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Five Issues in European Criminal Justice:

CORRUPTION, WOMEN IN THE CRIMINAL JUSTICE SYSTEM, CRIMINAL POLICY INDICATORS, COMMUNITY CRIME PREVENTION, AND COMPUTER CRIME

Proceedings of the VI European Colloquium
on Crime and Criminal Policy

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Foreword

Every two years, researchers and practioners meet to discuss selected topics in crime and criminal policy in Europe. The purpose is to see how current research can inform decision-making on problems that are shared by many European countries.

The series of European Colloquia on Crime and Criminal Policy was launched in 1988 by Professor Roger Hood at Oxford University. Ten years later, HEUNI had the pleasure to organize the VI Colloquium in Helsinki, the last such Colloquium before the new millenium.

In planning the agenda for the VI Colloquium, HEUNI decided to focus on five topics that are to be dealt with in the framework of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Vienna on 10-17 April 2000. The Congress will feature four workshops, dealing, respectively, with combatting corruption; crimes related to the computer network; community involvement in crime prevention; and women in the criminal justice system. In addition, HEUNI decided that one topic should be the development of indicators of crime trends and the operation of criminal justice.

The VI Colloquium brought together researchers and practitioners from all over Europe. The discussions proved to be very intensive, and will undoubtedly help to prepare the way for more global discussions in Vienna at the Tenth United Nations Congress.

The staff of HEUNI wishes to express its appreciation to all the speakers at the VI Colloquium, who laid the groundwork for its success, and to all the participants, who actively shared their research and experience, for the benefit of all.

Helsinki, 15 March 1999

Matti Joutsen
Director, HEUNI

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Proceedings of the VI European Colloquium on Crime and Criminal Policy

Dr Matti Joutsen (HEUNI)

1 Background

The VI European Colloquium on Crime and Criminal Policy was organized by the European Institute for Crime Prevention and Control, affiliated with the United Nations, in Helsinki, Finland on 10-12 December 1998. The purpose of the European Colloquium was to bring together researchers and policy-makers to discuss research findings in key areas of crime prevention and criminal justice, and their possible impact on policy in Europe.

The series of European colloquia on criminal policy and research had been launched by Professor Roger Hood at the University of Oxford on 3-6 July 1988. This first colloquium had dealt with policing; victims and criminal policy; privatisation of social control; ethnic minorities, crime and public policy; and imprisonment. [1] The second colloquium had been organized in Buchenbach, Germany in September 1990, and had dealt with environmental criminal law; organised crime; international comparative research; crime prevention policy; and mediation, compensation and restitution.[2]

The third colloquium had been held in Noordwijkerhout, the Netherlands, 5-8 July 1992. The themes had been political ideology and drug policy; ghettoization; reparative justice; changes in the family and their impact on crime; and legitimacy and the limits of judicial intervention. The fourth colloquium had been held in Romainmotier, Switzerland, 14-16 September 1994, and had dealt with self-report delinquency research; victimization surveys; experiments with the controlled distribution of opiates in Switzerland; crisis in corrections; and the Fourth United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, and the European Sourcebook project.[3]

The first four colloquia had been attended primarily by researchers from France, Germany, the Netherlands and the United Kingdom, together with a scattering of researchers from other Western European countries. The fifth colloquium, held in Bled, Slovenia, 26-28 September 1996, had been the first to

1 Roger Hood (ed.), Crime and Criminal Policy in Europe, Oxford 1989.
2 Gunther Kaiser and Hans-Jörg Albrecht (eds.), Crime and Criminal Policy in Europe, Freiburg im Breisgau 1990.
3 European Journal of Criminal Law and Criminology, vol. 1, no. 1 and vol. 2, no. 4, respectively.

have a more balanced distribution of researchers and policy makers from the different parts of Europe. The themes were crime trends in Eastern and Western Europe; organized and transnational crime in Europe; designing a European crime policy; European co-operation in criminal justice; and punishment and/or rehabilitation strategies.[4]

In planning the VI European Colloquium, HEUNI gave consideration to the preparations for the workshops to be held within the framework of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Vienna on 10-17 April 2000. These four workshops shall deal with combatting corruption; crimes related to the computer network; community involvement in crime prevention; and women in the criminal justice system. In addition, the Secretary-General has been asked to prepare an overview of the state of crime and criminal justice worldwide for presentation at the opening of the Congress. In the discussions regarding this overview, it had been suggested that the overview should be based on a variety of indicators of crime trends and the operation of criminal justice.

