervision achieved by the traditional realist novel
> inheres in its dominant technique of narration – the style of 'omniscient narration'
> that grants the narrative voice an unlimited authority over the novel's 'world,' a
> world thoroughly known and thoroughly mastered by the panoptic 'eye' of the nar-
> ration. (1984: 54)

Similarly, some film critics argue that prison films are the visual products of societies that punish under the veil of secrecy, and follow „the pleasure of observing a punishment being enacted" (Hale 1982: 50). According to Jarvis, "the spectator enters an enclosed space to observe images of enclosed bodies, to witness the certainty of punishment for acting out fantasies of deviance" (2004: 173). Hale even draws a parallel between cinema audiences and the idea of 'panoptic' vision. More specifically, he argues that in prison films, "everything is disclosed [...] as if we were visitors to Bentham's Panopticon, an invited audience in the zoo of punishment" (1982: 62). Admittedly, prison films allow us access to a forbidden realm, namely to the secretive world of the prison. However, they do not necessarily invite us to enjoy the punishment of 'deviant' bodies; rather, they may occasionally shed a critical light on the punishments we 'witness'.

I thus refuse to link purely formal features to any type of ideology. From a theoretical perspective, all types of narrative can continue the work of the prison or critique the logic of imprisonment. On the one hand, they may allow us to incorporate otherness, i.e. to "sympathize with the marginalized and the condemned" (Fludernik and Olson 2004: xxv); but on the other hand, they can also be used to objectify and reify the prisoners' otherness (or 'deviance'). In other words, the question of whether narratives reproduce or critique the prison does not depend on

narrative structures or techniques but on the context in which these structures and techniques are used. In what follows, I will thus focus on the representation of prisons and their inmates in order to determine the pro- or anti-prison ideologies that are spread by the narratives in question.

3. The Representation of Prisoners in Dickens' Novels[3]

In this section, I will concentrate on the representation of prisons and their inmates in Dickens' novel *Little Dorrit* (1855-57).[4] Dickens has traditionally been associated with some sort of liberal-conservative consensus: critics have frequently argued that he wants „prisons as simply neither too hard nor too easy" (Tambling 1994: 128). In what follows, I will show that in most of his novels (and in contrast to his non-fictional writings), Dickens is rather critical of the prison and participates in the philanthropic discourse mentioned in the previous section.

Little Dorrit presents us with two prison settings, namely a dungeon-like jail in Marseilles and the Marshalsea debtors' prison in London. The narrator describes the gloomy prison in Marseilles, which houses two inmates, Rigaud and Cavaletto, as follows: „Besides the two men, a notched and disfigured bench, immoveable from the wall with a draught-board rudely hacked upon it with a knife, a set of draughts, made of old buttons and soup-bones, a set of dominoes, two mats, and two or three wine bottles" (Dickens 1998: 16). 'He' then points out that "that was all the chamber held, exclusive of rats and other unseen vermin, in addition to the seen *vermin*, the two men" (16; my emphasis, J.A.). At first glance, the classification of the prisoners as vermin seems to suggest that they are evil villains who justify the existence of prisons. However, upon closer inspection, we learn that Cavaletto is 'only' a smuggler. Also, he turns out to be one of the liveliest presences in this sombre novel: even in jail, he joyfully sings songs with the prison officer's daughter (21), while later on, he is described as "a chirping, easy, hopeful little fellow" (295).

The prisoner Rigaud is usually classified as a criminal devil who suffers no remorse, guilt or fear for what he did.[5] However, in actual fact, he remains entirely enigmatic. On the one hand, he claims to be a „gentleman" (22), while on the other

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[3] Earlier versions of section 3 and 4 were published in my *Narrating the Prison: Role and Representation in Charles Dickens' Novels, Twentieth-Century Fiction, and Film*. I would like to thank Cambria Press for permission to reproduce this material.

[4] I will focus on *Little Dorrit* but also refer to *Oliver Twist* (1837-38), *David Copperfield* (1849-50) and *A Tale of Two Cities* (1859). Generally speaking, and in comparison with other nineteenth-century novels, it is in Dickens' fiction that the prison figures most prominently.

[5] See Trilling (1955: 56), Collins (1962: 83; 250; 280-81; 288) and Cockshut (1998: 48).

hand, he tells Cavaletto that he killed a man, married his rich widow and then killed her (24-25). If this story is true, Rigaud might indeed be classified as a monster and his existence may serve as an argument in favour of prisons. From this perspective, the novel might argue that the situation in prison is bad; nevertheless, society needs prisons because of the irreclaimable depravity of criminals like Rigaud. The idea that prisons are a societal necessity is also expressed by the landlady of a lodge in Chalon. She points out

> [...] that there are people who have no human heart, and who must be crushed like savage beasts and cleared out of the way. They are few, I hope; but I have seen (in this world here where I find myself, and even at the little Break of Day) that there are such people. And I do not doubt that this man – whatever they call him, I forget his name [Rigaud, J.A.] – is one of them. (131)

However, when Cavaletto and Rigaud meet again outside prison (134-38), we do not learn whether Rigaud has actually committed any crime at all. Also, the question of how he managed to get out of prison remains unanswered. Maybe he was "deeply wronged" (136) and finally released; or he was guilty but managed to escape; or he was guilty but pronounced not guilty. The narrator does not address these possibilities. Since we are never in a position to find out whether Rigaud is a real criminal, the landlady's statement could also be read as a critique of the ways in which law-abiding citizens classify other people as criminals. The assumption that Rigaud has "no human heart" seems to be based on prejudice rather than verifiable facts.[6]

When the narrator turns to the Marshalsea, we learn that 'he' is rather critical of this institution. In an aside, he tells us that "it is gone now, and the world is none the worse without it" (68). The prison is in a rotten state "because the time had rather outgrown the strong cells and the blind alley" (68). Furthermore, the imprisonment of debtors like William Dorrit and Arthur Clennam is represented as being unjust; they are imprisoned for debt under laws that are completely impolitic. Imprisoned debtors are not in a position to earn any money to pay their debts. These prisoners are hardly evil criminals, villains or ruffians. "The inmates of the Marshalsea are there because they owe money they can't pay, not because they are guilty of murder, theft or grievous bodily harm" (Wall 1998: viii).

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6 In Dickens' *Oliver Twist*, on the other hand, we are presented with a vicious criminal in prison. The character called Fagin is a crook who trains young pickpockets and is responsible for the murder of the prostitute Nancy. After Fagin's arrest, the narrator comments on the character's anguish in prison as follows: "Those dreadful walls of Newgate, which have hidden so much misery and such unspeakable anguish, not only from the eyes, but, too often, and too long, from the thoughts, of men, never held so dread a spectacle as that" (Dickens 1966: 361), i.e. as Fagin sitting on the stone bench in his cell. In this case, the novel seems to argue that prisons may be bad but we need them because evil criminals like Fagin exist.

The novel's critical attitude towards the prison is intensified by the fact that most of the Marshalsea inmates are likeable characters. Amy Dorrit, who is not a prisoner but lives with her father in prison, is an example of such a sympathetic character. The little Dorrit of the novel's title may even constitute a symbol of hope because of her love for Arthur and her devotion to her father, whom she selflessly rescues from despair. Moreover, most of the inmates of the Marshalsea are shown to suffer severely in prison. For instance, throughout the novel, the prisoners complain about the lack of air in the Marshalsea, which is presumably a psychological effect rather than a physical symptom. This hypothesis is corroborated by the depiction of the effects of imprisonment on Arthur Clennam:

> The sensation of being stifled, sometimes so overpowered him, that he would stand at the window holding his throat and gasping. At the same time, a longing for other air, and a yearning to be beyond the blind blank wall, made him feel as if he must go mad with the ardor of the desire. Many other prisoners had had the experience of this condition before him, and its violence and continuity had worn themselves out in their cases, as they did in his. Two nights and a day exhausted it. It came back by fits, but those grew fainter and returned at lengthening intervals. A desolate calm succeeded; and the middle of the week found him settled down in the despondency of low, slow fever. (721)

Other inmates suffer in prison as well. At one point, William Dorrit observes that new inmates cry when they have to leave their visitors, and we learn that he experiences his time in prison as a voyage on a ship: "[...] now he was like a passenger aboard ship in a long voyage, who has recovered from sea-sickness, and is impatient of that weakness in the fresher passengers taken aboard at the last port" (222). The point of this simile is perhaps to stress that the weeping newcomers are tossed on the waves of adversity just like new passengers become sea-sick because of tempests at sea, but after some time, they get used to it. On the other hand, even though Old Dorrit clearly suffers in prison – he is said to be "now boasting, now despairing" because he is "a captive with the jail-rot upon him" (227) – he simultaneously experiences the Marshalsea in terms of a place of "refuge" (74) that protects him from the world outside: "Crushed at first by his imprisonment, he had soon found a dull relief in it. He was under lock and key; but the lock and key that kept him in, kept numbers of his troubles out" (73). In contrast to his brother Frederick, who is lost in the "the labyrinthian world" (219) outside, William knows that he is "safe within the walls" (223). This safety is of course an ambivalent one because it infantilises the prisoner by making him powerless and dependent on the prison.

We also learn that the prison determines the mindsets of its inmates. Most of the novel's prisoners get so used to the prison that they cannot live without it. For example, Amy's brother Tip begins to depend on the prison, and returns to jail again and again:

> Wherever he went, this foredoomed Tip appeared to take the prison walls with him, and to set them up in such trade or calling; and to prowl about within their narrow

limits in the old-slip-shod, purposeless, down-at-heel way; until the real immoveable
Marshalsea walls asserted their fascination over him, and brought him back. (84)

Similarly, when Little Dorrit is locked out of the Marshalsea, "she is locked out
of her home, and so spends the night more aware than usual of the fact that she
belongs nowhere else" (Cockshut 1998: 41). When the Dorrits are released because
the money William Dorrit owes is miraculously found again, they all remain tied to
the prison's ignominy. For example, when Amy realises that she does not manage
to adapt to her father's 'new' fortunes, she writes a letter to Arthur in which she
says: "[...] As soon as I begin to plan, and think, and try, all my planning, thinking,
and trying go in old directions [...]" (452). The prison continues to lurk within her
and she has difficulties adapting to the habits in the world outside. Also, at a fash-
ionable High Society dinner in Rome, William Dorrit slips back into his role as the
imprisoned 'Father of the Marshalsea' (621). Psychologically speaking, the Dorrits
never manage to leave the Marshalsea which has thus effectively destroyed their
lives.

As I have shown, *Little Dorrit* critiques the prison by representing most types of
imprisonment as being grossly unjust. The novel primarily presents us with like-
able inmates who suffer severely in prison (and also after they have been released);
we are never really confronted with hardened criminals who would perhaps justify
the existence of prisons.[7] Many further examples of such innocent and sympathetic
prisoners exist in Dickens' fiction.

For instance, in Dickens' *A Tale of Two Cities*, Dr. Manette has to serve eighteen
years in the hellish Bastille because of his knowledge about the tyrannical Marquis
St Evrémonde and his brother. Even though the prison experience is only rendered
retrospectively, the depiction of Manette is "a powerful, and a plausible, rendering
of the permanent damage to the personality which such an experience may inflict"
(Collins 1962: 137). We get to know Manette after his release in a prison-like "dim
and dark" (Dickens 2000: 41) room above the wine shop of the Defarges in Paris.
When his daughter Lucie and Lorry visit the freed Manette in his room, Lorry asks
the formerly "buried man" Manette, "I hope you care to be recalled to life?"
Manette then answers "I can't say" (53). The former prisoner wishes to be locked
in his room because, as Defarge puts it, "he has lived so long, locked up, that he
would be frightened – rave – tear himself to pieces – die – come to I know not what
harm – if his door was left open" (39). Like the Dorrits in *Little Dorrit*, Manette
remains tied to the prison which continues to lurk within him. When Defarge asks
him for his name, Manette answers: "One Hundred and Five, North Tower" (44).
In prison, Manette lost his former identity and even though he has been freed, he

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[7] In contrast to many other critics, I do not think that one can read Rigaud as a proper
criminal either. Admittedly, he begins to blackmail Mrs. Clennam towards the end of the
novel. However, at the beginning, we do not know whether he actually committed a crime.
For me, the novel argues in favour of caution with regard to the identification of criminals
because our judgments may be based on nothing but prejudice.

still considers himself to be a number. Manette's body is "withered and worn", and when he puts up his hand to shield his eyes from the incoming light, "the very bones [...] seemed transparent" (43). His voice is like the voice of a ghost: "it was like the last feeble echo of a sound made long ago"; "it was like a voice underground" (42). According to Gross, such ghostliness suggests some kind of "death in life to which men are reduced by imprisonment, psychological or actual" (1962: 188).

Later on in *A Tale of Two Cities*, the well-meaning Charles Darnay, the nephew of the Marquis St Evrémonde, is imprisoned by the brutal revolutionaries simply because he is an aristocrat. Darnay is released owing to the intervention of Manette whose long years of imprisonment under the *ancien régime* have entitled him to a privileged position. However, the revolutionaries' relentless hatred of the aristocracy causes Charles to be sent before the Tribunal again, which this time consigns him to the Conciergerie and sentences him to be guillotined. The second condemnation is ironically based on a document written by Manette in prison. In this document, Manette denounces all Evrémondes: "[...] I, Alexander Manette, unhappy prisoner, do this last night of the year 1767, in my unbearable agony, denounce to the times when all these things shall be answered for. I denounce them to Heaven and to earth" (344). The connection between his document and the condemnation of Darnay causes Manette to return to the imbecile mode of consciousness that possessed him in the Bastille. The supposed utility of Manette's suffering is rendered pointless, and ends in entire disillusionment (Cockshut 1998: 46). Like *Little Dorrit*, *A Tale of Two Cities* focuses on the unjust imprisonment of sympathetic characters and thus critiques the prison.

Finally, in Dickens' *David Copperfield* (1849-50), Mr. Creakle shows David Copperfield and his friend Traddles around a model prison that is based on the 'separate system' of prisons like Pentonville. During the course of this 'tour', they meet Uriah Heep and Littimer who are incarcerated in neighbouring cells and about to be transported for life (Dickens 1981: 727-33). Admittedly, they are criminals[8]; however, I would like to interpret the comic drama of the appearance of "Number Twenty Seven" (Uriah Heep) and "Twenty Eight" (Littimer) before a ready-made audience and their pretending to be rehabilitated ("I see my follies now, sir") as a satire on the rather naive belief that strict solitary confinement leads to the reform of the criminal.

To summarise: as a first result with regard to the question of how the interaction between the prison and its inmates influences our perception of the prison, I would like to argue that a close link exists between our admiration for prisoners and our contempt for the prison system as well as between our dislike of inmates and our approval of the prison system. Similarly, a rather close connection exists between

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[8] Uriah Heep is imprisoned for fraud, forgery and conspiracy, while Littimer robbed his current master.

the representation of prisons as hellish institutions on the one hand, and the evocation of sympathy for inmates on the other. In contrast to Dickens' non-fictional writings, which became slightly more reactionary as he grew older (Collins 1962: 22), Dickens' fiction is rather critical of the prison institution: normally, we are confronted with innocent and/or likeable prisoners whose suffering sheds a critical light on the prison. Generally speaking, Dickens' novels participate in a philanthropic discourse that represents prisons as instruments of injustice. We are only occasionally presented with evil criminals like Fagin who seem to justify the existence of prisons.

As I will show in the following section, most prison films of the twentieth century present us with an innocent identificatory figure who is usually set apart from the rest of the prison population, while the 'other' inmates are normally presented as 'real' criminals. Such films critique the imprisonment of our prisoner-hero but tacitly accept the incarceration of the other inmates. This is clearly a narrative strategy that is not dominant in Dickens' fiction.

4. The Representation of Prisoners in Prison Films of the Twentieth Century

Our identificatory figures in twentieth-century prison films are often prisoner-heroes who are wrongfully imprisoned. For example, in the film *The Shawshank Redemption* (1994), the city banker Andy Dufresne (Tim Robbins) is wrongfully convicted for murdering his wife and her lover and descends into the hell of the Shawshank State Prison, where he is exploited and raped. Similarly, in the movie *Down by Law* (1986), the disc jockey Zack (Tom Waits) is set up by Gig (Rockets Redglare) while the pimp Jack (John Lurie) is set up by another pimp named Preston (Vernel Bagneris). The two are imprisoned and exposed to the monotonous and boring life at the Orleans Parish Prison. Sometimes our identificatory figures undergo harsh punishment for what are only apparent transgressions or accidents. For instance, the four boys in the film *Sleepers* (1996) are sent to the Wilkinson Home for Boys in New York because following a stupid prank, they accidentally killed a man with a hot dog vendor's cart.[9] On the other hand, some prison films focus on the social causes of crime, thus pointing out that certain criminal acts may be motivated by poverty or other types of social pressure. For example, James Allen (Paul Muni), the major protagonist of the film *I Am a Fugitive from a Chain-Gang!* (1932) steals a few dollars because he is hungry and is then sentenced to serv

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[9] Similarly, in *Down by Law*, Roberto (Roberto Benigni) is imprisoned because he accidentally killed another man by throwing a snooker ball which hit the victim in the forehead. Also, in the film *Cool Hand Luke* (1967), Luke (Paul Newman) is caught vandalising parking meters, which is not a proper crime; rather, this action is perhaps associated with the romance of outlaw culture.

time in a hellish chain gang.[10] Similarly, in the film *The Loneliness of the Long-Distance Runner* (1964) Colin (Tom Courtenay) is sent to borstal for robbing a bakery. The film 'explains' the crime as follows: Colin accuses his mother of not having waited to get a new boyfriend until his dead father was cold in his grave. She then hits him and throws him out of the house; as an afterthought, she hurls the order not to return without some money.

At first glance, one might feel that this almost essential erasure of criminality on the part of the prisoner-heroes correlates with an attempt to construct a fictional counter-discourse to society's strategies of stigmatising prison inmates. However, upon closer inspection, one does realise that the innocent hero is frequently constructed as an exception within the prison world: he is in fact diametrically opposed to the 'other' prisoners. Hale correctly points out that our identificatory figure "is in some way distinguished from other inmates. This often involves wrongful or unjust conviction" (1982: 51).[11] Furthermore, he is normally surrounded by a group of 'real' criminals who seem to 'belong where they are'. In the words of Jarvis, we are frequently confronted with a

> [...] rogues gallery amassed behind the prisoner-hero. Whilst the individual prisoner might be innocent, or at least not guilty as charged, no such claims are advanced on behalf of the collective prison population and at least one irredeemably bad con is introduced to deflect from a more sweeping institutional indictment. (2004: 172)

Hence, most prison films question the legitimacy of the central protagonist's incarceration but tacitly accept imprisonment when it comes to the other prisoners who are usually represented as the 'real' criminals.

For instance, one might feel that the film *The Shawshank Redemption* condemns the prison system because the prison world is upside down: the Shawshank State Prison houses innocent inmates like Andy and is run by sadist criminals like Warden Norton (Bob Gunton) and Captain Hadley (Clancy Brown).[12] On the other hand, the movie also represents the prison as a societal necessity because wicked

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[10] The film *Murder in the First* (1995) seems to argue that three years in one of Alcatraz's dark dungeons is a disproportionate punishment for Henri Young (Kevin Bacon), who had initially only stolen five dollars to feed his starving sister and then attempted to escape from Alcatraz.

[11] Rafter also argues that in most prison films, the hero "is either absolutely innocent or at most guilty of a minor offense that does not warrant prison. [...] Few [movies, J.A.] tamper with the essential innocence of the lead character, with whom viewers must be able to identify" (2000: 118).

[12] Hadley beats the inmate "Fat Ass" (Frank Medrano) to death and brutalises the rapist Bogs Diamond (Mark Rolston) so severely that he is a cripple afterwards. Norton exploits the prisoners as slave labour and uses Andy to run his various corrupt scams. When the innocent Andy wishes to get a new trial because the new inmate Tommy Williams (Gil Bellows) told him that Elmo Blatch (Bill Bolender) had committed the crime for which Andy was incarcerated, Norton sends Andy to the 'hole'. Since Tommy declares that he would testify that Andy is innocent, Norton tells Hadley to kill Tommy.

murderers like Elmo Blatch exist. This devilish criminal, who committed the crime for which Andy is incarcerated, deprives us of the philanthropic thought that prisons are only instruments of injustice. The representation of the villainous Blatch, who is once shown laughing insanely with stereotypically bad teeth, demonstrates that prison films may also be used to stigmatise criminals and justify the existence of prisons. According to Jarvis, the film valorises "rehabilitative penal styles" (2004: 197). More specifically, the movie opposes Warden Norton's 'old' and brutal prison regime, which it critiques, with a more progressive apparatus, which it agrees with because ultimately we need prisons to confine wicked criminals like Elmo Blatch (and perhaps also sadists like Norton and Hadley). The film thus participates in a discourse of subtle pro-prison propaganda that tries to persuade its recipients of the existence of evil criminals and the necessity of well-run or rehabilitative prisons.

It is perhaps also worth noting that the film *The Shawshank Redemption* encourages self-satisfaction and contentment. By means of the contrast between the traditional and the more progressive prison, as well as by setting the movie safely in the remote past,[13] this film of the 1990s seems to imply that today, prisons are not as bad as they used to be. Viewers are drawn into believing that penal reform has already taken place and that today's prisons are run by well-meaning individuals.[14]

The following observation by Bammann actually applies to most prison films: „sie unterstützen vorbehaltlos die Bestrafung der Schuldigen, solange den Unschuldigen die Möglichkeit gewahrt bleibt, dem System (wieder) zu entkommen" (2001: 236). For example, in *I Am a Fugitive from a Chain Gang!*, the major protagonist, with whom we are supposed to identify and who twice manages to escape from the chain gang, is persistently distanced from his fellow inmates who are represented in terms of the 'real' criminals. Similarly, the film *Down by Law* focuses almost exclusively on the sympathetic inmates Zack, Jack and Bob, who are associated with the romance of outlaw culture and ultimately escape from prison. We only see the other prisoners in the course of a dolly shot at the beginning of the prison sequence: the camera moves slowly and smoothly past a row of barred cells and then stops at a medium shot of Zack, who will be joined by Jack, and later on by Bob. After the medium shot, we are presented with "a 30-minute sequence during which the camera never leaves the confines of the cell" (Jarvis 2004: 224). The other prisoners are reduced to off-screen murmurings so that we do get a sense that their imprisonment does not really matter. Indeed, the examples listed above verify Wilson's (1993: 79) and O'Sullivan's (2001: 321) hypothesis that in prison films, escape and/or redemption is usually reserved for exceptional individuals, while the mass of ordinary prisoners seem to deserve what they get.

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[13] Andy is sent to prison in 1947 and he escapes in 1967.

[14] O'Sullivan also argues that the film "is in no way seriously critical of any actually existing experience of incarceration" (2001: 326).

It is not only the case that in fictional narratives our sympathies for the prisoners influence our perception of the prison. The representation of the prison system may also impact on our perception of the inmates. The harsh treatment of prisoners by diabolic wardens or prison officers may evoke sympathy for the prisoners (usually regardless of whether they are guilty or not). In other words, if the punishment in prison is severe or unjust, the inmate's "criminal actions will be eclipsed by the greater crimes committed against him" (Jarvis 2004: 171).

Alex (Malcolm McDowell) in the film *A Clockwork Orange* (1971) is such a character. He is the leader of a gang called the droogs, and delights in purely gratuitous acts of violence. When peer pressure drives him from the 'normalcy' of assault, rape and robbery to the rashness of murder, he is caught and sent to prison. From the moment he is knocked over the eyes with a milk bottle by one of his 'droogs' and abandoned to the police, he becomes "a Christ-figure embarked on an odyssey of suffering and victimization" (Elsässer 1976: 186). Once Alex is caught, he is beaten, cursed at, spat on and ultimately exposed to the Ludovico Technique[15] so that our hostility is quickly directed towards everyone but him. The film seems to argue that the perfect rehabilitation, which the Ludovico treatment achieves, is not desirable because it implies the complete destruction of individual willpower. The movie ends with Alex lying on his hospital bed fantasising about a life of more sex and violence. Rafter argues that the film's ending shows us "the confirmed delinquent's delight in violence" (2000: 3). For me, the message of the film is more specific. I think that it argues that Alex's criminal violence correlates with individuality, autonomy, spontaneity and perhaps even art,[16] and as such should not be disciplined by conformist forces like the prison or the Ludovico Medical Facility.

Robert F. Stroud in the film *Birdman of Alcatraz* (1962) is another example of a criminal who is exposed to an unjust treatment in prison. Stroud killed a man (22) and later on a guard in prison (43), but becomes a sensitive ornithologist who clearly shows signs of rehabilitation. Ultimately, the prisoner turns out to be more humane than the prison staff at Leavenworth and Alcatraz. By constructing Stroud as a clever scientist and sympathetic individual, the film clearly wishes to counter processes of dehumanisation and depersonalisation. Additionally, the movie questions the penal practice of merely exposing prisoners to deadening routines and abstract rules and regulations, and perhaps supports reformative prisons in which

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[15] The Ludovico Technique makes Alex incapable of acting violently because he begins to feel nauseous at the thought of violence and sex. The treatment is a form of brainwashing in which the inmate is drugged and forced to watch a succession of pornographic and violent films with the result that any thought of sex and violence, and, incidentally, the sound of Beethoven, cause him to suffer nausea.

[16] According to Elsässer, "Alex's violence is stylized into libidinal self-expression and his destructiveness becomes a manifestation of a self-assertion that promises a subversive anarcho-individualist liberation" (1976: 182). Sobchack points out that in the film, "art and violence spring from the same source; they are both expressions of the individual, egotistic, vital, and non-institutionalized man" (1981: 98).

inmates are given an occupation like bird-breeding that allows them to develop their personality.

As I have shown, most prison films critique and legitimate the prison at the same time. More specifically, they tend to critique 'traditional' prisons based on discipline but simultaneously legitimate rehabilitative incarceration.[17] The plot elements of prison films are normally always the same. We are frequently confronted with an innocent prisoner-hero who suffers under a brutal system. The fate of this unique character is then represented as being illegitimate, while the mass of ordinary prisoners are frequently depicted in terms of 'real' criminals who have to be imprisoned (but not necessarily under the awful circumstances we are presented with). Most prison films only invite us to identify with the innocent prisoner-hero but they do not allow us to sympathise with the 'deviant' rest of the prison population. On the other hand, if the treatment in prison is extremely harsh, we also sympathise with incarcerated criminals, i.e. "the marginalized and the condemned" (Fludernik and Olson 2004: xxv). Generally speaking, the representations of prison in most films "actively contribute towards legitimising prison as a form of punishment" (O'Sullivan 2001: 321); I would only like to add that they tend to legitimise reformative incarceration rather than the prison system per se.

5. Conclusion

As I have shown, prison narratives may construct a counter-discourse to society's strategies of stigmatising criminals (and/or prisoners) or they may constitute a form of pro-prison propaganda. Surprisingly, the 'conservative' and canonised Charles Dickens turned out to be much more critical of the institution of prison than most prison films of the twentieth century. In Dickens' novels, the prison primarily correlates with the unjust suffering of sympathetic inmates, and is additionally represented as a negative force that even manages to enter the minds of its inmates. Some prison films also shed a critical light on the prison by highlighting that the idea of rehabilitation always correlates with the destruction of the prisoner's individuality. On the other hand, most of these films draw a qualitative difference between the suffering of our prisoner-hero (who is normally represented as 'one of us') and the 'other' prison inmates. Hence, they only question the legitimacy of the imprisonment of our identificatory figure but tacitly accept the incarceration of the 'deviant' others. According to Rodríguez, the "discursive [...] production of fear" (in the shape of wicked criminals) may lead recipients to agree with the idea of

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[17] The film *A Clockwork Orange*, on the other hand, seems to glorify Alex whose individuality must never be disciplined by society's conformist forces. Also, the film *The Loneliness of the Long-Distance Runner* argues that the attempt to rehabilitate inmates like Colin is pointless because his crime was motivated by social necessity. In other words, society's class structure is to be blamed for the existence of criminality.

carceral punishment (2002: 412). Also, the representation of evil and/or guilty prisoners prevents the viewers (and readers) from forging stronger identifications with the represented prison population than with the state and its prison system. Hence, I would like to suggest that the idea of "wanting prisons as simply neither too hard nor too easy" (Tambling 1994: 128) has to be attributed to most prison films rather than Dickens' fiction.

As a general tendency, one can say that since Dickens' novels do not present us with a single inmate who goes through a process of reform in one of his gloomy dungeons, Dickens' fiction is rather critical of the idea of rehabilitation in prison. Most prison films of the twentieth century, on the other hand, seem to argue that if their prison settings – i.e. borstals, reform schools, state and federal penitentiaries, etc. – are run by well-meaning individuals, the rehabilitation or reform of the prisoner is possible and desirable. Sometimes a progressive prison system is shown to develop in the course of the narrative, and sometimes it is alluded to through well-meaning and humane prison officers. Such narratives correlate with a form of pro-prison propaganda because they critique punitive or discipline-based institutions but (at least tacitly) agree with rehabilitative penal styles.

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Hollywood's Prison Film
Towards a Discursive Regime of Imprisonment

Paul Mason

Introduction

The populist turn in criminal justice has often been cited in discussions of an increased punitiveness in Britain and elsewhere (Garland, 2001; Pratt 2002; Roberts and Hough, 2002; Roberts *et al.,* 2002; Ryan, 2003a; Pratt *et al*., 2005). The argument goes something like this – bottom up pressure from an outraged public, driven by visceral tabloid headlines, demand more displays of repressive punishment. Hence an increase in longer prison sentences, boot camps, ASBOS, and most recently in the UK, proposals for young offenders to wear uniforms while carrying out community service (*The Guardian*, 15th May 2005). Whether one accepts this argument or not (see Matthews, 2005) none of the writing on penal populism and punitiveness engages with the how the media constructs prison and punishment or how it may contribute to a populist and punitive criminological imagination.

This chapter seeks to explore one such media discourse: the prison film and in particular those films made in Hollywood, which in the last hundred years has produced over three hundred prison films. One used to be able to write confidently about the dearth of analysis of the prison film: the puzzling lacunae of research on a considerable corpus of cinema. However, in recent years there has been significant growth in academic writing in the area (Schauer 2004, Jarvis 2004, Wilson and O'Sullivan 2004, Kermode, 2003, Mason 2003, Nellis 2003, O'Sullivan 2003), ironic given the small number of prison films that have been made since 2000. It has been this increase in analysis that has prompted me to reassess the ways in which the prison film has been discussed, and in this chapter I wish to offer three things as part of a larger exploration of prison cinema (Mason 2006, forthcoming). Primarily I am interested in suggesting a framework for analysing the prison film, and argue that a useful epistemological structure takes account of genre theory but also Foucauldian discourse analysis and representation. I seek to exemplify this approach by offering some initial thoughts on one aspect of Hollywood's discourse on imprisonment which, I argue continues to pervade its discursive regime of representing prison. To begin with however it is necessary to present a cartographic account of Hollywood's prison film output without the constraints of the artificial taxonomies which unhelpfully punctuate existing prison film chronologies.

Hollywood, Prison Films and Canonic Generality

Much of the work carried out thus far on the prison film has either relied on a small number of films and then used them as a basis for sweeping commentary on the genre, (for example Cheatwood 1996, Rafter, 2000, O'Sullivan 2001, and indeed some of my own work – Mason 1998, 2000) or used audiences merely as 'the rhetorical guarantor' (Hutchings 1995: 66) of the rightness of the analysis and failed to engage with real audiences at all, such as Wilson and O'Sullivan (2004). My analysis is predicated upon the recognition of genres as social constructions, subject to constant negotiation and reformulation, and thus in researching the prison film and its history 'it is necessary to include as wide a range of films as possible, while trying not to misrepresent the spectrum of audience conceptions' (Tudor 1989:6). Nellis and Hale are right when they suggest that '… no other type of crime film – the gangster movie, the police procedure movie and the characteristically English murder mystery- has claimed such impressive credentials in its bid for genre status (as the prison film)' (Nellis and Hale 1982:6) and it is this 'bid' I wish to address first.

The term 'genre' despite being used in Hollywood production terms since the 1910s, came to prominence in work on cinema some fifty years later 'to situate the *auteur* more systematically (and perhaps more credibly) within the Hollywood set-up' (Hutchings 1995:60), engaging with an audience who saw that 'it is not a new Hawks or Ford or a new Peckinpah; it is a new western' (Buscombe 1970:43). A trawl through the vast literature on genre theory proves both complex and contradictory. Indeed, the only facet of generic accounts that appears consistent is disagreement concerning terminology, application and ideology. Writing on genre can often be narrow, circular and indulgent, where its recurrent structuralism often excludes not only historical factors but also misinterprets industrial ones. While Hollywood has undoubtedly minimised commercial risk through 'repetition with difference, similarity with variety' (Neale 2003:54), there has been a tendency in some genre work to overstate the apparent symbiosis between Hollywood production and genre categories. With the perpetuation of genres often undertaken by critics not filmmakers, Neale and Maltby concur in suggesting Hollywood is a 'generic cinema' (Maltby 2003:99) rather than Ryall's contention that it is 'a cinema of genres' (Ryall 1998:327).

Despite these misgivings, and as Neale suggests, genre theory enables the 'exploration of the cultural values and ideological dilemmas central to American society' (2003:162). In choosing to adopt genre theory for an analysis of the prison film, one is immediately faced with the problem of terminology and definition. The prison film is often lumped together in larger genres such as crime films, social problem films, or juvenile delinquent and teenpics. I would argue however that to distinguish the prison film as a separate corpus of work offers the opportunity for, what Muncie and McLaughlin term, 'high definition, wide screen analysis' (Muncie and McLaughlin 2002:x). Naturally, there is a blurring at the edges: a venn-

diagramatic overlap between genres, for as Jarvis suggests, while 'the classical prison film is either an escape or an execution drama; it is complemented by a number of sub-genres and hybrids' (Jarvis 2004:166). Among these we can note the prison comedies: *The Slams* (Jonathan Kaplan, 1973) and *Stir Crazy* (Sidney Poitier, 1980), the prison musical, *Jailhouse Rock* (Richard Thorpe, 1957) *Chicago* (Rob Marshall, 2002), prison science fiction: *Space Rage* (Conrad E. Palmisano and Peter McCarthy [reshoot], 1985) *Wedlock* (Lewis Teague, 1991) and *Fortress* (Stuart Gordon, 1993), the sport/prison film featuring American football in *The Mean Machine* (Robert Aldrich, 1974), boxing in the *Penitentiary* series (all Jamaa Fanaka, 1980, 1982, 1987), and football in *Escape To Victory* (John Huston, 1981). The latter could also be classed as prisoner of war film, of which there have been many, including *Stalag* 17 (Billy Wilder, 1957), *Prisoner of War* (Andrew Marton, 1954), *The Great Escape* (John Sturges, 1963) *King Rat* (Bryan Forbes, 1965) and *The Dirty Dozen* (Robert Aldrich, 1965). In addition we could add the exploitation prison movie, a large number of which were made in the 1970s, such as *The Big Dolls House* (Jack Hill, 1971), *Women in Cages* (Gerardo De Leon, 1971) and *The Big Bird Cage* (Jack Hill, 1972). As well as these sub genres, there are prison films in which the *mise en scene* of punishment does not dominate, such as the Bogart comedy vehicle *We're Not Angels* (Michael Curtiz, 1955), Charles Bronson's jail break, *Breakout* (Tom Gries, 1975), and Oliver Stone's postmodern media critique *Natural Born Killers* (Oliver Stone, 1994).

Mapping the Prison Film

I am sceptical of the historical taxonomies of the prison film that have been undertaken thus far (Cheatwood 1996; Crowther 1989; Rafter 2000; Wilson and O'Sullivan, 2004). In constructing such time periods and attributing terms to them, those writers who offer historical schemas of the prison film succeed in producing mere internal generic chronologies with little recourse to Hollywood's industrial or historic context. Cheatwood (1996), for example, traces the prison film through 'the depression era' of the 1930s, the 'rehabilitation' era from 1943 to 1962, 'confinement' from 1963 to 1980 and finally, contemporary prison films which he terms the 'administration era'. However, Cheatwood's taxonomy is forced, claiming, for example, that *Cool Hand Luke* is part of the 'confinement era' where 'toughness and the image of the Bad Dude have replaced loyalty and the Square John as primary values' (ibid:223) is surely to miss the point that *Cool Hand Luke* is about the horrors of a chain gang in Southern America, owing much, in spirit at least, to *I Am A Fugitive From A Chain Gang* (Mervyn LeRoy, 1932), made thirty years previously and in what Cheatwood terms the 'depression era'. A similar approach is also adopted by Wilson and O'Sullivan (2004), who argue that periodising the genre in this way, aids rather than reduces prison film analysis but fail to elucidate this claim, or justify imposing such a periodisation.

These over-simplified taxonomies become tautologous, where historical periods narrowly defined (either using a small number of films, in a cultural and industrial vacuum, or built solely on UK and/or US criminal justice policy developments) serve simply as artificial frames wedged round an ill-fitting pile of prison films which may or may not be justifiably grouped together based on their release date. This practice becomes a one-eyed decontextualising of the prison film, the purpose of which seems to be seeking out films which <u>prove</u> the category works, rather than exploring what discourse(s) Hollywood constructs through its representation of prison at particular historic moments. Under the former regime, the prison film is confined to a small cell and subject to unreasonable conditions. I want to liberate the prison film from this restrictive analysis, instead tracing its development and re/presentation since the beginning of the 20th century.

My research suggests Hollywood has produced around 350 prison films since the Barnsdale production company made the silent melodrama *Prison Bars* in 1901. Many accounts of the prison film begin in the 1930s, however there were at least thirty made before that, including the silent comedies *Pimple's Prison* (1914) *No Place Like Jail* (Frank Terry, 1918), *Big Town Ideas* (Carl Harbaugh, 1921) and *See You In Jail* (Joseph Henabery, 1927), the latter featuring Stan Laurel who also appeared with Oliver Hardy in the prison comedies *The Second Hundred Years* (Fred Guiol, 1927), *The Hoose Gow* (James Parrot, 1929) and later in their best known prison comedy and first full-length talkie, *Pardon Us* (James Parrot, 1931). While it is true that few remarkable prison pictures came out of Hollywood during this period, a number of directors, who went on to make more significant contributors to the genre made their first prison films before 1930.[1]

As I have previously noted (Mason 2003), the 1930s remains the most prolific decade for the production of prison films in Hollywood, with over eighty being made. As well as *I Am A Fugitive From A Chain Gang*, the decade's prison films included the Oscar nominated *The Criminal Code* (Howard Hawks, 1931) and *The Big House* (George W. Hill, 1930). The latter described by *Variety* as 'Not a two-dollar talkie but a virile, realistic melodrama' (Walker, 1997:71). Nellis notes:

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[1] For example, Raoul Walsh, director of *The Honor System* (1917) and *Me, Gangster* (1928) who later directed James Cagney in *White Heat* (1949); and Lloyd Bacon, best known for his direction of musicals such as *42nd Street* (1932) who also directed the Bogart films *San Quentin* (1937) and *Invisible Stripes* (1940) but previously worked on the silent prison film *Brass Knuckles* (1929) and with Al Jolson in the improbable mawkish prison yarn, *Say It With Songs*. The 1920s also saw prison films directed by Joseph Von Sternberg (the noir-ish *Thunderbolt* 1929) and Cecil B DeMille (*Manslaughter*, 1922), the latter Parish notes as '(b)esides being a self-serving moral essay, DeMille craftily interwove flashbacks into the proceedings, allegedly for historical comparisons. However it was just an excuse to introduce lavish Biblical settings, risqué costuming and debauched behavior' (Parish, 1991:271).