These developments, the fact that the United Nations network of institutes had assumed the lead responsibility for the preparation of the workshops, and the fact that European research had a considerable amount to contribute to global discussions on all five of these issues had made it an obvious decision for HEUNI to select these as the themes of the VI Colloquium.

Although the VI European Colloquium was not an official preparatory body for the Tenth United Nations Congress, the report of the VI European Colloquium is to be sent to the various institutes in the United Nations network responsible for the preparations so that they could utilize the results at their discretion in the preparations. HEUNI also intends to distribute the report, as appropriate, at the Tenth United Nations Congress itself.

The structure of each European Colloquium had been based on careful advanced preparations. For each Colloquium, persons had been designated to take over responsibility for preparing a background paper on each of five specific themes. This background paper had then been sent to several other persons representing different parts of Europe, for commentary. The background papers and commentaries in turn had then been sent in advance to all of the participants so that everyone had had time to review the material already before the Colloquium began.

2 Combatting corruption

The first theme of ”Combatting Corruption” was introduced by Professor Petrus van Duyne. He noted that corruption is possible only in circumstances where there is a decision-maker who is guided by rules and criteria from which he or she has the power to deviate, and who is in principle accountable for the propriety

4 European Journal on Criminal Policy and Research, vol. 5, no. 1.

of his or her decision-making to another authority. Further components include an exchange relation between a decision-maker and an interested person who offers or promises an advantage in exchange for a desired decision outcome, and the hidden, improper nature of this exchange relationship.

Van Duyne emphasized that his approach was not based on ethics or morality. The focus of his paper is on the individual decision-maker, on what people do when they are corrupt: what happens, what affects decision-making, who has an interest in the decision, and so on. He noted that a typology can be presented of six interactions (in the public and private sector and in politics) between interested parties who influence one another in ways that are not part of legitimate decision-making; these interactions are described and illustrated in the paper.

In analysing how corruption develops, van Duyne noted that corruption frequently, but not always, develops as a ”top-down disease”. He noted what could be called the ”successful leader paradox”: the more successful the leader, the more he or she is trusted, and the less he or she becomes accountable. In time, leaders may come to behave as if they were the ”owner” of the organisation, and may feel that they can decide freely on how to dispose of the assets and people of the organisation. Other social processes that may take place are that the leader begins to assemble a ”court” (which has its own social-psychological consequences), and a deterioration of the recruitment standard (the onset of ”Caligula appointments”). Such favouritism may in time lead to clientilism, whereby the new recruits assemble their own courts.

In discussing the prevention and control of corruption, van Duyne noted that the focus should be on the highest levels of public and private leadership. Two ”truisms” should be applied systematically, the transparency principle and the ”first servant” principle. The transparency principle requires that decision-making is open and subjected to control. The ”first servant” principle, in turn, emphasizes that no one is above the rules on decision-making; no self-exception may be made.

Each of the three commentaries used the perspective of a single country or group of countries to examine van Duyne’s paper. Dr Sabrina Adamoli noted that the ”buyers” and ”sellers” of corruption are rational people who analyse the costs and benefits. In this, both objective (institutional) and subjective variables are involved. The subjective variables are essentially the ”moral” costs linked with the individual’s aversion to committing a criminal offence. In this respect, the willingness to commit an offence depends on whether the culture in question is more or less accepting of corruption. In some cultures corruption can be found on both a high and low level. This is the case, for example, in Italy, which provides examples of ”environmental corruption”: corruption may spread to the extent that it becomes systemic. In certain environments the decision-maker does not even need to ask for a bribe, since the bribe is paid as a matter of course. For this reason, efforts to prevent and control corruption require action from the highest level of both public and private leadership. Such action should not be limited solely to penal sanctions, since not only may sanctions seem ineffective and inefficient (as in the case of Italy), but may even have undesirable effects. More attention should be paid to the reduction of the opportunities for corruption, and

to the development of strategies that touch all sectors of public life, enhancing the transparency of decision-making. One component of such strategies is codes of conduct. Another component is the reorganization, where necessary, of administrative processes, especially those that are especially prone to corruption.

Professor Miklós Lévay noted that the approach of the main paper was that of the value-free researcher. From the point of view of criminal policy, a distinction should be made between illegal corruption and acceptable behaviour. It is also important to study corruption not only as an individual phenomenon, but as something that has a societal context. Corruption, for example during the socialist era in Central and Eastern Europe, has system-specific features. Under a totalitarian regime, the attitude towards corruption can in fact come to be one of acceptance. It had been said in Hungary that corrupt behaviour was one way of making life livable in the ”topsy-turvy” world of socialism. This attitude has been inherited by modern society. Among the factors that have helped to generate new corruption are privatization, the lack of capital, and inappropriately drafted or incomplete legislation.