… the failure of prison to rehabilitate, together with scenes of admission to prison and solitary confinement have become integral to the narrative and iconography of subsequent prison films, and have helped to give *The Big House* its status as a minor classic. (Nelllis, 1981:15)

Some of subsequent legends of Hollywood starred in prison films during the 1930s, including James Cagney (The Mayor of Hell (Archie Mayo 1933), Angels With Dirty Faces (Michael Curtiz, 1938) and Each Dawn I Die (William Keighley, 1939)); Edward G. Robinson (Two Seconds (Mervyn LeRoy, 1932), The Last Gangster (Edward Ludwig, 1937) and George Raft (Each Dawn I Die and Invisible Stripes (Lloyd Bacon, 1940)).

The self-regulation of Hollywood's Production Code in 1930, devised to counter external regulation and censorship[2] in essence 'amounted to a consensus about what constituted appropriate entertainment for an undifferentiated mass audience in America and, by default, the rest of the world' (Maltby 2003:61). This led to a 'negotiated struggle and eventual convergence' (Parker 1986:146) between the film industry and the institutional regulators, producing recurring cinematic narratives in which crime never paid. Hollywood's most famous gangster actors metamorphosed into dynamic cops, Edward G Robinson (*Outside the Law* (Tod Browning, 1930), *Little Caesar* (Mervyn Leroy,1931), *Smart Money* (Alfred E. Green, 1931) became cop Johnny Blake in *Bullets or Ballots* (William Keighley, 1936) and James Cagney (*The Public Enemy* (William A. Wellman, 1931)*, Blonde Crazy* (Roy Del Ruth, 1931), *The Mayor of Hell*) turned heroic G-Man Brick Davis out to avenge the murder of his best friend in *G-Men* (William Keighley, 1935).

Both Roffman & Purdy (1981) and Parker (1986) argue that the prison film during this time was 'the ultimate metaphor of social entrapment, where the individual disappears among the masses in an impersonal institution' (Roffman and Purdy, 1981:26). Thus prison cinema in the 1930s regularly constructed the protagonist as an innocent man wrongly convicted, such as James Allen (Paul Muni) caught up in a hold-up in *I Am A Fugitive From A Chain Gang*; Chick Wheeler (Edgar Edwards) wrongly convicted of murder in *Convicted* (Leon Barsha, 1938), or James Larrabee (Donald Woods) framed on grand larceny charges by corrupt politician Shields (Joseph Crehan) in *Road Gang* (Louis King, 1936). If our hero was guilty of a crime, then it often came with mitigating circumstances such as Robert Graham (Philips Holmes) protecting his sweetheart in *The Criminal Code* (Howard Hawks, 1930) or young orphan Jimmy Mason (Junior Durkin) persuade to work for a bootlegger in *Hell's House* (Paul Gangelin, 1932). A third variation on this narrative was predicated upon the reforming con who, having reformed or redeemed himself in some way suffered an unjust death while still incarcerated. Tom Connors

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(Spencer Tracy) goes willingly to the chair, for an unjust execution in *20,000 Years In Sing Sing* (Michael Curtiz, 1933) for example, and "Killer" John Mears (Preston S Foster) ends a prison riot by his suicidal walk towards the guards' machine guns, enabling a death row reprieve for new inmate Walters in *The Last Mile* (Samuel Bischoff, 1932).

As Roffman and Purdy argue, such films reflected the dejection of the recession in 1930s America:

> ... the films' evocation of innocence living in subjugation and terror clearly reflects the despair of the nation faced with incomprehensible social and economic upheaval ... the cells and bars and chains eloquently re-create the sense of frustration and restriction in a land of lost opportunity (Roffman and Purdy, 1981:28).

During the 1940s, in the climate of post-war readjustment in America, Hollywood's production of prison films declined both in number and in quality. Rafter (2000) argues that the influence of the European directors and the consequent, but contested,[3] corpus of 'film noir' reconstructed the crime film adding complex narratives and a confusing moral order. This is perhaps best illustrated by *Brute Force*, Jules Dassin's bleak representation of prison life. Dark in tone and fractured in its narrative, with flashback sequences of four inmate's stories, Parrish (1991) argues its lip service to prison reform allowed Dassin more licence for gratuitous horror.

Along with several notably prisoner-of-war films, such as *Stalag 17* and *Prisoner of War* (Andrew Marton, 1954) and prison comedies *We're Not Angels* and *My Six Convicts* (Hugo Fregonese, 1952), the juvenile delinquent and social problem films such as *The Wild One* (László Benedek, 1953), *The Blackboard Jungle* (Richard Brookes, 1955) and *Rebel Without A Cause* (Nicholas Ray, 1955) were evidence of Hollywood's realignment to incorporate the growing teenage market during the 1950s. *Girls In Prison* (Edward L. Cahn), and the Elvis prison film vehicle *Jailhouse Rock* further echoed this trend. The former, also illustrated the development of women protagonists in prison narratives (Chibnall, this volume) in films such as *Caged* (John Cromwell, 1950), *Yield To The Night* (J. Lee Thompson, 1956) and *I Want To Live* (Robert Wise, 1958). The producer of the latter, Walter Wanger, was also involved in the Don Siegel picture, *Riot In Cell Block 11*, filmed at Folsom Prison and featuring some of its inmates among the cast. Having spent three months in prison in 1951 for attempting to shoot his wife's agent, Siegel was moved to make the film following the riots in American jails between 1951 and 1953, and offered a serious treatise on prison reform (Nellis and Hale, 1981). Kiminsky comments that the film 'broke two cardinal Hollywood rules: the good guys lost and there were no women in the picture' (Kaminsky 1974:83).

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[3] See for example Cook (1990), Neale (2003) and Silverman & Ursini (2004).

The Kennedy years in the 1960s witnessed 'a new domestic agenda … reflected and to some extent reinforced by American film' (Neve 1992:212) and this was perhaps echoed in the final release of *The Birdman of Alcatraz* (John Franken-heimer, 1962) based upon the true story of Robert F. Stroud, who had spent 42 years in solitary confinement. The film's release coinciding with Stroud's transfer from Alcatraz to Springfield prison following extensive campaigning by, among others, journalist Thomas Gaddis. Hollywood's liberal agenda was also evident in *The Defiant Ones* (Stanley Kramer, 1958), a tale of two escaped convicts, one black and one white, chained together at the ankle, exemplifying Hollywood's exploration of racism in American society. Although prison film production continued to decline in the 1960s, with Hollywood producing less than thirty prison films, alongside *The Birdman of Alcatraz* was *Cool Hand Luke* in which Paul Newman played Lucas Jackson, sentenced to hard labour on Southern correctional camp for knocking the heads off parking metres. In many ways the film echoed the horrors of the chain gang previously explored in films such as *I Am A Fugitive From A Chain Gang*, *Hells Highway* (Roland Brown, 1932) and *Blackmail* (HC Potter, 1939) Worthy of mention is *In Cold Blood* (Richard Brooks, 1967) based on Truman Capote's case study of two killers on death row following the Clutter family murders in Kansas City in 1959. There were also several prison of war films, including *The Great Escape*, *King Rat* (Bryan Forbes, 1965) and *The Dirty Dozen* (Robert Aldrich, 1965) in which the eponymous convicted murderers were assigned to destroy a Nazi-occupied fortress.

The 1970s too produced few prison films of note, although my research suggests Hollywood produced around thirty five. These included the run of women-in-prison exploitation films, such as Women's Penitentiary series, *The Big Doll's House* (Jack Hill, 1971), *Women in Cages* (Gerardo De Leon, 1971) and *The Big Bird Cage* (Jack Hill, 1972) and comedies such as the Burt Reynolds vehicle *The Mean Machine*. Nellis and Hale however, note an interesting development prompted by the MGM release of *Fortune and Men's Eyes* (Harvey Hart, 1971) which dealt frankly[4] with homosexuality in prison. They suggest that '(a) series of press exposés, the rise of gay liberation and the greater frankness of cinema generally combined to ensure that the new prison movies gave considerable space to it, in both its violent and affectionate forms' (Nellis and Hale 1982:35). True stories provided Hollywood with the narratives for several prison films during this period, notably *The Sugarland Express* (Steven Spielberg, 1973), *Straight Time* (Ulu Grosbard, 1978) as well as *Midnight Express* (Alan Parker, 1978), based on Billy Hayes's account of life in, and escape from, a Turkish prison. Both *Midnight Express* and the earlier *Papillon* (Franklin J Schaffner, 1973) highlighted conditions in prisons outside America, in the case of *Papillon*, Devil's Island in French Guiana.

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4 In fact, MGM insisted that the original, much more provocative, stage play originally shown Off Broadway in 1967 and again in 1969, was toned down for the screenplay.

While interesting and challenging prison films were being made outside of Hollywood, such as *The Kiss of the Spider Woman* (Hector Babenco, 1985) and Jim Jarmusch's monochromed prison/road movie romp, *Down by Law* (Jim Jarmusch, 1986), Hollywood continued to offer familiar prison narratives throughout the 1980s which focussed on violence (*Lock Up* (John Flynn, 1989), *Penitentiary II*), escape in *Escape From Alcatraz* (Don Siegel, 1980) and corruption and miscarriage of justice in *Fast Walking* (James B Harris, 1982). There were occasional highs; in particular, *Brubaker* (Stuart Rosenberg, 1980) in which Robert Redford played the eponymous warden, attempting prison reform against a backdrop of corruption at local and government level. The film was based upon the revelations of Thomas O. Murton who was appointed superintendent at two prison farms in Arkansas in the late 1960s (Murton and Hyams, 1970).

In the 1980s, prison films began to look forward as well as back, in science fiction prison films such as *The Chair* (Waldemar Korzeniowsky, 1988), and future dystopian punishment narratives in *Escape From New York* and *The Running Man* (Paul Michael Glaser, 1987) (Nellis, 2005). This continued into the 1990s with *Fortress* (Stuart Gordon, 1993) and *No Escape* (Martin Campbell, 1994). Cheatwood notes how these futuristic prisons were run by faceless, mechanistic wardens: in *No Escape*, the warden is a hologram, while in *Fortress* he is part robot. In the mid-1990s the catalyst for the increased popularity and production of the prison film was *The Shawshank Redemption* (Frank Darabont, 1995). In the immediate years that followed the release of *The Shawshank Redemption*, Hollywood studios also released *Murder In The First* (Marc Rocco, 1995)*, Just Cause* (Arne Glimcher, 1995), *Dead Man Walking* (Tim Robbins, 1996)*, Last Dance* (Bruce Beresford, 1996)*, Con Air* (Simon West, 1997)*, Return To Paradise* (Joseph Ruben, 1998)*, Brokedown Palace,* (Jonathan Kaplan, 1999), *The Green Mile* (Frank Darabont, 1999)*, American History X* (Tony Kaye, 1999), *The Hurricane* (Norman Jewison, 1999) and *Life* (Ted Demme, 1999).

Guaranteed first on the list when anyone mentions prison movies, *The Shawshank Redemption* is the best known and most popular example of the genre of all time, a regular in many 'greatest films ever made' lists.[5] Director Frank Darabont has said of it "I've gotten mail from people who say 'Gosh, your movie got me through a really bad marriage…or it got me through a really bad patch in my life or a really bad illness; or it helped me hang on when a loved one died" (Kermode 2003: np). Darabont later directed *The Green Mile* (Frank Darabont, 1999) which also proved a commercial success, although Tom Hank's feel-good Mom's apple pie portrayal of guard Paul Edgecomb proved rather too sweet for some tastes, Pe-

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[5] For example it was ranked 3rd in Channel Four's 100 Greatest Films of All Time [http://www.filmsite.org/filmfour.html, 2nd in the Internet Movie Database Top Rated 250 Films of All Time [http://www.imdb.com/chart/top] and 3rd in 'The Ultimate Movie Poll', Empire Magazine, November, 2001.

ter Bradshaw in *The Guardian* wrote '(i)f you can stand the three-hour-plus stretch of saccharine gibberish and patronising racial politics then you've got a stronger stomach than me' (*The Guardian*, 25th February, 2000).

Since 2000, Hollywood has produced few prison films at all. Apart from the re-make of *The Mean Machine* (Barry Skolnick, 2001) in a British prison with foot-ball replacing American football, and Alan Parker's first foray back into prisons since *Midnight Express* in the death row film *The Life and Death of David Gale* (Alan Parker, 2003), Steven Spielberg's DreamWorks SKG produced *The Last Castle* (Rod Lurie, 2001) in which Robert Redford takes over a military prison from the brutal Colonel Winter (James Gadolfini); and echoing the earlier boxing in prison films in the *Penitentiary* series was *Undisputed* (Walter Hill, 2002) There have been some interesting films which fall outside Hollywood and the prison gen-re as discussed thus far, but nonetheless worthy of note. These include Spike Lee's film about a man's final 24 hours before his seven year prison sentence begins – *25th Hour* (Spike Lee, 2002) and two hard edged treatments of American penal culture by independent cinema, *Animal Factory* (Steve Buscemi, 2000) and *Down Time* (Sean Wilson, 2001).

Escaping Epistemology: Towards A Regime of Representation

Despite the growth in contemporary research on prison cinema, much of this work has, on the whole, been theoretically lightweight. With the exception of ex-cellent work by Jarvis (2004; 2005), Nellis (2003; 2005) and Schauer (2004), much of the literature is reductive, offering little more than narrative description with no attempt to critically engage with broader epistemologies. I have already proposed that genre theory allows for a full exploration of the corpus of prison film and its consequent cultural and socio-political significance. However, I want to extend this to consider whether Hollywood's construction of incarceration can be considered in Foucauldian terms as a discursive practice, which contributes to the fixing of the meaning of imprisonment within a particular discourse at a particular time.

Foucault has argued that discourse constructs versions of social reality, such that although things may exist outside a given discourse, it is only through discourse that knowledge and meaning are produced (Foucault 1972). Thus, as Hall has sug-gested, discourse 'governs the way that a topic can be meaningfully talked about and reasoned about' (Hall 1997a:15). Consequently, meaning is always fixed and refixed (Shapiro 1989) by discursive and representational practices at particular moments, what Foucault termed the 'episteme' (Foucault 1972). Drawing on Nietzsche's argument that central values and ideas are culturally and historically constructed (Dean 1994), and reinforcing Derrrida (1973), Foucault contends that there are simply histories of the present – 'genealogies' (Foucault 1972) – which reinterpret the past within socially, culturally and politically situated discourses: a slippage between historical moments that emphasise the discontinuity of historic

events. Thus, for Foucault, terms such as 'homosexuality' (Foucault, 1973) 'madness' (Foucault, 1978) and 'criminality' (Foucault, 1979) are historically and culturally specific.

If we adopt Foucault's approach here, three questions arise. Firstly, to what extent can we say that Hollywood's prison film output is a discursive practice, a dominant *regime of representation* with the power to re/present prison in a particular way? Second, what does this representation look like and consist of? Thirdly, if meaning floats, only to be temporarily anchored in specific historic moments, has Hollywood contributed to ruptures and discontinuities in the discourse of prison between one period and another, and if so what have these meanings been? Finally, have there been what Hall calls different 'transcoding strategies' (Hall 1997b) of reappropriating the meaning of imprisonment within Hollywood's output; or counter–discourses which exploit the ambivalences and complexities within Hollywood's dominant discourse of prison? These are clearly considerable questions that require more space than is available here (see Mason 2006, forthcoming) consequently, I aim to offer some preliminary thoughts on the first question before moving on to explore one aspect of Hollywood's prison film discourse.

For Foucault, discourses are 'a series of discontinuous segments whose tactical function is neither uniform nor stable' (Foucault 1990:100). Thus, to view Hollywood's prison films as *the* discursive practice, constructing what can be said and known about prison would be problematic. Not least because a number of other discourses exist which construct knowledge of prison, such as the entertainment and news media, government rhetoric, parliamentary debate, pressure groups campaigns and pubic opinion (Mason, 2005). However, what is particular about prison compared to other arms of the criminal justice system – the police and the courtroom for example – is their inaccessibility, their shrouding in secrecy which negates informed public knowledge about them. Further, despite Foucault's genealogical account of the disappearance of the *ancient regime*'s spectacle of punishment, of gallows and guillotine replaced by the birth of the prison, visual spectacle persists in cinematic representations.[6] Jarvis is right when he suggests that one can read the prison film as 'a dark panopticon that regulates the public gaze on law and order' (Jarvis 2004:173).

The Hollywood prison film then contributes significantly to the discursive practice around prison. Further, as a regime of *re/presenting* penalty, Hollywood dominates. In what Maltby (2003) calls the 'commercial aesthetic', Hollywood has driven the commodification of entertainment in post-war Western cinema, ensuring that like all corporate strategy, its films are seen by the most number of people in the most number of cinemas the most number of times. Hollywood produces, and contributes to, a discourse of imprisonment through its power to represent prison in

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[6] I have discussed elsewhere Foucault's genealogy of modern penalty and its application to the prison film (Mason 2000; 2003) and do not propose to repeat that work here.

particular ways, more specifically it is 'the exercise of *symbolic power* through representational practices' (Hall 1997b:259, original emphasis). In Foucault's terms, Hollywood's prison films are an example of power *producing*, through a regime of representation, discourse on imprisonment. Thus power is not primarily repressive and restrictive but constructs new objects, in this case "imprisonment". Further, power does not simply flow from a centralised source, it circulates, and is 'exercised through a net-like organisation' (Foucault 1980:98), so rather than the top-down coercion and force suggested by Marx (1867/1976) power can solicit consent at micro-levels of society.

The Grammar of Hollywood: the Discourse of Imprisonment

So what does Hollywood's discourse of imprisonment look like within the prison film genre? In offering some thoughts on this question, my aim is somewhat modest. Indeed, I propose *not* to do three things. First, to explore all facets of the prison discourse, nor as I have discussed above, to investigate the fixing and refixing of the meaning of imprisonment across the genealogy of prison cinema outlined above. Thirdly, I do not explore here Hollywood's counter-discourses which challenge the dominant regime of representing prison. In the space available, I will outline one aspect of Hollywood's prison discourse which has remained ubiquitous in the prison film genre. Jarvis, rightly points out that 'the prison film is a repeat offender on the counts of character, plot and mise en scène' (Jarvis 2004:167). He also notes the centrality of the penal built environment to the Hollywood's treatment of prison, and it is this iconography and its mechanistic resonance that I wish discuss.

Hollywood's Mechanistic Discourse of Incarceration

The discourse of machine pervades the prison film like the slamming of doors and the turning of keys. For Hollywood, the prison is a system with impenetrable swathes of regulations which grind on relentlessly. This mechanical representation of punishment emphasizes the inmate's struggle to survive and the process of dehumanisation and othering, inherent in incarceration within the penal system. The monotony and regulation of prison life is most often depicted by the highly structured movement of prisoners. In the opening scene of *Numbered Men* (1930, Mervyn LeRoy) for example, the inmates trudge round the prison landings with the number of years of their sentence superimposed above their heads. From *The Criminal Code* (Howard Hawks,1931) to *The Mean Machine* frequent shots of prisoners making their way along steel landings, up and down stairwells to and from their cells has been used to convey the system within prison, echoing Roffman and Purdy's description of a scene from *The Big House*:

> Rows of cell doors open simultaneously and hundreds of prisoners tramp in unison
> to the yard. In the cavernous mess hall, they sit down to eat the mass-produced fod-

der their keepers call food. The camera tracks along a row of prisoners to reveal
faces mainly individuated by the manner in which they express their revulsion at the
meal (Roffman and Purdy 1981:26).