Professor Ahti Laitinen commented on the main paper from the Finnish perspective. Also in Finland, the question of the definition of corruption is problematic. Professor Laitinen noted that Finnish law criminalizes bribery but, in the light of a survey he had carried out during the early 1990s among Finnish civil servants, it appeared that the operationalization of bribery varied considerably. Professor Laitinen also noted that corruption need not be solely individual behaviour. It can also be collective behaviour: corrupt activity can take place between two organizations. For example, the briber may be acting on behalf of a municipality, seeking an (illegal) benefit from the State not for himself or herself, but for the municipality as a whole. Another example is provided by the relationship between states and multinational enterprises. Societies can be divided into two levels: the citizens' level and the organizational level. The power of the organizational level has increased dramatically over the past 100 years. This generates more possibilities for corruption, also as a form of collective behaviour. Professor Laitinen also emphasised the importance of greater transparency as a means of prevention and control. One example of the application of this to Finland is the requirement that Ministers provide financial disclosure statements.

The general discussion on the theme of ”combatting corruption” covered such themes as research, prevention and control. It was emphasized that research was needed on the factors (economic, social, cultural, political and so on) that increase or inhibit corruption. Victimization surveys should be developed, and extended to both the business community and to higher levels of decision-making. Reference was also made to the need to study the different dimensions of corruption (including ”street-level” corruption and business corruption). The example of the ”corruption index” developed by HEUNI (in its recent report on the results of the Fifth United Nations Survey) for assessing the degree of corruption as a whole was noted.

Measures of prevention and control that were mentioned included raising the salaries of decision-makers, vigorous elimination of ”bad apples”, codes of

conduct, financial disclosure systems, elimination of the tax-deductibility of bribes paid, and arrangements that foster the reporting of corruption and the protection of the ”whistle-blowers”. It was noted that such measures cannot work in isolation, and each may have drawbacks, requiring careful planning and oversight of implementation. For example, the procedure for decision-making can be made more transparent and the level of auditing may be increased, but this in turn may raise the level of bureaucracy, which would decrease the efficiency of government.

Particular attention was paid to the role of the media. It was noted that the media have had a key role in exposing corruption, but at the same time the media may gain a degree of power that is in itself corrupting. The media, and ”producers of morality” have a major role in changing the perception of the acceptability of corruption, and instilling the attitude that State and municipal resources are part of the ”common wealth” (aka commonwealth or common weal), and thus not something that is the ”property” of the civil servant, that can be traded away for personal benefit.

3 Women in the criminal justice system

Dr Katarina Tomasevski’s paper on ”Women in the criminal justice system” was presented by Ms Kristiina Kangaspunta. The paper reviewed the lessons learned in the process of developing women’s rights as human rights, and sought to apply this in a criminal justice context to the position of women. Dr Tomasevski noted that within the United Nations context in general, little had been done about women’s issues in criminal justice until the 1990s. One of the reasons for this was that the original human rights focus had been a ”vertical” one, on the abuse of power by states against individuals. The ”horizontal” perspective, that of individuals against individuals, had at first not been regarded as particularly relevant.

During the 1990s, the perspective gradually changed in three different fora in the United Nations: the Commission for Human Rights, the Commission for the Advancement of Women, and the Commission on Crime Prevention and Criminal Justice. Such ”horizontal” issues as violence against women came to be addressed, not only in the form of physical violence, but also for example as psychological violence and sexual harassment. Such abuse of power of one individual against another was seen as examples of structural violence. Emphasizing human rights were regarded as one way of changing such structures. The 1995 Conference on Human Rights proposed the establishment of the position of Special Rapporteur on Violence Against Women as a way of spearheading this work.

Among the approaches developed was ”gender mainstreaming”, whereby gender issues were to be considered in connection with all issues – including crime prevention and criminal justice. One of the debates in the application of mainstreaming to crime prevention and criminal justice (as has been the case

also with other sectors), is whether the emphasis should be on fair and equal treatment of women, or on preferential treatment. The former had been the original goal. Preferential treatment subsequently came to be advocated on the grounds that it was the best way to correct an imbalance in power. Both approaches had their costs and benefits, also in the criminal justice sector. For example, the use of specialised institutions for women, or the development of specialised units (such as special police units) may be in conflict with the principle of mainstreaming, and may in fact hamper the attainment of equal status. Moreover, the criminal justice system by itself can at the most provide short-term safety for women, but cannot ensure long-term independence.