Prison films frequently depict inmates undertaking repetitive tasks, which acts
both as a narrative device to move from one scene to another and as a constant re-
minder to the audience of the mundane regime of prison. As Abu Jamaal suggests,
'(t)he most profound horror of prisons lives in the day-to-day banal occurrences
that turn into months, and months into years, and years into decades' (cited in Jar-
vis 2004:166). The banality is constructed in the limited movement of the exercise
yard, in inmates collecting food; and in the half whispered conversations taking
place on stairwells or in and outside cells. The constraint in and uniformity of mo-
vement serves both to underscore the highly structured system and routine of pri-
son life, and also to extend the machine allegory further. The visible movement of
inmates against the backdrop of cold steel and grey concrete which contains them,
mirrors the workings of a machine – prisoners are the cogs that turn, driving the
huge mechanism of relentlessly onward. Long tracking shots in many films reveal
the prison interior, dwelling on landings, stairwells, bars and cell doors, stressing
the quasi-industrial nature of the prison. In *Wedlock* for example, the audience fol-
low new inmate Magenta (Rutger Hauer) around the high-tech maximum security
prison to which he has been sent. The camera sweeps around the dripping silver
pipes, huge fans and metal columns accompanied by an insistent humming noise.
Hollywood's representation Alcatraz in films such as *The Birdman of Alcatraz*, *Es-
cape From Alcatraz* and *Murder In The First* all dwell on their grim surroundings.

As if to emphasise its dominance still further, the prison film habitually demon-
strates the inflexibility of rules of the prison machine, as Robert Stroud (Burt Lan-
caster) notes in *The Birdman of Alcatraz,* "I know 'em. They're the same in all
Pens. They tell you when to eat, when to sleep, when to go to the privy". Although
used primarily to exemplify injustice, the harsh penal regulations serve to accentua-
te the unyielding processing of inmates through the prison system. This is expres-
sed through seemingly trivial regulations such as James Stewart's chain gang routi-
ne in *Carbine Williams* (Richard Thorpe, 1952), paralleled in (amongst many
others) *Chain Gang* (Lew Landers, 1950), and *Hell's Highway* (Rowland Brown,
1932). Breach of these regulations is often punished by long periods of solitary
confinement, a penalty often represented as harsh given the original offence, for
example *Papillon* and *Cool Hand Luke*. Mechanistic discourse has been fundamen-
tal in Hollywood's prison cinema, producing other narratives in the genre: escape
from the machine, riot against the machine, the role of the machine in processing
and rehabilitating inmates and, entering the machine from the free world as a new
inmate.

A second pervasive aspect of Hollywood's prison discourse, and one linked to
the mechanistic process and systematic nature of imprisonment is the emphasis on
a dehumanising process: the death of the men and women from the outside world,

and the birth of the prisoner as a number and statistics of the inside prison world. This process is initiated at prison reception, and is often shot from the inmate perspective, underscoring for the audience the routine and regime that will stay with the inmate for the length of their sentence. Frequently this process involves the relinquishing of worldly possessions to an intransigent prison guard, stripped naked, scrubbed, or hosed, and clothed in prison issue uniform and shoved unceremoniously into a cell. Versions of this routine are present in many films, initiating, particularly visibly, the dehumanising process, what we might call the othering of the prisoner from her/his outside world self in Hollywood discourse. I have noted elsewhere (Mason 2003) how this mastering of the body of the condemned, is perhaps most symbolic in the cutting of hair, which historically has represented an attack on liberty and personal autonomy and is the most visible difference between inmate and free citizen. The speed and mechanical interpretation of this process, implemented almost immediately the inmate arrives at the prison is the first, and perhaps therefore the most striking, example of the regulated institutional nature of prison the viewer sees.

This process has another important function other than highlighting the process of turning men into prisoners. The entrance of the protagonist into a prison resonates with audiences, whose limited knowledge of prison ensures they empathise with the ignorance and fear felt by the new inmate. The audience are subjected to the harsh regime of prison life, the stern officers and claustrophobic cells. Hollywood uses audience ignorance it to elicit sympathy for the new inmate: the naivety of Carmen (Ena Hartman) in falling for an inmate prank in *Terminal Island* (Stephanie Rothman, 1977) and freshly convicted Billy Hayes being administered a horrendous beating after trusting another inmate in *Midnight Express*. Hayes's beating exemplifies Hollywood's pattern of new inmates often meeting with a violent introduction from guards. Chain gang films like *Road Gang*, *Hell's Highway*, *I Am A Fugitive From A Chain Gang*, *Cool Hand Luke* and *Chain Gang Women* (Lee Frost, 1971) depict guards whipping inmates new to the rigours of hard labour. While in *The Mean Machine* Paul Crew (Burt Reynolds) is beaten by Head Guard Captain Kennauer, and in *Murder In The First* Henry Young (Kevin Bacon) had his foot sliced with a razor by Chief Warden Glenn (Gary Oldman). The introduction of violence serves to establish what Jarvis terms 'the exitlessness from the theatre of cruelty' (Jarvis 2004:167)

Conclusion

My brief discussion of one aspect of the discourse of imprisonment constructed by Hollywood serves merely to begin fleshing out the skeletal frame of my argument. Other important aspects of Hollywood's prison discourse concern, for example, constructions of masculinity and the body, and of prison reform. There are also key questions around the dis/continuity of these discourses at particular

historical moments and counter-discourses within the Hollywood prison genre. Further, a wider analysis might include discourses in punishment narratives outside the prison film genre, in other crime cinema and thrillers for example; and, of course in films made outside of Hollywood. I am aware that I have asked more questions than I have answered here. My aim has been to offer a framework for analysing the Hollywood prison film through combining genre theory and Foucauldian discourse analysis and ideas of representation. A full and comprehensive analysis which adopts this position is like the escape route of many a prison film inmate: a lengthy dig, but one which promises light at the end of the tunnel.

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Images of Crime and the
German Justice System in German Trial Soaps

Monika Fludernik and Martin Brandenstein

Since 1999 German television has had on offer a variety of extremely popular trial soaps: *Richterin Barbara Salesch* (Sat 1, 1999), *Richter Alexander Hold* (Sat 1, 2001), *Das Jugendgericht* (RTL, 2001), *Das Strafgericht: Richter Ulrich Wetzel* (RTL, 2002) and *Das Familiengericht* (RTL, 2002). These series centre on the person of the judge, who in all five series is portrayed as a very humane and fair person. By contrast, the prosecutors and defence lawyers in these series frequently squabble with one another and are not consistently portrayed as models of professional probity. All five series clearly prefer sensational cases and, for reasons of dramatic interest and suspense, emphasise last minute discoveries and peripeties in court.

In this paper we would like to analyse the court docudrama *Barbara Salesch* from a comparative perspective of legal and literary studies. This is part of an interdisciplinary research project on criminalisation processes funded by the Deutsche Forschungsgemeinschaft,[1] which focuses on discursive strategies of exclusion. In this framework the imaging of the German justice system in these trial soaps is interesting not only for its depiction of the German *Rechtsstaat* but additionally for the presentation of criminality in the figures of the accused and/or witnesses given in these films.

Any analysis of such television series must, however, start out with a general framework of comparison with two horizons of reference – on the one hand the nature of actual trials; on the other hand the literary models of the courtroom drama and of narrative plot management (suspense, dramatic highlight, peripety etc.). The foremost question that suggested itself to us in this context was the question in how

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far trial soaps like *Richterin Barbara Salesch* (in future: *Salesch*) should be treated as mere entertainment with no value and no ulterior social purposes at all, or whether such series are responsible for significantly determining, or at least corroborating, viewers' attitudes towards 'criminals'.

Warped Realities: The Soap as Fiction

Salesch, like some other docusoaps, belongs to a popular genre of television programmes that claim to be documentaries and therefore raise expectations of factual veracity. *Salesch*, for instance, claims to be based on real trials; the actress who plays Barbara Salesch is in fact a former judge, and the film deploys a number of 'reality markers' (see below).

On the other hand, trial soaps can be discussed as the latest development in the popular televising of professional groups: from the detective movie, the police movie, the hospital series (*Die Schwarzwaldklinik*; *Dr. Sloane*) and the general practitioner or gynaecologist movie (*Frauenarzt Dr. Stefan Frank*) to the vet movie (*Der Landarzt*; *All Creatures Great and Small*), the forest ranger movie (*Forsthaus Falkenau*), the medical examiner series (*Dr. Quincy*; *Gerichtsmedizinerin Dr. Ryan*), the vicar or nunnery movie (*Pater Braun; Um Himmels Willen*), and now the judge series.[2] We have chosen series that are currently being broadcast on German cable television channels. Since crime detection is particularly suspense enhancing, many of these genre films intersect with detective movies – most obviously *Dr. Sloane* and *Dr. Quincy*, but also a variety of crime movies that 'officially' focus not on the police but on the defence lawyer (*Ein Fall für zwei*), the vicar (*Pater Braun*) or the reporter (*Der Pfundskerl*). In these series, a development towards increasing realism can be observed. Thus, in the detective movie, the lone inspector musing philosophically on questions of morality (as in early episodes of *Der Kommissar* or *Columbo*) have given way to cops cruising the slums in their patrol cars (*Die Straßen von San Francisco*), to much more realistic depictions of the police station (*Polizeiruf 110*; *Dempsey and Makepeace*; *Wolffs Revier*), and an ever more extensive integration of the detective's private life into the series. At the same time, these developments towards greater realism are offset by a tendency towards parody and comedy which clearly re-fictionalise these films. (Examples, just to name three, are the dog movie series *Mein Partner mit der kalten Schnauze*; the new detective series *Monk*; and the by now classic Viennese detective movie *Kottan ermittelt*.)

The situation is therefore very complex because a basic claim for authenticity is counteracted by a 'literary' tradition of previous genre movies and by general developments attaching to all kinds of literature – their tendency to *rewrite* previous

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[2] We are quoting German series since these are the ones we know, and the traditions about which we speak are partly German.

models and to improve upon them by way of parody. As a consequence, any analysis of *Salesch* also needs to take such literary aspects into account.

It is therefore immediately obvious that trial series such as *Salesch* do not depict the realities of criminal trials. On the other hand, since most people do not have any experience of courts, they will tend to take these images as depictions of such reality – more or less at least. In the discussions of our research group the following general departures from actual legal practice were noted:[3]

(a) The films are highly selective and leave out much of the paper documentation of the trial.

(b) The films are very unrealistic in their frequent surprise turns. Most regular criminal court cases are clear from the outset – much research has been done by the police beforehand so that unexpected witnesses overturning the case do not appear on the screen during trial.

(c) The high rate of acquittals in the series is quite untypical (relates to (b)).

(d) The presentation of prosecution and defence lawyers as shouting at one another is unrealistic. More generally, the prosecutor in many of these series is frequently depicted as very unprofessional in other respects, too (harassing the defendant or witnesses with insinuations; attacking the moral attitude of the defendant/witness).

(e) The behaviour and dress of the witnesses and defendants is frequently too informal if not downright vulgar. Women in particular arrive dressed in miniskirts, with generous décolleté and excessive make-up; younger men often arrive in full punk gear or in a T-shirt and with a tattoo. Swearing is common, as is the use of highly derogatory labels in reference to antagonists (*die Tussi*, *die blöde Kuh*, *dieses Monster* etc.) including four-letter words.

(f) The general tone of the trial is excessively emotional, unlike the dry and formal tone of real lawsuits.

These deviations from ordinary court practice or court realities are clearly motivated by the necessity of making such series both entertaining and suspenseful. In imitation of courtroom drama, the antagonism between prosecutor and defence needs to be underlined, and the surprising turns of events clearly relate to the suspense value of these broadcasts. In the context of the features (a) to (f) noted above, an analysis of the series from a legal perspective demonstrates a number of major omissions in the representation of trials in *Salesch* and the other soaps.

German criminal procedure law (*Strafprozessrecht* StPO), demands extremely careful formal correctness within the court hearing. The StPO is worked out in a strict formal way in order to avoid arbitrary procedures and verdicts. As soon as formal mistakes are made in a trial, the judge can count on the court of appeal to quash his judgement (§§ 352, 344 II StPO). Naturally, the courts are therefore ex-

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[3] Thanks here go to Dr. Manuel Ruby who joined us for a session discussing two episodes from *Salesch*.

tremely concerned about preventing this. Thus, a court normally spends a great deal of time making sure that all formal requirements of a fair and just trial are met. As already mentioned above, this applies especially to the paper documentation of the trial, which is omitted in the *Salesch* series. Moreover, the formally correct examination of all the points of evidence is omitted. Instead, without any such disruption, Salesch smoothly proceeds to question defendants and witnesses without needing to concentrate on lengthy formalities.

As a consequence, no care is taken to enlighten the audience about the trouble it takes to fulfil the demands of an equal, independent and conscientious trial. This legerdemain attitude towards the formalities of trial procedure may have far-reaching consequences for the audience's image of the German courtroom. Obviously, the producers are not particularly concerned about this, and seem to value entertainment over constitutional veracity. Although the absence of formalities may thus be seen negatively as an unrealistic portrayal of court cases and might therefore impair people's confidence in the workings of the law, one could however also argue that a realistic reproduction of a trial would not only be boring but tend to enhance people's negative opinions about the legal profession as being overly concerned with abstract rules to the detriment of people's lives and situations.

Formalities are of course not completely erased from *Salesch*. Defendants and witnesses are carefully informed about their rights; the charge is read by the prosecutor in full legal form; and the sentence is read out in legal format.

Barbara Salesch reminds each witness of their obligation to be truthful as soon as they give evidence or make a statement. Defendants are also reminded of their legal privilege (e.g. in the case of a relative being involved, § 52 StPO). Another formal standard upheld in the trial procedure is the citing of paragraphs by the judge and the prosecutor. These paragraphs do not seem to be merely cited as an alibi, as 'markers' that this is, indeed, supposed to be a professional court trial. However, since these paragraphs are never really explained to the audience, they serve very much a Barthesian 'reality effect' (Barthes 1968). In addition to an interim reality marker, the citing of paragraphs almost acquires an aesthetic effect as well – the trial becomes a ritual with set elements that appear to be almost 'chic'. Especially the prosecutor frequently rattles off the paragraphs with the speed (and in the manner) of a machine gun. The audience's lack of knowledge in this respect is at most instrumentalised for gaining respect towards the virtuosity with which the professional trial parties use their vocabulary'. In addition, this ritualistic start evokes the impression that the prosecutor is sober and objective, and that this will be the tenor of the trial.

However, the depiction of trials in *Salesch* suggests that the trustworthiness of German courts is less to be judged on the basis of principles of procedural law than by the charisma of protagonist Barbara Salesch. This contradicts the status of the judge in German criminal law, where the judge's function is meant to be more or less an instrument that helps the law to be applied correctly in a particular case.

The only – important – paragraph in German Procedural Law that explicitly refers to the fact that the judge is indeed a person – and not a mechanical machine – is to be found in § 261 StPO, which contains the regulation that the judge is to pronounce the verdict in accordance with his/her independent *conviction* of the truth.[4]

The wording of § 261 StPO also includes the principle of oral proceedings (*Mündlichkeitsgrundsatz*). This principle ensures that every single exhibit or utterance by a witness of (potential) significance for the verdict – even if it is known to all participants of the trial, e.g. after having studied the case file – has to be orally introduced into the trial, before it may be used for the free evaluation of evidence. The principle of oral proceedings is necessary to provide transparency and has been instituted to prevent secret trials in writing such as were common in Roman law. In this respect, the episodes from *Salesch* can be called realistic. Nevertheless, it seems rather strange that so many case details of importance still seem to be unknown to Salesch, and apparently also to the defence lawyer and prosecutor, although the case has already reached the court stage. This perception evolves especially from the way defendants and witnesses are questioned by Salesch, who really celebrates the hearing of evidence in a tone suggesting that many vital things still have not been revealed – as if it were not the prosecutor's job to examine the case thoroughly in advance so that at least the most crucial questions are already answered before the lawsuit reaches the trial stage!

The amount of knowledge about the case in question on the part of the judge, the prosecutor and the defence lawyer is definitely not as reduced as is often the case in *Salesch*. However, from the dramatic point of view the principle of oral proceedings turns out to be of great practical value for court shows: Everything of importance for judging the case *has* to be shown to produce a credible image of a trial. This automatically provides the audience with the same level of knowledge about a case as Salesch herself, for only what is orally introduced into the trial may be considered in the verdict. Dramatic turning points, at which the cases seem to be 'solved', often by an emotional eruption of a trial participant (or even by a member of the audience in the court room) may be introduced whenever the end of broadcasting time demands it. These frequent surprising turns, as already mentioned, are not realistic at all. They allow the producers, however, to develop the plot with hardly any restrictions.

The other party involved in the proceedings who seems to be characterised by his behaviour rather than by how he is doing his job is the prosecutor. The emotional, usually harsh and aggressive tone in which he addresses defendants and witnesses deflects the audience's attention from his expertise and his function as a representa-

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[4] Original wording of § 261 StPO: „Über das Ergebnis entscheidet das Gericht nach seiner freien, aus dem Inbegriff der Verhandlung geschöpften *Überzeugung*." (The court passes judgement after freely coming to a decision on the basis of insights drawn from the trial.).

tive of the accusation of crime. In § 160 II StPO[5] it says that the prosecutor has to explore the exculpatory facts as carefully as the incriminatory facts of the case! However, as the prosecutor is the one who initialises the trial against the defendant, he will, in *Salesch* as well as in reality, feel the need to justify his decision that this case needed to go to trial. Were this different, he would have to feel ashamed for having made much ado about nothing. So, even if a prosecutor will hardly behave as depicted in *Salesch*, there will also in reality exist a tendency to denigrate the defendant.

A noteworthy aspect of *Salesch* (and the other trial soaps) concerns the similar, almost identical structure of how every single case is being heard. Due to the broadcasting time – which allows for a maximum of two cases to be dealt with in one instalment of *Salesch* – there are hardly any complications that would cost too much time.[6] Expert witnesses, forensic scientists or court interpreters are rarely seen in *Salesch*, although in reality they play a major role in exploring and evaluating the facts. The regularity of the trial procedure as shown in *Salesch* in this respect is quite ridiculous. These regularities do, however, add to the impression that (procedural) law is standardised and unerring, even though, as stated before, the majority of formal requirements of a trial do not actually feature in *Salesch*. Interestingly enough, the similar setting of each trial does not seem to evoke any boredom in the audience. On the contrary, this sort of monotony may even contribute to the fascination of *Salesch*. The audience does not have to rearrange its expectations concerning the formal procedure and the setting of the broadcasts. If that is what they know best and how they like it, they will in most cases feel comfortable if it stays that way. The frequently repetitive, clichéd and schematised format of the trial soaps resembles that of popular literature in general. For instance, Susan M. Griffin remarks on the sensational novel of the nineteenth century (Wilkie Collins, etc.) and its marketing success that sensation fiction deployed "a common pool of narrative tropes, but these were not stable, they drew on and broke down distinct methods of generating strangeness within familiarity, of creating the sense of a weird and different world within the ordinary, everday one" (Griffin 67 quoting Taylor 1998:7). She goes on

> Writing in the *North British Review* in February 1863, Alexander Smith characterized the experience of reading Collins: "If a young lady goes into the garden a moment before dinner, you know that someone is waiting for her behind the laurels. If two people talk together in a room on a hot summer day, and one raises the window a little, you know that a third is crouching on the gravel below, listening to every word, and who will be prepared to act upon it at the proper time" (141). Smith deplored the feverish excitement, "the passion of curiosity" that Collins, "the master of

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[5] Original wording of § 160 II StPO: „Die Staatsanwaltschaft hat nicht nur die zur Belastung, sondern auch die zur Entlastung dienenden Umstände zu ermitteln und für die Erhebung der Beweise Sorge zu tragen, deren Verlust zu besorgen ist".

[6] At times, the one-hour show brims with events when corpses are being recovered off-stage as the trial is proceeding in the courthouse.

mystery" incites in his audience, but his description of the charged engagement of readers who rapidly turned the pages of *The Woman in White* is relevant here. Like the lurid covers that entice purchasers at railway stalls, robes and masks, *when recognized as such*, awake audience expectations – expectations based on prior experiences – and direct reading modes. (68)

The routinised shape of the *Salesch* series can in fact be explained as a kind of ritual – the fascination of the trial in *Salesch* may in part derive from its similarity to religious ritual, and the interest of the law case in general depends on the basic shape of a battle between innocent and guilty in which the innocent are supposed to win. Not only does the prosecutor rattling off his paragraphs resemble a priest reading off a prayer; the final revelation of the verdict and sentencing is reminiscent of the sacred rites of law (instead of Christianity). Stereotypical schemata and the reception process highlight the personal lives of the defendant and witnesses and provide a neat formalised frame to them.

The fact that the physical and personal setting of the court hardly ever significantly changes luckily matches with the necessity of a uniform trial. For instance, the audience would hardly ever come up with the idea of complaining about the never differing, relatively small and inconspicuous court room. If the audience got bored, they would only have to remind themselves that *Salesch* acts as a judge within a court, not as a detective within an action movie. In this respect the credibility and respectability of *Salesch* meets precisely with the interests and wishes of producers, who are of course constantly concerned about production costs.

On the other hand, the – justifiable and noble – fascination with criminal procedure derives from the many different social constellations and conflicts that emerge in court. The setting thus provides for a large variety of subjects. This again would be impossible without the impressive range of statutes in substantive criminal law (*materielles Strafrecht*) and criminal procedure law (*formelles Strafrecht*) that are to be applied in the same way to each case. Finally, a point that seemed to be particularly striking in the series was the oddity that guilty parties, often after having been warned that they need not utter anything that would incriminate them, freely confess their involvement in the crime, thereby drawing down the law's revenge on themselves. The TV series *Salesch* therefore conveys it as a moral duty that one has to confess one's guilt as a defendant whether being asked or not to do so by a judge. Once more a principle is undermined, this time one of the most important principles of all in criminal procedure law: the so-called "Nemo-Tenetur-Principle", abbreviating the Latin phrase: *nemo tenetur se ipsum accusare* (i.e. nobody is obliged to incriminate himself or herself). This principle makes sure that the defendant may choose whether to make a statement or not, § 136 I 2 StPO. In the latter case he or she must not suffer any disadvantages at all (Rogall: § 136, margin no. 31). These norms were introduced as a reaction to trials that were still common in the Third Reich, in which the defendant was physically and psychologically coerced into 'confessing' his guilt (Gusy, C. 2001: Art. 104, margin no. 29).

So unconvincing are these recurring solutions to the question of guilt that the suspicion arises that, in more life-like circumstances, innocent defendants would not be acquitted because the guilty parties would not feel the unrealistic urge to confess to their involvement. When viewed from this angle, therefore, the general impression of the series that the German legal system works quite excellently and that innocent parties are always rescued from unjust sentencing, on analysis starts to crumble. In fact, this illogicality makes it possible for the series to solve nearly every case (there are, however, a few instances of acquittal *in dubio pro reo*).

As with the recurrent last-minute revelations by persons storming into the trial session, these surprising confessions by the guilty need to be explained dramatically as good plotting. The literary pattern of poetic justice requires the punishment of the guilty and the acquittal of the innocent. Interestingly, in some episodes the series even reaches out towards a tragic effect as when the woman who has just learned that her husband is responsible for killing her son unintentionally kills the husband and goes to prison for manslaughter, thereby perpetuating a series of tragic events. Such tragedies point out the general aesthetic quality of the series which is based not only on a manifestation of poetic justice but in addition to this presents the court cases as mini-tragedies or comedies (if not farces).

Images of the Law

What images of the German judicial system does *Salesch* provide? To start with, one has to keep in mind that images of law and crime in court shows like *Salesch* are not to be analysed in a one-dimensional way. Of course, images of law in *Salesch* have an effect on the idea people have of the law. But apart from that they also reflect the producers' ideas of what will meet the TV audience's expectations. For commercial reasons, producers of court shows are likely to be less interested in the reality of trials than are producers of documentaries. Therefore the depiction of reality, to the extent that there is an attempt to reproduce actual court scenes realistically, is compromised for dramaturgical reasons. This, of course, inevitably results in caricature. Concerning the relationship between the law on the one hand, and the imaging of the law in court shows on the other, it can be stated that there is an interdependence between 1) reality; 2) the audience's expectations of both what reality *is* and what it is *supposed* to be like; and 3) the desire of the audience for entertainment. These overlapping aims may be found in other contexts as well. However, what causes considerable feelings of unease in the context of court shows is that the public's acceptance of the law depends on people's opportunity to form their own opinion about the law. One must not forget that television series like *Salesch* belong to the few easily accessible sources from which the public is able to gain information about the law in action.

In democratic nations, the media, especially TV, are not without reason called the 'fourth power' (*vierte Gewalt*) alongside the legislative, judicial and executive

powers. This fourth power can be said to play with depicting the second, the judicial power, in quite a carefree manner so that the separation of powers, it could be argued, in this respect may be in danger. The functioning of the law is related to the public's acceptance of the law, which again is widely based on people's perceptions of whether justice is done. After all, the legislature as the first power cannot afford to neglect the public's attitudes towards the law.

One of the most striking examples for these processes is to be found in the way that cases of the murder of minors with previous child abuse are dealt with in the media. Judging from the presentation given in the media, one might hardly believe that in 2003 'only' five children were murdered after being subjected to sexual abuse.[7] In the news these crimes are covered in disproportionate detail and intensity, suggesting to the public that these are crimes to watch out for. The media does not really care whether such crimes are actually a general threat for children or not. What counts alone is the anticipated interest of the readers or audience in sensational and spectacular matters whose attention soars in direct proportion to the 'perversity' of the crime. Other dangers that ought to be considered as much bigger threats to children, like traffic accidents, do not feature accordingly in the media; they do not meet the media's need for sensationalism. Not only are traffic accidents boring, they also do not allow the audience to keep a distance to the perpetrators, as the spectators know from their own experience how easily accidents can happen in traffic (Brandenstein/Kury 2005; Kury/Brandenstein, in press). It is much more convenient to feel that the murderer and child abuser is somebody entirely different from oneself, a person of ideal deviancy, criminality and monstrous otherness.

Of course, every single case of child abuse is one case too many. But it has to be kept in mind that crimes that are more sensational and evoke more general interest do not necessarily correlate with the quantitative salience of the corresponding crimes. By way of comparison: in 2003, 208 children were killed in traffic accidents.[8] Similar disproportions between the frequency of occurrence and media emphasis can be noted in the comparison of traffic deaths and deaths by plane crashes. Very few planes crash, but each time one does there is big coverage of the event in the media, suggesting that air travel is much more risky than it really is statistically speaking. The influence of the media on one's feelings of safety can also be gauged from the comparative feelings of danger one experiences in small countries where the national news carry every car accident with fatal loss of life as against larger countries that feature only accidents with a significantly higher number of casualties in the national news.

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[7] The numbers for 1999 are five; for 2000 four; for 2001 six; and three for 2002. These numbers include attempted murders. See Bundeskriminalamt (2004: 1).

[8] The figures for 1999 are 316; for 2000: 240; for 2001: 231; for 2002: 216. See Statistisches Bundesamt (2004): 39.

German legislature in recent years has brought in significantly more punitive measures against child abusers.[9] In this it obviously did not respond to a sensational rise in the number of sexual murder crimes involving children but to the public disgust occasioned by the media's excessive focus on such cases. Interestingly, it has been demonstrated that parents are actually more worried about their children having a traffic accident than their becoming a victim of a sex crime (Cf. Innenministerium des Landes Nordrhein-Westfalen 2004). The public outcry against this type of crime, therefore, does not directly correlate with people's fears regarding their own children but is of a more abstract, one could even say, moral nature.

These observations have to be kept in mind when considering the influence of the choice of topics in *Salesch*. The cases dealing with murder for reasons of jealousy, for instance, are overrepresented, which strengthens the audience's notion that crime and danger have almost exclusively to do with sex and violence, and not, for instance, with negligent driving causing death. (On the representation of different types of crime see more below.)

Several conclusions can additionally be drawn from the way *Salesch* is staged. The series provides an extremely positive view of judges. In particular, unlike the prosecutor, Barbara Salesch makes great efforts to be both unbiased and friendly to the defendants. This behaviour is significantly enhanced by the motherly role that she impersonates and which underlines her general sympathy with victims and defendants (even after they have been convicted). Salesch therefore manifests an ideal version of the law in action. Together with the fact that in nearly all cases treated in the series the outcome is 'just' – the innocent defendants are shown to be innocent, the guilty ones are punished – this adds to the overall impression that German law is reliable and trustworthy. The series can therefore be said to reflect the general acceptance of the law and the courts in Germany. When asked in a survey about their confidence in institutions, the German population placed the police (73%) and the judges/legal system (59%) on ranks one and two, while the list ended with the press media (29%) and the church (26%) on ranks 12 and 13 (Noelle-Neumann/ Köcher 2002: 619).[10]

Moreover, the series has a clear didactic thrust. Violence is generally discountenanced, and so is tyrannical behaviour towards wives or other women. The views expressed by the judge, but also the justice meted out in these court cases, imply that women are independent agents with their own rights and that husbands must not abuse or intimidate them. These attitudes are clearly expressed by both prosecutors and judges in *Salesch* and *Das Strafgericht* and seem to constitute a norm

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[9] In 1998, a much more punitive framework for sex criminals was introduced. Cf. Albrecht (1999: 864; 869-70).

[10] When asked, whether they had a good or a bad opinion of the German Federal Constitutional Court (*Bundesverfassungsgericht*) the answers were 51% for "a good opinion", 12% for "a bad opinion" and 37% were undecided (Noelle-Neumann/Köcher 672).

that the series is intent on inculcating in the audience. Such norms can be described as middle-class values, and it is noteworthy that drug dealers and pimps are dealt with very dismissively in the series. At the same time, the didactic message includes an emphasis on the responsibility for one's actions – one needs to make sure that the consequences of one's doings do not result in possible injury to others.

The didactic elements in the series therefore project the image of a rational, nonviolent and fair person as the societal norm, and this ideal conflicts strikingly with the behaviour manifested by almost all participants in the trial (defendants, witnesses, prosecutor and defence lawyer). The only rational person involved in the trial is frequently the judge herself, who remains emotionally uninvolved and aloof from the tide of recriminations and verbal violence that is rocking the courtroom.

This takes us to another interesting aspect of the series, namely that most witnesses and defendants are shown to be excessively violent in their verbal behaviour, and many express their nonconformity with middle-class values by their physical appearance. The preponderance of mini-skirts, scant upper body clothing and excess of make-up with women serving as witnesses is striking and a clear indication of fictionalisation for sensationalist purposes. It is, however, not always clear whether such extravagance in dress necessarily betokens guilt or moral failing. Although many male and female defendants and witnesses that behave with deliberate discourtesy to the court, appear in disreputable clothing or use excessively vulgar and oppressive language, turn out to be guilty of something or other, there are also several episodes in which persons that seem made out to be the guilty parties (prostitutes, tramps, punks, etc.) turn out to be innocent of the actions with which they were charged, and the guilty party is the doctor or businessman or housewife who had first seemed to be representative of the good citizen role. In particular, in many episodes, the defendants and victims engage in shouting matches and duels of recrimination, thereby underlining the possible guilt of the defendant (he or she has a grudge against the victim). Nevertheless, the defendant may still turn out to be innocent despite his or her consistently non-normative behaviour.

For instance, in an episode broadcast on July 1, 2005 (a repeat broadcast), the murder of a prosecutor is initially attributed to a released murderer who had been preparing to take revenge on the man responsible for his sentencing. His former cell-mate corroborates that plans for revenge were under way, and the behaviour of the man in court is disgraceful, as is his external appearance. Nevertheless, at the end of the trial, it turns out that the murder was committed by the prosecutor's son, who tried to kill his parents in order to inherit their money since his parents had refused to continue financing his luxurious idle life of pleasure. As a consequence of these patterns, the series both corroborates social stereotypes about nonconformity as well as current norms of dress, politeness and the work ethic – behaviour that violates these norms is immediately suspect – and at the same time subverts these

stereotypes; a few suspect individuals of non-conformist behaviour and non-normative views actually turn out to be innocent of the charges laid against them.

Such a pattern of simultaneous corroboration and undermining may be regarded as problematic because it underlines that social stereotypes are mostly correct even if at times they may turn out to be incorrect. Although the possibility of overturning the stereotype exists (message: prostitutes or crooks may be innocent), the overall corroboration of stereotypes subliminally tends to confirm the heuristic value of these prejudices, with the result that no clear refutation of these stereotypes occurs. Interestingly – presumably another didactic message intended by the series – foreigners are frequently shown to be innocent, or guilty only because caught up in their ethnic values which conflict with 'German' norms (e.g. revenge for the sake of preserving the family honour). Most worryingly, the sexualisation of female witnesses and defendants on the whole seems to perpetuate traditional prejudices against the display of bare skin, since most commonly women that break the norms of respectable clothing turn out to be guilty or morally defective in one way or another. Respectably dressed women, on the other hand, are frequently proven to be innocent, with some exceptions in the case of *crimes de passion*.

Manipulation of the viewers' opinions about the defendants extends moreover to the final self-defence by the defendant after the prosecutor's and defence lawyer's pleas. It is quite obvious that innocent defendants who are still under suspicion at this point in the trial should now passionately reiterate their plea of innocence. A failure to do so almost immediately corroborates the general impression that they must be guilty. Overall, one can conclude that the images of the law conveyed by the *Salesch* series are on the whole most benign. They enhance the public's positive opinion of German legal institutions and didactically inculcate middle-class norms in the audience. We have also observed that sensationalism and reality effects correlate with fairly conservative values, contrasting the thrill of transgression and perversion with the disgust, fear and indignation against transgressors. This ambivalence does not only reproduce general societal ambivalence towards crime and criminals as both fascinating and loathsome (Duncan 1996), it also reproduces constellations observable elsewhere in reality television shows. As Cynthia Freeland has demonstrated, reality TV both caters to people's taste for the outrageous and yet, precisely because the sensationalism is so extraordinary, also conveys the message that this could not happen to the viewer:

> A third structural feature of such programs is that they represent and defend the values of traditional religion and middle-class people. "Cops" suggest that the only criminals the police deal with are low-life scumbag alcoholics and drug addicts who clearly deserve to be locked up – and who *will be* locked up. "Rescue 911" thrives on, but simultaneously assuages, typical middle-class worries: can you be sure that your nanny won't abuse your infant, that your child won't accidentally impale his throat with a toothbrush, that a rapist won't break into your bathroom, or that a Christmas tree fire won't burn down your new house? (Freeland 2004: 255).

Freeland goes on to notice that reality TV tends to "perpetuate the values of patriarchy and the traditional nuclear family". Although this latter insight does not completely tally with *Salesch* and the other trial shows, some conservatism regarding women's dress has been noted; and the nuclear family reigns supreme as the norm of values that are however being transgressed by most witnesses and defendants. The norm is clearly honoured more in the breach than the observance, but it continues to be the implicit ideal for the viewers.

Images of Crime

Another question perhaps more relevant to the current volume is that of the depiction of crime and 'criminals' in the series. What we find particularly interesting in the trial soaps is the mixture of realistic and literary aspects as regards the sources for crime in our society.

Salesch and the other trial soaps present a large range of crimes. Theft, the most common type of criminal behaviour, figures comparatively often. On the other hand, although murder is relatively frequent in the series, it is not the exclusive type of crime dealt with as in the usual detective films. The most common transgression of which defendants are accused is physical violence, either as part of a drama of jealousy and revenge or as part of a robbery. The choice of criminal actions is therefore partly realistic by comparison with detective fiction, but much less realistic in down-grading theft, traffic crimes and white-collar crime.[11] Interestingly, errors on the part of medical practitioners figure quite often in the series but are not a very common type of crime in the court statistics at all. From a reality-based perspective, the selection of court cases therefore seems to be determined by a gesture towards greater realism than in the detective movies, but at the same time by an emphasis on more spectacular cases than the normal fare of German courts, in which the snatcher of old ladies' handbags and the youngster who has demolished the wine shop's glass windows presumably figure more commonly than the violence that fills most of the series' episodes.

To some extent, however, one could also argue that the crimes discussed in the series are the ones ordinary folk believe they may become involved in. This is true of the fact that the majority of crimes are connected with adulterous relationships and the jealousy, secrecy and debts caused by such affairs. (The series actually seems to suggest that practically every husband and nearly every second wife in Germany have an affair – a gross exaggeration.) Moreover, though the most common law suit concerns physical violence, this violence is only a symptom of other

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[11] According to the *Statistisches Bundesamt* 2005: 52, 19% of all criminal courtcases were concerned with theft; 9.9% concerned physical violence; but only 0.13% murder. For medical errors, see Hansis, M.L. (2002): Only a tiny amount of errors of medical practitioners play a role within criminal prosecutions.

crimes which emerge during trials – if the root cause is not adultery, it is blackmail, insurance policy crimes, drug dealing, prostitution, mafia-like gang crime, white slavery, and so on. In this manner the series covers a much broader range of criminal behaviour (much of it also quite stereotypical) than is actually presented in the prosecutor's charge. Some of these, like Mafia-type crimes and white slavery have had considerable prominence in the German national press. The series can therefore also be argued respond to topical media interest with regard to real-life crime.

As already noted, physical violence is the most common charge figuring in these series. Apparently the public prosecutor steps in whenever doctors and hospitals receive a patient whose injuries suggest suspicious circumstances. Though the public prosecutor is required to take up such cases on due suspicion, doctors actually have to maintain confidentiality towards their patients so that this confidential requirement is rarely broken.[12] Thus, the frequent number of cases in *Salesch* which deal with violence inside the family is implausible. When this happens in the series, the victims frequently deny that anything untoward has happened (wife battering, rape etc.), or they accuse somebody else who is innocent of having beaten them up, in order to shield the real agent. Thus, in the rather farce-like episode (broadcast 16 November 2004) of the husband thrown down the stairs by his vituperative wife, the neighbour who happens to find the husband at the bottom of the stairs is accused by him of being responsible for the injuries. It is only thanks to the defendant's little son that the truth comes out. The case is interesting also because it exemplifies a non-stereotypical crime – husband battering – and delivers a message of the condemnation of physical violence which is, extraordinarily, also directed at violent women.

The gender proportions in the series are again extremely interesting. Whereas, according to prison statistics, female crime is quite underrepresented in real life (Cf. Statistisches Bundesamt 2005: 52)[13], more than half of the defendants in *Salesch* and the other trial soaps are women. Even more surprisingly, the majority of these women are accused of serious injuries, manslaughter and murder. This difference can only be explained from literary tradition in which the female victim figure tends to attract particularly intensive sympathy, a scenario that came to be the determining constellation in the sentimental novel and persisted well into the Victorian novel. Another possible reason for the untypically high number of female defendants might be the presumed female audience of the series for whom female identification and disidentification figures are offered. Particularly the implicit criticism of a failure to observe dress codes supports ulterior didactic messages on this front, too. Owing to the large female presence as defendants in physical violence cases, however, a very non-traditional image of woman as liable to using violence against their partners is created in the series, an image that reflects the

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¹² Cf. § 34 StGB: „Rechtfertigender Notstand“.

¹³ In 2003, only 17.6% of all defendants in courts were women.

contemporary more extensive independence of women. On the other hand, many of the women accused of crimes are depicted as confined within traditional patriarchal structures from which they have been unable to liberate themselves. Many of the tragedies enacted in the series concern abused women, who in a moment of despair, hit back at their abusers and thereby end up in prison, away from their children and condemned to the life of a social outcast. Interestingly, the imprisonment of women for drug dealing offences that is common in the UK and the USA does not figure in *Salesch* at all.[14] Presumably this is the case because, by German standards, sending the woman to prison for the drug dealing committed by her partner is conceived as entirely unjust and would therefore ruin the didactic framework of the series. Moreover, German anti-drug laws are much more lenient than are those in English-speaking countries and judges have more flexibility in preventing major injustice.