Dr Tomasevski's paper also dealt with the three aspects of women in the criminal justice system, women as victims, women as offenders and women as criminal justice practitioners. In reviewing the research on these issues, Dr Tomasevski noted that more information is needed in particular on women in custody, and on women as practitioners.

In his commentary, Mr Juan Medina noted the difficulties in developing a European perspective on the wide variety of topics covered by the present theme. Among these difficulties are the lack of appropriate statistical and empirical data, and the poorly developed network of criminologists, institutions and other entities working on the theme in the different countries. There is a growing interest in the topic in Europe, and for example more attention is being devoted to it in the media and by policy-makers. For example, Spain has recently developed a national plan for the prevention and control of domestic violence. Regrettably, however, key persons in government are still not familiar with comparative experiences. For example, in the governmental regulations on restraining orders, judges are urged to look at the potential harm that such orders may have on the economic situation of the husband, but no explicit reference is made to security issures or to the potential dangerousness of the man. Mr Medina noted that his commentary focused on certain issues, such as on the limits of criminal justice in preventing violence against women, and on the need for the criminal justice system to work together with other agencies.

Mr Medina also emphasized the need to study how the criminal justice actors could improve their response within more proactive and problem-solving framework. He criticized a simple gender inequality explanatory model of violence against women based on empirical and theoretical grounds, and questioned its utility for policy purposes. In its place, he suggested the development of a framework that (1) examines the relationships and interactions between violence against women and other forms of violence, and (2) takes into consideration a more sophisticated understanding of the relationship between the structure of gender identities, relationships and oppression and violence against women and in general.

In her commentary, Professor Frances Heidensohn noted that issues related to women and the criminal justice system have in fact been dealt with for over a century. Examples include violence against women, and trafficking in women. This early debate had influenced the early feminist movement. The two approaches to women's issues in the criminal justice context identified by Dr

Tomasevski, equality and preferential treatment, are not necessarily the only ones, but do provide a good start. Previous experiments with preferential treatment ultimately proved to be more damaging than helpful to the position of women. Professor Heidensohn noted that, in addition to the human rights approach, attention could be paid for example to women's issues under the third pillar of the Maastricht Treaty (i.e. home and justice affairs in the European Union), and to the possibilities open on the non-governmental level, for example through strengthening a European network of policewomen. As for research, it was true that much that is available comes from the United Kingdom and the United States, but in addition to the references in the Tomasevski's paper, a considerable amount of other research could be noted. This should provide a start in developing strategies nationally, and attention should and can be paid to what strategies might work in other countries.

In the general discussion, reference was made to the recognition, in feminist scholarship, of heterogeneity in gender. So-called "third wave feminism" has placed most of the emphasis in the recognition of the intersection of social class and ethnicity with gender in the creation of different scenarios or situations in which women live. Women with different social and cultural backgrounds, even in the same country, may be confronted with different problems. This debate has affected the way in which we think about criminal justice and about women as victims and women as offenders.

Reference was also made to the emergence of new research and to the possibilities of the application of the survey method to this issue. Standardized questionnaires should be used with a sufficiently big sample, and comparative data should be collected. At HEUNI it had been noted that a number of European countries had shown an interest in this, and HEUNI was seeking to produce such data in time for the Tenth United Nations Congress.

At HEUNI, the results of the Fifth United Nations Survey on Crime Trends and Operations of Criminal Justice Systems had been analysed from the point of view of possible links between violence against women and the status of women. Although women tended to be victimised more widely in developing countries than in developed countries, at a certain level of women's empowerment it appeared that the amount of violence against women began to increase. It was suggested that this could be due to a "redefining" of violence at a certain level: more empowered women might tend to regard aggressive male behaviour as violence, while less empowered women might in turn regard such behaviour on the part of males as "normal", or alternatively (or simultaneously) not as something that should be reported either to the authorities or even to researchers. It was also suggested that men might feel threatened by more empowered women, and react in a more aggressive manner.

In this discussion, reference was also made to the current work of the United Nations on trafficking in women and children, including the development of a strategy and the drafting of a protocol on the subject for the United Nations Convention against Organized Crime. The importance of looking at the close ties between trafficking in women and prostitution were emphasised.