Having considered the types of offences figuring in the series, let us now turn to the reasons for crime as emerging from the episodes. Postmodern theories within criminology stress the economic aspects of crime, especially the one known as Rational Choice Theory introduced by *Gary S. Becker* in 1976. By presuming that a (potential) criminal weighs up risks and benefits of a crime, this theory nourishes the hope that deterrence by punishment could be a promising means of preventing people from committing crimes. However, this presupposes that the prospective criminal plans his deeds carefully, weighing the risks of arrest and sentencing against the advantages arising to him from the commission of the crime. One major problem about this theory is that hardly anyone (apart from jurists) will know or even feel the need to know what the long-term costs of a crime are, in case anything goes wrong. It is rather the risk of being caught that criminals are concerned about.

The trial soaps corroborate the fact that very little crime is committed as a deliberate strategy planned carefully and weighing the risks attached to the action. Although there are of course such crimes (murder, larceny, black market labour) that need a sort of calculation, the majority of offences committed in the series (and also in real life) is the consequence of spontaneous temptation, emotional (over)reaction or a neglect of weighing the possible side effects of one's actions (e.g. underestimating the long-term effects of injuries caused by spontaneous violence). In fact, the trial soaps seem to us to be extremely realistic in highlighting as causes of crime unstable emotional states and relationships, a general lack of emotional and moral control, egotism and disregard for other people's rights, despair and similar emotionally debilitating states of mind, fear of detection (of adultery, for example) and other states of panic as well as revenge, jealousy and hatred that have usurped all reasonable faculties of control. These are not all exclusive causes of crime, but decisive contributing factors and can occur in open combination.

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[14] In 2003, merely 10.3% of all people sentenced for drug crimes were women (own calculations based on statistics of the Statistisches Bundesamt 2005: 53).

Thus, the two young men who race their cars causing a bad accident; the raped woman who manages to poison the rapist; the mother in despair at the sexual abuse suffered by her daughter manipulating the brakes of her boyfriend's car – they all act in an extremely irresponsible and emotional manner without considering the consequences of their actions or deeds. Although this is usually said in reference to women who have written out false cheques or to young men who steal because they need to have the roller skates or bomber jackets that their friends at school have, these crimes are committed by women and men who are in fact unable to consider either the harm they are causing to others or the ruin of their own lives which they are preparing for themselves.

The audience may perhaps feel comfortable realising that the crimes in *Salesch* in many cases are the result of highly specific and emotional, maybe even coincidental, situations. The crimes seem to be singular ones. Therefore the audience need not necessarily identify with the defendants. As the perpetrators are usually flat (i.e. superficially outlined) characters, the audience may feel free to condemn them anyway. This would then contribute to putting the criminal act itself into the focus of attention, not the criminal, so that the lawfulness of the sentencing may be measured almost exclusively by principles of proportionality to the seriousness of the transgression committed. Aspects of positive general prevention as sociopsychological correlates of normative principles (Frisch 2000: 305) are therefore even being strengthened by *Salesch*.

It may therefore be argued that the depiction of crime in these trial soaps reflects a fairly realistic estimation of the 'causes' of crime, with deliberate cruelty, callous disregard of others' lives or moral turpitude figuring on the margins of large central blocks of social, emotional and rational ineptitude and a general disability to monitor one's actions and reactions. Such an analysis of the 'causes' of crime strikes us as quite appropriate for a generally permissive society in which people's expectations of getting everything have been raised significantly since World War II. It moreover touches on a perspective that has recently won distinctive influence within criminological research (as in control theories, for example): that 'causes' of crime analyses must not neglect the defendants' desire to indulge in the sensual and thrilling experiences that transgression affords (Kunz 2004: § 24, 14). The criminal act as a means of achieving a certain goal from this viewpoint recedes into the background.

However, this diagnosis additionally suggests an extremely lenient view of crime in German society and conflicts with public outcries for tougher punishments discussed under the keyword 'punitivity' in criminological research. The cases in the series, with few exceptions, depict situations in which many of the viewers might conceivably have acted similarly. Although one could argue that the message of these cases is therefore a warning to viewers not to lose control of themselves when attacked by jealousy or other strong emotions, the series could at the same time be argued to send a quite different message, namely the message that we are all poten-

tially in danger of succumbing to criminal actions. If one draws this second conclusion from the series, one can go on to argue that the series implicitly counters tough-on-crime policies, and if that were the case, the series might be interpreted as an intervention in the current climate of demands for rough justice. As with the positive representation of the law in the figure of the judge, *Salesch* and the other trial series might therefore serve to project a positive image of the German legal system as is.

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"Public Harm" in the Media Selection of Crimes

A Discussion of Recent Research
in the Light of Some Cesare Beccaria Tenets

Gabrio Forti

1. Cesare Beccaria, legality
and the "eloquence of the passions"

For many Italian (and not only Italian) criminal lawyers and criminologists, the great Enlightenment legal thinker and reformer Cesare Beccaria doesn't cease to be a robust source of inspiration well beyond the strict boundaries of criminal justice issues. Indeed, Beccaria displayed a remarkable insight into the meanderings of modern human minds, being well aware of how far disregard for legal principles by States or ruling classes can affect general feelings, attitudes and behaviors. As in late-modern discussions on uncertainty arising from the inability of governments to rein in savage free market struggles (Bauman, 2003: 216-220), he grasped how a widespread perception among people of anomie and undue privileges granted to rich and powerful élites is bound to generate fear and, consequently, to hinder that clear understanding of social reality which is paramount in order that citizens make their public choices rightly and thus that "the republican spirit" may "breathe not only in the public squares and in the popular assemblies but also within the households, where men experience a large part of their happiness or misery" (Beccaria, 1764-1994: 57; Paolucci, 1963: 89)[1].

"Fear" is deemed by Beccaria as having the most significant bearing on behaviors as in human beings "the fear of being injured is greater than the desire to injure" (Beccaria, 1764-1994: 85; Paolucci, 1963, 77). The source of fear among citizens is the sheer uncertainty about law and about actual institutional compliance with legality – *nullum crimen sine lege* ("no crime without law") – a principle Beccaria so "vehemently advocated" (Brown et al., 2004: 182).

> "The view that each citizen should have it within his power to do all that is not contrary to the laws, without having to fear any other inconvenience than that which may result from the action itself – this is the political dogma that should be believed by the

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[1] While referring, in this and following quotes, primarily to the authoritative "Venturi" Italian edition of Beccaria's masterpiece, we will use the English translation by Henry Paolucci, quoting from it as "Paolucci (1963)", due to the numerous arbitrary manipulations of the original text subdivisions this edition displays.

people and inculcated by the supreme magistrates, with the incorruptible guardianship
of the laws. [It is] a sacred dogma without which there can be no lawful society; a just
recompense to men for their sacrifice of that universal liberty of action over all things,
which is the property of every sensible being, limited only by its own powers. This
shapes free and vigorous souls and enlightened minds; this makes men virtuous with
that virtue which can resist fear, and not that of pliant prudence, worthy only of those
who can endure a precarious and uncertain existence" (Paolucci, 1963, 67).

Strictly related to this view, is what Beccaria writes on the "obscurity of the laws",
and especially on the "eloquence of the passions" arising from it. He sees as a "very
great" evil that "where the laws are written in a language that is foreign to a people",
this may be forced "to rely on a handful of men because it is unable to judge for itself
how its liberty or its members may fare – in a language that transforms a sacred and
public book into something very like the private possession of a family".

"When the number of those who can understand the sacred code of laws and hold it
in their hands increases, the frequency of crimes will be found to decrease, for un-
doubtedly ignorance and uncertainty of punishments add much to the eloquence of
the passions". Within the same reflection, Beccaria aptly underlines how useful "the
art of printing is, which makes the public and not some few individuals, the guardi-
ans of the sacred laws"."And we can see how it has dissipated the benighted spirit of
cabal and intrigue, which must soon vanish in the presence of those enlightened
studies and sciences, apparently despised, but really feared, by its adherents. This
explains why we now see in Europe a diminishing of the atrocity of the crimes that
afflicted our ancestors, who became tyrants and slaves by turns" (Beccaria, 1764-
1994: 18-19; Paolucci, 1963: 17-18).

Beccaria's thoughts on legality and its role in shaping "free and vigorous souls
and enlightened minds" and in making "men virtuous with that virtue which can
resist fear" cannot however be considered separately from his statement, still so
crucial for any criminal law or criminal policy discussion, that "the true measure
of crimes is … the *harm done to society*" (Beccaria, 1764-1994: 23-24), and thus
that the role of criminal law should be to control behavior that is harmful to society
and to punish it only in so far as it is proportionate to the harm done (Beccaria,
1764-1994: 23; Paolucci, 1963: 64). In other places of Beccaria's work this idea is
better articulated, e.g. where he says (Beccaria, 1764-1994: 22; Paolucci, 1963: 65)
that "they were in error who believed that the true measure of crimes is to be
found in the intention of the person who commits them. Intention depends on
the impression objects actually make and on the precedent disposition of the
mind; these vary in all men and in each man, according to the swift succession
of ideas, of passions, and of circumstances. It would be necessary, therefore, to
form not only a particular code for each citizen, but a new law for every crime.
Sometimes, with the best intentions, men do the greatest injury to society; at
other times, intending the worst for it, they do the greatest good".

Although the idea of "harm" may seem nowadays certainly "both vague and am-
biguous", as highlighted in a well known namesake work, and a "more convenient

abbreviation for a complicated statement that includes, among other things, moral judgements and value weightings of a variety of kinds" (Feinberg, 1984: 31), still it plays a relevant role not only in criminal law, but in criminology as well, being one of the main parameters entering into crime seriousness ranking (further references in Brown et al., 2004: 3-10) and also into some standards used to define "crime" in a way at least partly independent of the constraints of legal definitions (e.g. Hagan, 1987: 48-51; Forti, 2000: 346-375).

Beccaria's assertions on "harm" as the "true measure of crimes" may be analysed and developed in a way that reveals how they are consistent with what he says about the role of the legality principle as well as the need that laws are not written "in a language that is foreign to a people", in order that this is not forced "to rely on a handful of men because it is unable to judge for itself" and thus that "the benighted spirit of cabal and intrigue" is dissipated. I mean that all these statements may be framed within a same "system of thought", namely an idea of legality which encompasses, besides its formal meaning, a substantial one, the latter referred to the requirement that there must be a "proper proportion between crimes and punishments".

> "It is to the common interest not only that crimes not be committed, but also that they be less frequent in proportion to the harm they cause society. Therefore, the obstacles that deter men from committing crimes should be stronger in proportion as they are contrary to the public good, and as the inducements to commit them are stronger. There must, therefore, be a proper proportion between crimes and punishments" [...] "If pleasure and pain are the motives of sensible beings, if, among the motives for even the sublimest acts of men, rewards and punishments were designated by the invisible Legislator, from their inexact distribution arises the contradiction, as little observed as it is common, that the punishments punish crimes which they themselves have occasioned. If an equal punishment be ordained for two crimes that do not equally injure society, men will not be any more deterred from committing the greater crime, if they find a greater advantage associated with it". (Beccaria, 1764-1994: 19-22; Paolucci, 1963: 62-63)

It's also such proportion that allows among citizens the view that they have it within their "power to do all that is not contrary to the laws, without having to fear any other inconvenience than that which may result from the action itself", and thus that releases them from fear, shaping "free and vigorous souls and enlightened minds" and making them "virtuous with that virtue which can resist fear". And such proportion may be deemed as related to the core of legality (although generally the discussion on this principle is focused on the guarantee it grants against arbitrary decision by the executive and the judicature) in so far as it prescribes that all socially and legally relevant interests, especially those most unable to defend themselves due to their social weakness, must find an adequate protection by law (Pulitanò, 2005: 117-118).

As a matter of fact when legislators or judges do not stick to this requirement of "proportion to harm", they generate the same source of uncertainty and fear among citizens and the same hindrance to their "clear understanding of social reality" which

arises from any violation of the proper "sacred dogma" of legality. The more so when the deviation from such requirement may be ascribed to a will of favouring particular "classes" of men and thus is bound to foster further crimes, breed new wrongs.

Equaling the focus of many contemporary criminal policy discussions, Beccaria was able to outline causes and effects of crime and thus the sensitive area on which any legislator should crack down to cope with it, namely reducing that citizens' fear by which most crimes – including white collar crime and corruption – are fed, ensuring that laws are clear, simple and based on the idea "which is the foundation of human justice", namely "common utility" and therefore "relations of equality" among human beings (Beccaria, 1764-1994: 23; Paolucci, 1963: 65), as well as fostering and spreading knowledge, "which breeds evils in inverse ratio to its diffusion, and benefits in direct ratio".

> "Do you want to prevent crimes? See to it that the laws are clear and simple and that the entire force of a nation is united in their defense, and that no part of it is employed to destroy them. *See to it that the laws favor not so much classes of men as men themselves*. See to it that men fear the laws and fear nothing else. For fear of the laws is salutary, but fatal and fertile for crimes is one man's fear of another. Enslaved men are more voluptuous, more depraved, more cruel than free men. These study the sciences, give thought to the interests of their country, contemplate grand objects and imitate them, while enslaved men, content with the present moment, seek in the excitement of debauchery a distraction from the emptiness of the condition in which they find themselves. […] Do you want to prevent crimes? See to it that enlightenment accompanies liberty. Knowledge breeds evils in inverse ratio to its diffusion, and benefits in direct ratio. […] Knowledge, by facilitating comparisons and by multiplying points of view, brings on a mutual modification of conflicting feelings, especially when it appears that others hold the same views and face the same difficulties. In the face of enlightenment widely diffused throughout the nation, the calumnies of ignorance are silenced and authority trembles if it be not armed with reason"(Beccaria, 1764-1994: 97-98; Paolucci,1963: 94-95; italics added).

All these statements by Beccaria (as several other we haven't the space here to quote) on the relationship of fear as well as of the "eloquence of the passions" to uncertainty and obscurity of the laws (in the above illustrated, namely broad, not only formal but "substantial" meaning) and to the related monopoly of knowledge as well as to the privilege of impunity held in the hands of few people, may still be deemed relevant today not only as a central pillar of any penal system, but also to the understanding of the role of mass media in shaping what has been called the «criminality in our minds» (Walter, 1995: 211), «affected, even determined, by factors totally different from those used in crime statistics and traditional criminological research» and «created every day through reading the newspaper, speaking to friends and colleagues, listening to the radio, going to the movies, and – of prime importance – through watching TV programmes» (Kania, 2004: 226).

I mean that "obscurity of the law" in such broad sense may lie no less in the text contents of such laws than in the distorted presentation of what such laws actually

or should punish. Thus uncertainty and fear may arise just from the "criminality in our minds" that in late modern societies has largely replaced or at least profoundly affected the perception of the criminal justice system. Indeed such a system has been termed a "nonsystem", as each of its "components (or subsystems) operate independently, with little coordination and different, if not conflicting perspectives", having, as the only element linking its constituent parts the processing of persons suspected of criminal misconduct (Brown et al., 2004: 59-60). Having often, we could by now more properly say, as the only element linking its constituent parts, the television coverage of crimes, whose choices are bound to affect in the public just the perception of the laws defining such crimes and of the principles which provide their foundations.

Thus fear among citizens that they *may* suffer any other "inconvenience" than that which may result from their actions (and from a proportionate evaluation of the harms they and other people respectively cause), which Beccaria saw stemming from a criminal justice system disregarding the principles of equality and legality, may also find its source in a media presentation of crimes which distorts the real or reasonable seriousness of such actions: namely in a peculiar, often topical media selection of crime news far removed from the reality of actual crimes and punishments and from the idea that any crime doing harm to society is dutifully prosecuted in proportion of the harm itself, with no regard to the social status of those committing it.

2. Television and the wearing down of "free and vigorous souls and enlightened minds"

As recently stated, the eminent formative influence of the media on the viewers' representation of crime arises from the fact that personal experiences with crimes are scarce, and the media's depiction features high credibility, which is particularly true for TV programmes: "hence, individual concepts of criminality are much more a product of the media depiction than of *real* experiences with crimes" (Kania, 2004: 230; Chermak, 2005: 476-477). Moreover people are fundamentally unable to autonomously check the truth of news reports and, more importantly, are also dependent upon them for the construction of the same reported events (Calvanese, 2003: 165; Chermak, 2005: 477).

The seminal statements of Beccaria on the relationship between the "eloquence of the passions" and obscurity of the laws, especially when we consider the law "in action", better, "in *mediatic* action", can be revived and put in connection to the well known remarks of Bourdieu on the invisible censorship produced through the inevitable limits of space and, especially, time, involved in television reporting (Bourdieu, 1997; Forti, 2005: XV-XVI). Television, as a visual medium intent on treasuring any precious second of programming time, is bound to narrow the "view of the world" cherished by the public, not only taking away from the time spent on more important matters, but especially allotting an undue and disproportionate value to everything

which may seem spectacular, sensational and dramatic; a logic which is beginning to override and influence the form and character of print journalism as well, along a trend frankly recognized also by Italian print as well as television journalists in a recent debate (Simonelli et al., 2005). This media selection of crimes doesn't contribute to shaping "free and vigorous souls and enlightened minds" precisely because the seriousness ranking conveyed by the media *is not consistent* with the actual social meaning of the "results" of criminal "actions", namely with the "harms" thereof, but mostly with the quest for "spectacular, sensational and dramatic" events which make up the daily basic ingredients of visual media programming.

Equally appropriate as association with Beccaria's thought seems the recent analysis by Robert D. Putnam (Putnam, 2004: 14-23), on the erosion in America of that "social capital" which, according to his view, refers to features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit: communities blessed with a substantial stock of "social capital" display networks of civic engagement which foster sturdy norms of generalized reciprocity and encourage the emergence of social trust. Such networks facilitate coordination and communication, amplify reputations, and thus allow dilemmas of collective action to be resolved: civic engagement embodys past success at collaboration, which can serve as a cultural template for future collaboration and probably broaden the participants' sense of self, developing the "I" into the "we," or enhancing the participants' sensibility for collective benefits.

As a matter of fact, just according to Putnam's analysis, television has a strong negative impact on social capital: 39 percent of people watching hardly any television have taken part in public meetings on school or muncipal issues, against a 25 percent among intensive television consumers (Putnam, 2004: 280-281). In his view television is radically "privatizing" or "individualizing" people's use of leisure time and thus disrupting many opportunities for social-capital formation. His analysis attests that the growth in time spent watching television dwarfed all other changes in the way Americans passed their days and nights, giving evidence that Americans watch an average of four hours of television per day, and that television watching consumes 40 percent of the average American's free time. Moreover already at the end of the Eighties, 43 percent of Americans had declared that they switched on television with no regard for the broadcast program (2004, 274). This increase has taken effect along with a constant diminution of one important indicator of social capital and civic engagement: newspapapers reading (Putnam, 2004: 270). Television has made communities (or, rather, what we experience as communities) wider and shallower: in the language of economics, electronic technology enables individual tastes to be satisfied more fully, but at the cost of the positive social externalities associated with more primitive forms of entertainment. Thus according to Putnam, all electronic entertainment has isolated and privatized American's leisure time, allowing to consume this hand-tailored entertainment in private, even utterly alone, promoting isolated and private interactions that take place only in the home, and curtailing other social connections.

While Putnam points out a general diminution of interest for news in the American public, also in television news (Putnam, 2004: 271-272), according to another study most Americans (78 percent) get their news from nightly national television newscasts (Gallup 1996:117-118; Maguire, 2002), where crime is one of the primary subjects claiming 10 to 20 percent of total news air time (Maguire, 2002; Dominick 1978; Graber 1980).

These views have been somewhat confirmed in Italy, by a survey about the "media consumption" by the Italian population (Censis 2001) which attests that television is present in 98,7% of households and this medium is used frequently (at least three times per week) by 94,4% of individuals interviewed: a choice mostly motivated by leisure (43,6%) and routine (38,3%). Usage of newspapers, which reaches 71,8% of households, is frequent for 45,3% of individuals and mostly motivated by interest (55,4%). It is noteworthy that 81,5% of people interviewed deem television news their «preferred medium to be updated» (against 42,9% expressing the same opinion about newspapers) and even 70,3% and 69,2% consider them as the «most trustworthy» and the «most complete» source respectively. As to crime news, its coverage by the media has been deemed «balanced», although the public displays a low interest in these news, somewhat inversely related to educational level, being generally 8th, but ranking higher (5th) among people having attained a lower education level. The high television consumption of Italian people has been confirmed in 2004 (Censis, 2004), with 98,6% of people using it (95,5% usually) toward a 62,8% of radio (51,1% usually), 46,0% of newspapers (35% usually) and 43,5% of books (29,9% usually).

On the whole the preceding data seems to support the diffusion of television but also the confidence of public in its trustworthiness as the main source of information. Such data is however blatantly at odds with what has been established in a more recent Italian survey (Censis, 2005) which interviewed a sample of 300 young Italian journalists asking whether they felt their liberty of expression limited and thus unable to report facts without having to undergo undue influences: 50% of them admitted such limitations, more or less frequently in the course of their work.

Still more revealing and disconcerting in this regard are the results of the Freedom House's annual press freedom survey, which tracks trends in media freedom worldwide since 1980. Now covering 194 countries and territories, this *Global Survey of Media Independence* provides numerical rankings for each country, rating their media as "Free", "Partly Free", or "Not Free". Assigning numerical points allows for comparative analysis among the countries surveyed as well as facilitating an examination of trends over time about that crucial human right stated by the Universal Declaration of Human Rights in Article 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers").

In this survey the examination of the level of press freedom in each country has been divided into three broad categories: the legal environment (which considers

the laws and regulations that could influence media content as well as the government's inclination to use these laws and legal institutions in order to restrict the media's ability to operate), the political environment (based on the degree of political control over the content of news media, including the editorial independence of both the state-owned and privately-owned media; access to information and sources; official censorship and self-censorship; the vibrancy of the media; the ability of both foreign and local reporters to cover the news freely and without harassment; and the intimidation of journalists by the state or other actors, including arbitrary detention and imprisonment, violent assaults, and other threats) and economic environment (which includes the structure of media ownership; transparency and concentration of ownership; the costs of establishing media as well as of production and distribution; the selective withholding of advertising or subsidies by the state or other actors; the impact of corruption and bribery on content; and the extent to which the economic situation in a country impacts the development of the media).

According to the findings of the *Annual Survey of Press Freedom 2005*, Italy is ranked 77th (together with Bolivia, Bulgaria, Mongolia and Philippines) and its status currently classified as "partly free", having lost three further positions since the *Annual Survey of Press Freedom 2004* (where Italy was placed 74th).

Suffice it to compare the data of confidence among Italian people in the trustworthiness of media news with both the data mentioned above on freedom perception by journalists and on general freedom of press, to see confirmed one first consideration: control of media in few hands and thus lack of freedom of press can be easily concealed, to the point that people entitled to this right may be unaware of the level of diminution its enjoyment is actually suffering. We could also engage in the hypothesis (albeit already well founded on Bourdieu's analysis) that a feedback mechanism is working in this field, namely that television consumption, while eroding the social capital of communities, lowers in itself their ability of reacting against infringements to the editorial independence of newspapers and television networks and thus against further worsenings of the informative and cultural qualities of their contents: a far cry from the conditions required for development of the beccarian ideal of "free and vigorous souls and enlightened minds".

3. The "spirit of the family" and the media coverage of corporate crime

Just how criminal justice authorities are guided and, in turn, tend to perpetuate and legitimate selection mechanisms of crime, so highly selective are the media´s choices in general and especially news stories dealing with criminal matters (Chermak, 2005: 475-478). Journalists and media professionals "decide" what is worthy of the definition and relevance of crime (Forti, 2000: 53-54), although their "decisions" are mostly guided by the evaluation about what is more or less impor-

tant from their "newsperspective", namely based upon news values inherent in criminal facts or in particular features thereof (Losito 1993). We could thus say that the media produce a huge dark figure of crime news, no less problematic than the dark figure of crime arising from the operation of state control agencies, which makes a profound impact on the credibility of those principles (e.g. equality of citizens) forming the base of legal order in democratic societies (Hulsman & Bernat de Celis, 1982: 68-71; Blad et al., 1987: 8-9).

As stated quite recently, «media workers, sources, and the news-consuming public rely on shorthand reference schemes in order for reality to be consistent with existing conceptions. The frames used to describe events and groups are conceptualized here as organizing devices or conceptual tools. The significance of these frames is in the acknowledgement that there are multiple, competing ways to frame events, and the media, and the sources relied on for the interpretation of events, work to sponsor and then promote preferred meanings. Reporters are selective in deciding how to portray an event and obviously prefer some interpretations to other equally plausible ones. Because specific frames are selected and promoted at the expense of other interpretations, the framing of events has inherent ideological power». (Chermak, 2005: 474).

Although media selection standards and those practiced by legislators, prosecutors and police do not always overlap, sometimes are they even at odds with each other, in several areas they are quite similar and in any case often tend to mutually enhance their respective distorting effects, thanks to the capital they can make profusely out of the "myth" of objectivity (De Piccoli et al., 2003: 235-239). As aptly remarked, the media are nowadays among the most important social control institutions in our societies (Chermak, 2005: 477).

"Since the public generally assumes that press storytelling is factual, and even based on reliable, empirical based data, we are guided towards an unrepresentative and quite narrow worldview. Individuals and representatives of powerful and political institutions take advantage of this reality as they are accepted as having authority on such issues. They are thus given the chance to define the preferred meanings of these events and guide the media down a particular path of representation" (Chermak 2005: 480).

Numerous studies, e.g in America (see, also for further references, Maguire, 2002) and Germany (see, also for further references, Kury, 2005), have amply shown how distorted is the media´s presentation of crimes. This has long been the case for the entertainment media, marked by a persistent exaggeration of the prevalence of violent crime and by an underplaying of the frequency and severity of other types of criminal offenses, first and foremost virtually ignoring corporate violations of the law. By now also the news media, particularly newspapers and local television newscasts, have promulgated the same distortion by focusing most atten-

tion on violent crimes and making newspaper coverage and local television news guided by the "if it bleeds, it leads" format.

As attested by a plethora of researches, the news media focus the most attention on crimes of interpersonal violence, while devoting minimal coverage to corporate crime (Bertolino, 2005: 229-236), to the effect that the popular, distorted, attention continue to be focused almost exclusively on the harm caused by the former, although most criminologists would argue that people have more to fear, both financially and physically, from corporate criminals than street criminals. Yet this awareness, already well present in Beccaria, is unlikely to be inferred by viewers of network newscasts, albeit some evidence has been recently found of a substantial increase in corporate crime reporting in national newscasts (Maguire, 2002).

We could thus say that not only television in itself has played and still plays a relevant role in eroding "social capital", and even in undermining the ability of public opinion to perceive the manipulation to which is being subject and to adequately react, but this effect is further amplified in criminal news due to the peculiar selective choices of media reports in this field. Powerful white collars, often holding large shares in television networks and newspapers are quite capable of influencing the media, and have indeed the ability to escape public reproach for their illegal deeds diverting public attention away from their crimes and towards street and violent crimes.

Drawing again on Beccaria's thoughts, we could say that these reports are profusely spread with that "family spirit", which "is a spirit of details, limited to trifling facts", and far from "observing the facts and classifying them in the order of their importance for the good of the majority": a feature which, affecting the "criminality in our mind" is "a fertile source" of "contradictions between domestic and public morality", "inspiring submission and fear", instead of "courage and liberty".

> "Family spirit is a spirit of details, limited to trifling facts. The spirit that rules republics, sustained by general principles, observes the facts and classifies them in the order of their importance for the good of the majority. […] Such contradictions between the laws of a family and the fundamental principles of a commonwealth are a fertile source of other contradictions between domestic and public morality; they occasion, therefore, a perpetual conflict in every mind. Domestic morality inspires submission and fear; the other, courage and liberty: the first teaches the limitation of beneficence to a small number of persons, involving no spontaneous choice; the second calls for the extension of it to all classes of men. One commands a continual sacrifice of self to a vain idol, called 'the good of the family' (which is often the good of no one of its components); the other teaches the pursuit of personal advantage without violation of the laws" (Beccaria,1764-1994: 57-58; Paolucci,1963: 89-91).

A well developed "social capital" in communities is just the opposite of that "spirit of the family" branded by Beccaria as a further source of "submission and fear". This "spirit of details" is rather typical of those circumscribed relationship networks, creating fragile but rigid structure easily destabilised by stranger presences and likely to encourage friend/enemy attitudes, conducive to feeling of insecurity and

higher fear of crimes (Mosconi & Padovan, 2004: 160), as well as, precisely, of the most common way television represents crime, as recently exemplified by the construction of the terrorism scare in America (Chermak, 2005: 493-494).

In the media´s presentation of crime we are thus able to identify two ingredients, mutually supportive, Beccaria would have deemed conducive to a kind of hidden tyranny: widespread fear among citizens and the ability of the élites (of "the nobles") of presenting themselves as immune from criminal stigma and prosecution, namely what Sutherland aptly called the "benefit of business", by which the most powerful group in our societies secure relative immunity, just as in medieval societies the most powerful group secured immunity by the "benefit of clergy" (Sutherland, 1983: 57).

As a matter of fact, businessmen and, most of all, corporations are able to invest in promoting their "image", especially when they have a control on media, thus averting public and control agencies' attention from white-collar crime's dangers and harms (Forti & Visconti, 2007, 496; Simon & Eitzen, 1992: 20 ff.; Reiner, 2002: 387-393; Poveda, 1994:19-27). The lack of public concern for white-collar crime – contrary to a disproportionate fear of street crimes – is in itself conducive to further economic crimes and discourages the mass media from an investigative and critical approach (Levi, 2005: 512 ff.; Forti 2003:113; Lynch et al., 2000: 113-114, 123; Rosoff, 2005:497 ff.) – thus removing or weakening incentives for control agencies' investigations and prosecutions.

The two well known exceptions (among others, Goff, 2001:195-196; Evans et al.,1993:88-92; Lynch et al., 2000:112-113, 121-124; Wright et al., 1996:290-291) in the general lack of interest of the media for white-collar crimes – corporate violence (environmental disasters, work injuries or deaths, toxic torts, etc.) and the great financial scandals – are dealt with a focus only on more striking events, especially when corporate violence is concerned or when well-known corporations or businessmen are involved, thus being somewhat mesmerized by the "celebrities" (Forti & Bertolino, 2005: xi-xxviii; Levi, 2005: 511 ff.; Rosoff, 2005:502 ff.; Tumber, 1995:411; Katz, 1995: 54-55) involved in the scandal. Moreover the media is prone to sensationalism and very rarely to a close scrutiny of facts and causes (Wright et al., 1996: 291 ff.; Goff, 2001: 197 ff.; Lynch et al., 2000:113 ff.): they emphasize huge and palpable harms, especially when there is a butcher's list to count which entirely depends upon the official decisions to classify the relevant facts as "crimes" or simply wrongs. Besides, the media gradually loses interest during the trial and even a conviction generally suffers a lack of coverage that severely limits every educational effect over the public or deterrent effect over corporate managers.

The media coverage of economic crime – even in most striking cases – is still largely reactive: original inquiries by journalists are extremely rare, in spite of its probable usefulness in white-collar crime prevention (Wright et al., 1996: 301-303; Kramer et al., 2002: 279; Fisse & Braithwaite, 1983: 254-260; Rosoff, 2005: 502 ff.). The

choice between an investigative approach and a passive one is largely influenced by media resources, by the analysis of possible impacts on advertisement's incomes of such inquiries, by the risk of being involved in costly legal actions and by a preliminary evaluation of readerships interest. Thus most business coverage is supportive, complimentary and consonant with the media's role in reproducing dominant ideology (Rosoff, 2005: 497-498; Tumber, 1995: 418), even if sudden changes toward scandalized and scandalistic titles, as said, are always frequent after a huge financial or violent corporate crime is revealed (Levi, 2005: 516 ff.; Wright et al., 1996: 302-303).

The media may, themselves, also be conducive themselves to white-collar crimes (even though in different ways than the ones usually assessed in relation to street crimes) (Rosoff, 2005: 497 ff.). Not only through lack of criticism and flattery that the media grant to corporations whose deficiencies and anomalies any journalists could easily come to realize, as journalists or editors may accept rewards – under different forms – from corporations eager to get favourable coverage (Rosoff, 2005: 500 ff.; Wright et al., 1996: 301-302) or even there are businessmen or corporations involved in cases of white-collar crime who can get easily such coverage thanks to their proprietary control on the media, as the Italian case abundantly exemplifies, with the thick and practically still unresolved bundle of conflict of interests involving media, political and economic personalities.

Several texts in Beccaria's work detail other features of crimes by the "greats" deemed especially conducive to "public harm". First and foremost their potential for affecting a great number of people and, correspondingly, breeding new crimes.

> "False, finally, is the idea of utility which, sacrificing the thing to the name, distinguishes the public good from that of individuals. There is this difference between the state of society and the state of nature, that the primitive man harms others no more than is necessary to procure some advantage for himself; the social man, on the contrary, is sometimes moved, by bad laws, to injure others without advantage for himself. The despot casts fear and consternation into the heart of his slaves, but it rebounds and returns with greater force to torment his own heart. The more private and solitary fear is, the less dangerous is it to the person who makes it the instrument of his happiness; but the more it is public, and *the greater the number of people it affects*, the more likely is it that some careless, or desperate, or audaciously clever person will succeed in bending men to bis purposes by inspiring them with pleasant expectations, made all the more appealing by the fact that the risk of the enterprise is shared by a greater number; and, besides, the value the unhappy set upon their own existence diminishes in proportion to their misery. This is the reason why *wrongs breed new wrongs*; hate is a more lasting sentiment than love – so much more lasting as the former acquires strength from continuation of the acts that weaken the latter" (Beccaria, 1764-1994: 95-96; Paolucci, 1963: 88-89).

It is also to protect society against public harm arising from the sway of "the right of the strongest" that especially "the great and rich" should be kept in check by law.

> "The great and rich should not have it in their power to set a price upon attempts made against the weak and the poor; otherwise riches, which are, under the laws, the

reward of industry, become the nourishment of tyranny. There is no liberty whenever the laws permit that, in some circumstances, a man can cease to be a *person* and become a *thing;* then you will see all the industry of the powerful person applied to extract from the mass of social interrelations whatever the law allows in his favor. This discovery is the magic secret that changes citizens into beasts of burden; in the hands of the strong, it is the chain with which he fetters the activities of the incautious and weak. This is the reason why, in certain governments that have all the appearances of liberty, tyranny lies hidden or introduces itself, unseen, in some corner neglected by the legislator, where, imperceptibly, it acquires power and grows large" (Beccaria, 1764-1994: 50; Paolucci (1963: 69).

It is the power of the great and the rich that *empowers* them and their deeds to change citizens into "beasts of burden", but with a vengeance, as they are able to do that under cover, imperceptibly, namely keeping up appearances. The idea Beccaria so well develops is thus that no overt State capture by a tyrant is needed to have an actual tyranny established, but just a situation where "the right of the strongest" is affirmed and people cease to be *persons* and become *things*, seeing destroyed *in their minds* the ideas of justice and duty. Aptly, in the same paragraph quoted above, Beccaria uses a kind of pre-Kafkaeske metaphor of the insect: "men generally set up the most solid embankments against open tyranny, but do not see the imperceptible insect that gnaws at them and opens to the flooding stream a way that is more secure because more hidden" (Beccaria, 1764-1994: 50; Paolucci, 1963: 69).

Just so "imperceptible", as said above, is the erosion of social capital which makes communities unaware (and increasingly unable to regain the awareness) of the loss of independence in the media, i.e. to perceive the "insect" that "gnaws" at their "free and vigorous souls and enlightened minds".

4. The media selection of crimes: results of a recent research project

The highly selective nature and impact of the media´s choices has been confirmed by a recent interdisciplinary research of the Università Cattolica del S.C. di Milano, on *The TV Presentation of Crime* (from now on shortened to *UC Research*), lead over a two-years span, with contributions by scholars belonging to various scientific areas, especially legal, criminological, psychological and semiotic-mediological, and discussed during an international Conference that took place between 15 and 16 May 2003 in Milan, where several renowned experts in this field delivered their papers. While conducting autonomous investigations, according to methods and aims characteristic of their respective knowledge fields, all research groups have tried to keep the necessary coordination with the other ones. Neither of them however has tried to find scientific evidence to the hypothesis, still quite controversial and no more in the mainstream of worldwide communication research (with further references, De Piccoli et al., 2003), about the possible direct causal relationship between media coverage and criminal behaviour, especially vio-

lent behavior. It has rather been deemed productive and appropriate, as well as proportionate to available research resources, an analysis which should compare spaces/times and contents of criminal news in the media (especially television), with the image of crime emerging from data, know-how and scientific backgrounds characteristic of the various disciplines involved. From this comparison it was expected that some hints for theoretical explanations could arise, useful to better formulate or confirm hypotheses about the role of media news in prompting people to organize their images, perceptions and understandings of the social environment where crimes occur; an approach thus more akin to those developed within the cultivation (Gerbner et al., 1982, 1994) or the agenda setting (Roberts, 1972) theories, than to the so called hypodermic one (Katz and Lazarsfield, 1955).

From such a juxtaposition of the two visions of crime – the scientific perspective and the "newsperspective" – the research has aimed at identifying a few core problematic areas, defined by the most striking and meaningful contrasts discovered and to be submitted to discussion and interpretation, also with the help of the same agents (journalists, media professionals etc.) engaged in the "media treatment" of criminal news. Although it wasn't the aim of the research to find out the reasons why television tend to conform to these stereotypes, a debate with a group of prominent journalists set up during the Conference (Simonelli et al., 2005) has given insights into the political, structural and commercial constraints imposed on their choices and having a huge impact on the selective presentation of crime news.

The legal-criminological research (Forti & Redaelli, 2005), in particular, has studied spaces and ways of publication of the news regarding crime by some of the main Italian television networks, however analysing the two major national papers too, drawing on such relevant data for some useful comparison between the two kinds of media. The prime time editions of news television programmes like TG1, TG3, TG4, TG5, as well as the newspapers "Corriere della Sera" and "La Repubblica", have thus been screened for five consecutive months (from February 2002 to June 2002). The number and extent of crime news have been gauged, and the incidence of criminal news on the general news amount in terms of absolute figures, namely seconds of programming (as regards the television headers) and square centimetres of publication (for papers), calculated. The aim was initially to measure the incidence of criminal themes within the overall set of news, verifying in which percentage the audience-readership receives information related to crime, in comparison to all other information. With particular regard to the critical issue of the definition of news as "criminal", it has been chosen to classify as such all facts deemed punishable by the Italian criminal code. Moving from the knowledge that media description of crimes not always show or convey the awareness that a legally punishable offence has been committed, the survey has also thrown relief to the usage of words ("penal", "criminal", "delinquent", offence names, etc.) overtly conveying the criminal character of events referred to during broadcasts or within news texts. The research assumed that the use of these terms by the media has an enormous bearing on public perception of "criminal" matters: the labeling of an

event as a "crime" contributes indeed to separate it from its context, from the network of personal and collective relationships from where it has arisen, communicating that it has been committed by someone guilty, probably belonging to the special milieu of the wicked and cruel people: «to call a fact a "crime" means to limit enormously the ability to understand what has happened and to organize the response» (Hulsman-Bernat de Celis, 1982: 109-110, 114)

As an outcome of this first analysis, an incidence of crime topics upon the overall amount of news emerged between 12% and 17% on newspapers and between 29% and 40% on television news. It is then an undeniable fact that Italian journalists and media professionals are greatly attracted by crime, sharing under this respect the tendency of their colleagues in several other countries, like the United Kingdom (Reiner et al. 2000: 183), Germany (Kury, 2005) and the U.S.A., to what has been aptly termed the "commodification of crime", which makes it a major part of the daily news (Tunnell, 1992). As clearly stressed by D. Altheide in his paper delivered at the Conference (Altheide, 2005), «crime and fear dominate most U.S. newspapers and television news reports», and this overall feature is linked to entertainment formats that provide the basic underlying logic of commercial television (and newspapers), and in turn to "fear," «the most basic feature of entertainment in popular culture». This emphasis is not without effect on criminal justice, social policy, public perceptions of social issues, as citizens «are becoming more "armed" and "armored"» and «a new social identity – the victim» is being promoted, ready to be «exploited by numerous claims-makers, including politicians, who promote their own propaganda about national and international politics». As aptly stated «the key factor for the high impact of TV images seems to be their capacity to emotionalise the content»; «what really works is what really affects people – largely regardless of how representative or realistic the content might be» (Kania 2004: 242).

Besides gauging the general percentage of crime news from the overall amount, the research has mapped the occurrence of different crimes that are scrutinized by the medi. To this aim a first list of offence groups has been drafted: violent crimes not including homicide; violent crimes including homicide; crimes against honour; suicides; drug crimes; sexual crimes; child sexual abuses in the family; child sexual abuses out of the family; crimes against property, damages and forgery; economic crime; political-administrative crimes; negligence (not including traffic offences) and environmental crimes; traffic offences; violent political and terrorist crimes; crimes against humanity, war crimes, genocides, racial intolerances; prostitution and slavery; mafia and organized crimes; other crimes, not classified within one of the preceding items. This list has been largely based, although with some modifications, on the categories of reported crimes adopted by the Italian Criminal Judicial Statistics drafted yearly by ISTAT (Istituto Italiano di Statistica). Next to this official statistics list, further categories of news related to crime have been checked by the research, like general justice themes, prison issues, as well as three "cross-sectional" categories focusing on relevant personal features of the offenders (age, nationality and gender) especially flowing from the criminological research tradition and background: juvenile delinquency; crimes committed by aliens and immigrants; female crimes.

One of the most striking features of the media presentation of crimes emerged from the *UC Research* is the gap between television and newspapers occurrence of property crimes and actual extent of these same crimes according to official statistics as well as actual figures discovered through victimization surveys.

Property crimes make up 5,2% of total crime news and only 3,8% of space in the television news, while these same percentages are higher on newspapers, reaching 15,7% and 5,5% respectively.

Diagram 1: Media Presentation of Property Crimes
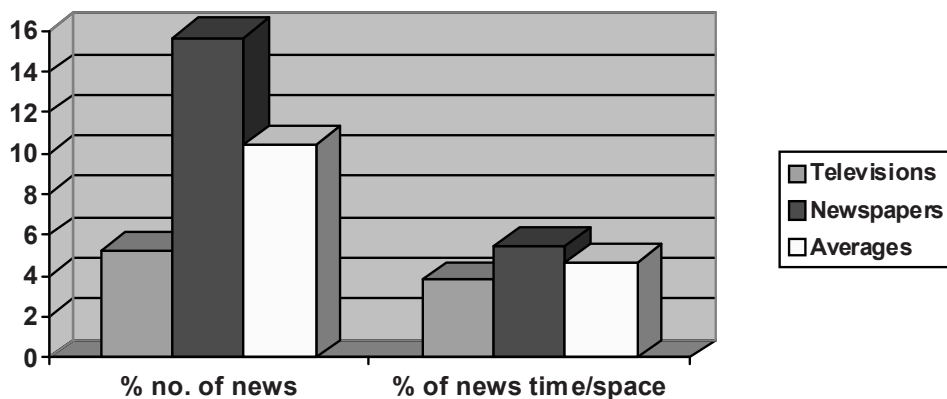
The average amount of media coverage of property crimes is therefore circa 10,4% and 4,6% respectively, a value strikingly at odds with official statistics, where these crimes have up 73,6% (year 2000) or 60,2% (year 2002) of total offences reported (see large *Table 1* attached below). The gap between media reality and "real" crime reality is still wider, if we consider the well-established criminological notion that property crimes have the highest dark figure rates, making official statistics quite unable to adequately represent the amount of crimes of this type actually committed.

Still lower is the media coverage of economic crimes, with averages of 1,75% and 1,2%:

Diagram 2: Media Presentation of Economic Crimes
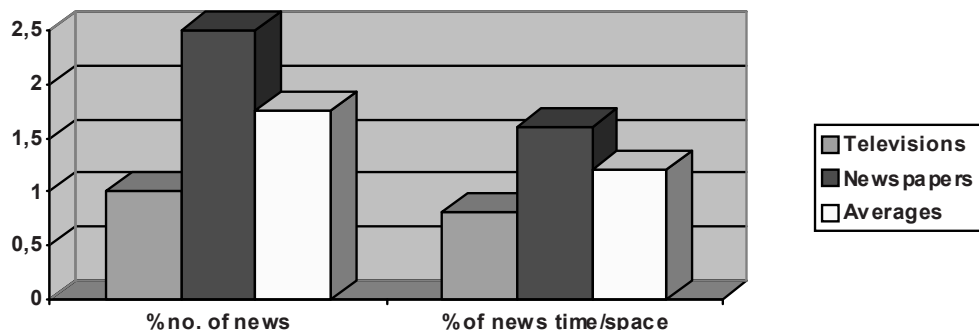
Quite opposite results, however no less telling, have been revealed by the survey on homicide and violent crimes:

Diagram 3: Media Presentation of Violent Crimes (without homicides)
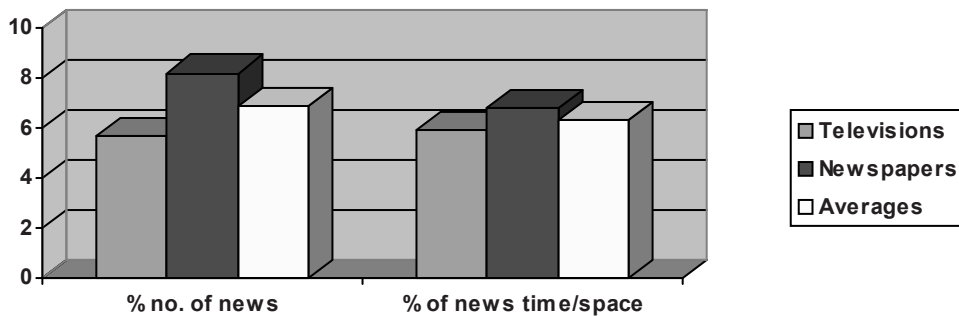
Diagram 4: Media Presentation of Violent Crimes (including homicides)
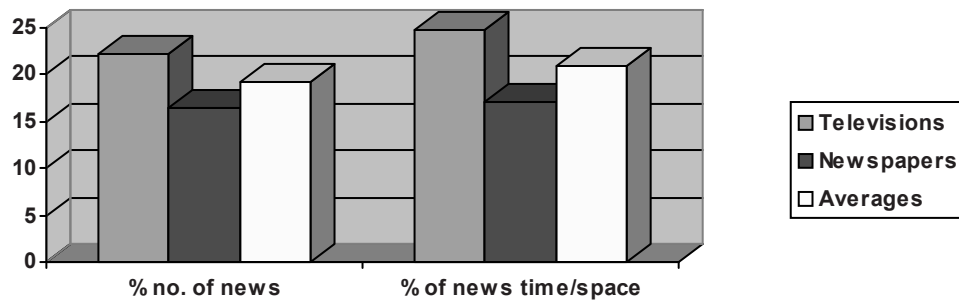
These media figures are strikingly at odds with official crime statistics, where in 2002 violent crimes made up only 2,6% and homicide only 0,4% of all reported crimes.

A similar distance has been discovered by the *UC Research* as regards terrorism (see *Diagram 5*) although in this area a comparison with official data is more difficult, due to the heterogenous legal classifications making up the group of offences we could label as "terrorism". In any case this category reaches an average of 20,4% of news and 31,5% of spaces/times in the media coverages considered, while official data, available for the year 2000 only (actually an aggregate made up of different crime classes occurring in Italian official statistics), reveal terrorism acts present in 1,63% of total registered criminal acts.

Diagram 5: Media Presentation of Political Crimes and Terrorism
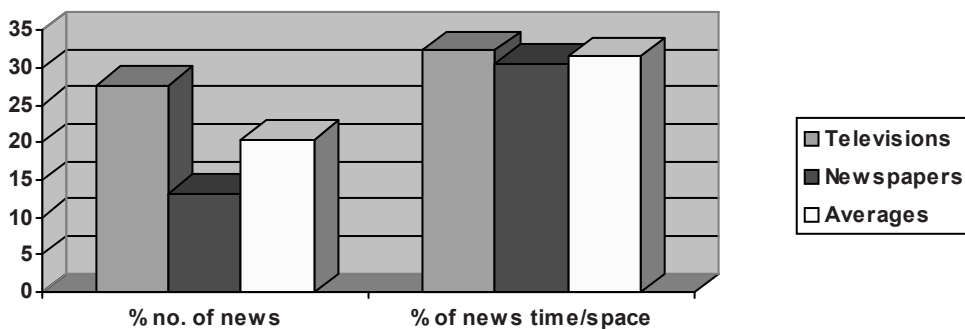
One is induced by these figures to remind one´s self of a similar conclusion growing from a research on the American paper *Time* magazine, which found «an overemphasis on violent street crime, in relation to the proportion of violent crimes among crimes known to the police» (Hickman Barlow 2005). Equally revealing a German research discussed during the Milan Conference, confirming «that TV programmes are usually perceived as *not showing representative and realistic reports on crime*», but rather as distorting reality «by (a) *selecting offences*, in particular, overemphasising homicide and other violent and/or sexual offences and at the same time neglecting economic or white collar crime, environmental crime, and the ubiquitous property crime (that [/which] seems to be of minor interest to the public)», and, additionally, *exaggerating* «the way these handpicked offences are committed by real offenders in the real world»: «thus, *selection* and *exaggeration* seem to be the most important means of distorting reality» (Kania 2004: 240)

The *UC Research* has also developed a more articulate analysis, wondering, at first, how much space/time was allotted to each of the traditional criminological components of the criminal phenomenon ("fact", "offender", "victim", "control agencies", especially police, prosecutors and judges, social context), by any news television or paper for each of the selected typologies of crimes. From this classification has emerged, among other things, the poor attention devoted by media news to the "human" components of the criminal event, namely offender and victim, and instead the wide space absorbed by the description of the fact (the more so when it shows brutal features) and the action of investigatory agencies. This data seem to suggest even further that in spite of the overemphasis put on victimizations feelings of the larger population in constructing media news (the fears of the "man in the street"), the insisting on citizens protection and the preference for «the victim's perspective» as well as the avoiding to show «the offender's perspective» (Kania 2004: 240-241), actually televisions and newspapers don't care about victims as real human beings, but only as stereotypes, as fearful "men in the street".

On the basis of a set of indicators (e.g. emphasis given on excuses or, conversely, on aggravating circumstances for the criminal act; "telling the story" of the offender or of the victim, using clear-cut reproach wordings, etc.), the *UC Research* has also ranked all crime news according to a "media gravity index of crimes", which in turn has been compared with a "legal gravity index of crime" especially constructed for this research and based upon an average of penalties imposed by law upon each class of offences considered. This rating has confirmed the well-established tendency for televisions and newspapers to emphasise the gravity of traditional street crimes, neglecting the extensive and long-term effects of victimless offences like bribery, environmental and economic crimes. However these latter crimes, as well as crimes committed by strangers and immigrants, while generally occurring with low frequency in the media (albeit with marked differences in the newspapers and televisions considered), when covered, receive very often high gravity indexes. The *UC Research* conclusion has thus found a striking counterpart

in American researches, "that crimes by persons from the upper class, in white collar jobs, and from 'good' families were presented as unusual and especially newsworthy, sending powerful messages what is usual about crime"; a feature further illustrated in the recent Enron scandal media coverage, where «rather than presenting the Enron offenders as fundamentally different from the rest of us, the articles contextualized their offenses in such a way as to suggest that these were just normal business people who just went too far in their exuberance for the art of the deal» (Hickman Barlow 2005: 311-312).

All data collected by the *UC Research* seem to support the image of media mostly prone not to describe and track crimes as phenomena having extensive implications and impacts, but rather as individual acts, displaying clear-cut outlines and consequences, as well as rooted in well-defined and easy to establish responsibilities. In Italy too, as already remarked on the U.S.A., reports about the causes of crime emphasize "individual level factors" and only rarely suggest "macro-social conditions as the source of the problem of crime"; a feature which somewhat explains why none of the solutions usually called for by the media address "the social structural causes of crime", so attesting "to the limited range of responses to crime contained within media accounts" (Hickman Barlow 2005: 311). These remarks have been recently applied to the terrorism scare dominating news coverage. "The argument here is that the media frames issues narrowly. In fact, it was somewhat surprising just how consistent the structure of media storytelling was following two significant acts of terrorism. Terrorism, a complex phenomenon with multiple causes and explanations, is presented clearly and without perspective. The public is not only blinded from understanding anything except the media perspective, but the fear conjured up following these events provide enough justification to accept responses – war, bureaucratic expansion, civil rights violations – uncritically and without reservation. The terrorist has become one of the United States great fears and has replaced other noteworthy demons. The public has been manipulated by the media and policymakers into believing that the nature and causes of terrorism should be of less concern than the evils deeds of the terrorist. This is a significant and important paradigmatic shift. Society's top social-control powerbrokers and rule-enforcers have taken the responsibility for protecting society from terrorism. Yet they have neither the means nor a full understanding to manage it. Instead, they can more effective manage how the public defines terrorism and accepts how best to respond to it. Effort is focused on defining the problem in a way that isolates decision-makers from concern" (Chermak 2005: 494-495).

If media professionals had the patience to do this apparently boring, namely not "entertaining", skivvying into the reality of crime and the actual harms thereof, adequately pouring these huge daily experiences on their papers or broadcasts, outside mere local coverage, instead of reinforcing the stereotypes of the "man in the street" – "obtuse, coward and vindictive", unable to distinguish among different kind of criminals as targets of his hatred and anxiety, convinced that prisons are

full of dangerous killers and that criminal law is the unique resource to protect society against its most disturbing phenomena (Hulsman-Bernat de Celis, 1982: 55) – they could make and be made aware of the real population crowding courts and prisons: the weakest and most deprived categories of people, at odds with law as unable to find help to solve their problems.

To this actually "most victimized class" belong the "invisibile men", like the ones occurring in Ellison's novel (Ellison 1982), recently analyzed by the German philosopher Axel Honneth within the framework of his "recognition theory" (Honneth 2003), whose bodies and souls are literally crossed by the "interior eyes" of their fellow citizens. The almost non-existence of prisons in the media – except in well sealed news spaces, times and areas, when the increased information may lead to side effects like an overemphasis on the need of stricter controls (Calvanese, 2003: 122-128) – namely of the place mostly crowded by this "invisible" population, has been confirmed by the *UC Research* (0,2% of time on television news, 0,5% of space on newspapers) and all too well supports such massive public dismissal.

Still and finally drawing on the vast and solid foundations of Cesare Beccaria's work (Beccaria, 1764-1994: 102; Paolucci, 1963: 98-99), we should take any possible consequence from his statement that education is "the surest but most difficult way to prevent crimes" (leading the fresh minds of youths "toward virtue by the easy way of feeling, and in directing them away from evil by the infallible one of necessity and inconvenience, instead of by the uncertain means of command which obtains only simulated and momentary obedience"). This means that we have to confront the inescapable fact that fostering and spreading knowledge, which "breeds evils in inverse ratio to its diffusion, and benefits in direct ratio", is the sole way to provide communities with the means of breaking the dangerous feedback effects stemming from media erosion of social capital as well as of keeping tightly within legality their powerful élites, intent, precisely with media aid, on massively distracting citizens from the enormous "public harm" affected by their deeds (Arnone & Iliopulos, 2005). As quite recently stated, "it is an inversion of the social reality of crime in capitalist society (and, therefore, ideological) to portray the classes and races most victimized within the capitalist social structure (in terms of alienation, inequality, unemployment, poverty, and crime) as predators on society, whereas the classes that reap a larger share of society's benefits are portrayed as victims" (Hickman Barlow 2005: 310).

Table 1: Comparison between the media occurrence of crimes and crimes registered in Italian judicial statistics drafted by the Istituto Italiano di Statistica (ISTAT).

CRIME TYPES	Average Percentages Newspapers and Television Texts		Convictions year 2000 Source: ISTAT		People reported and indicted for crimes Year 2000 Source: ISTAT		Reported Crimes Year 2000 Source: ISTAT		Crimes Reported and Prosecuted 1.1.2002-30.6.2002 Source: ISTAT	
	% news number	% news space (cm²)	total figure	percentage of total crimes	total figure	percentage of total crimes	total figure	percentage of total crimes	total figure	percentage of total crimes
violent crimes (without homicide)	6,9%	6,3%	17.270	5,6%	61.851	18,2%	252.297	9,5%	39.620	2,6%
violent crimes (including homicide)	19,3%	20,9%	4.389	1,4%	9.282	2,7%	11.810	0,46%	6.362	0,4%
crimes against the honour	0,75%	0,35%	1.506	0,5%	8.229	2,42%	35.295	1,37%	-	-
suicides	1,5%	1,2%	7.615	2,4%	7.615	2,2%	7.615	0,3%	-	-
drug crimes	3,25%	2,2%	17.849	5,8%	27.777	8,1%	27.599	1,07%	26.152	1,7%
sexual crimes	0,85%	0,45%	1.291	0,4%	2.532	0,75%	4.838	0,2%	4.039	0,3%
child sexual abuses within families	0,35%	0,2%	3.048	1%	6.017	1,27%	7.937	0,3%	2.498	0,16%
child sexual abuses outsidefamilies	1,4%	1%	-	-	-	-	-	-	-	-
crimes against property, damages and forgery	10,4%	4,6%	103.168	33,4%	118.844	35%	1.887.513	73,6%	902.196	60,2%
economic crimes	1,75%	1,2%	5.668	1,8%	6.431	1,9%	5.921	0,23%	3.131	0,2%
political-administrative crimes (e.g.bribery)	5%	3,75%	23.540	7,6%	17.589	5,1%	27.039	1,05%	93.770	6,2%
negligence (execept traffic offences) and environmental crimes	7,4%	8,8%	-	-	-	-	-	-	-	-
traffic crimes	3,2%	1,65%	-	-	-	-	-	-	-	-
political crimes, terrorism	20,4%	31,5%	878	0,27%	2.016	0,58%	41.780	1,63%	-	-
crimes against humanity	3,8%	4,1%	-	-	-	-	-	-	-	-
prostitution, slavery	1,2%	1%	2.773	0,9%	2.548	0,75%	3.700	0,14%	908	0,06%
organized crimes	4,3%	3,7%	1.099	0,35%	1.613	0,47%	1.080	0,04%	762	0,05%
other offences	3,1%	2,4%	-	-	-	-	243	0,01%	119	0,008%
news on justice system	4,2%	4,1%	-	-	-	-	-	-	-	-
prison themes	0,65%	0,35%	-	-	-	-	-	-	-	-
Juvenile delinquency	1,7%	1,1%	3.614	1,2%	17.535	5%	-	-	10.519	0,7%
crimes by strangers	5,4%	4,2%	58.829	19%	64.479	19%	-	-	-	-
female crimes	6,3%	7,7%	56.849	18,5%	46.116	13,5%	-	-	-	-

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