4 Indicators of crime and of the performance of the criminal justice system

Dr Rosemary Barberet presented her paper on ”Indicators of crime and of the performance of the criminal justice system.” She noted that the paper begins with a review of the advantages and disadvantages of the most common source of data on crime, official statistical data, as well as of victimisation surveys and self-report surveys. Although almost all countries produce official data on crime, there were differences in the degree of transparency, i.e. in who has access to data, who can report it, and how it is reported. In countries with a poorly developed criminological community, the quality of official data tends to be weak, because criminologists, despite being one of the main users of the data, have had little input in their collection.

Dr Barberet noted that not even survey data on crime are value-neutral. However, a combination of approaches can be used in order to shed light on other heretofore hidden aspects of crime. For example, victimisation surveys can be expanded to include youthful populations, and questions can be included that could reflect the extent to which victims may in another capacity be offenders. Dr Barberet also urged the development of indicators that could be ”exported” internationally, although in this respect she noted that comparative research has been replete with problems caused by errors in translation and by misunderstandings. Finally, she noted that attention must be paid to helping policy-makers understand the utility of the results of the analysis, and how to apply these result to policy formulation.

In respect of performance indicators, much work has been undertaken in the United States and in the United Kingdom. In particular the Audit Commission in the United Kingdom has developed performance indicators for various governmental sectors that can be applied in much the same way as an audit would be done in a private company. This process has had the added benefit that organisations have been encouraged to go through the process of defining organisational goals.

Nonetheless, it should be recalled that, as was the case with indicators of crime, also indicators of the performance of criminal justice reflect criminological theory, and are thus not value-neutral. This is true, for example, of measures of prison performance. Dr Barberet also cited examples of how the performance indicators developed for specific fields may raise conflicting goals and conflicting values. Such conflicting performance indicators may confuse the practitioners charged with their application.

Dr Barberet argued that the proper development and application of performance indicators requires a receptive environment. In many countries, policy-makers, practitioners and the general public do not necessarily understand the rational cost-benefit model involved. It may be taken granted, for example, that spending money on a problem is already in itself a solution to a social problem, and thus the cost-benefit approach is not regarded as relevant.

In commenting on the main paper, Dr Elmar Weitekamp noted that for many years, little had changed in respect of crime indicators. Suggestions had already

been made that for example crime statistics should be made more precise so that they would be more useful as indicators, but police statistics have in practice changed little. Dr Weitekamp noted examples of how these statistics provide a misleading view of the extent or serious of crime. Moreover, several countries do not carry out surveys, at least not on a regular basis, and thus also in this respect the necessary indicators of crime trends are lacking. As for performance indicators, very few countries have any rigorous evaluation research. He noted as one of the few good examples the recent evaluation undertaken at the University of Maryland of federally financed crime prevention projects.

Dr Weitekamp noted that an example of a positive experience in developing indicators is the Sellin-Wolfgang scale of crime seriousness. Dr Weitekamp cited ways in which the application of this scale can be useful not only for theory construction but also for the development of policy.

Dr Anna Markina observed that her comments focused on the perspective of a country in transition, where there is considerable reliance on official statistics, and research is underdeveloped. She noted that the clearance rate is commonly used as a performance indicator. However, during the Soviet period, crime tended to be recorded only if the offender was known; this inevitably ensured what appeared to be a very high clearance rate, but what was actually at odds with reality. Also other examples can be cited of the way statistical data can be manipulated to ”produce” what appear to be positive results. Dr Markina also pointed out examples of problems in the international comparability of statistical data, and in the comparability of national data over time; examples include translation difficulties and changes in legislation.

Mr Kauko Aromaa observed that three levels can be distinguished in the discussion on crime: that of ”all crime”, that of ”recorded crime” and that of ”beliefs about crime”. Although the assumption is that we are talking about ”all crime”, we are generally referring to ”recorded crime”, and our decisions are actually being made on how we interpret these data, by our ”beliefs about crime”. Other measures are needed to come to grips with the level of ”all crime”. We should also seek to define in respect of what aspects of crime we are seeking to develop indicators – is it the number of motivated offenders, the presence of suitable targets, or the presence of capable guardians? Mr Aromaa agreed with Dr Markina on the possible misuse of official data, and cited an example he had encountered where the police of a medium-size district in Finland, under pressure to demonstrate an improved clearance rate, had simply reclassified bicycle thefts (which are notoriously difficult to ”clear”) as cases of ”unauthorized use”. In the rare event that the case was solved, the police had reclassified them as thefts. This had led to an appreciable but artificial increase in the clearance rate for thefts.

Mr Gordon Barclay focused on the experience in the United Kingdom with official statistics and criminal justice performance indicators. He noted that in England, performance indicators were being applied to many aspects of governments, such as mass transport, schools and health care. The Government had decided that each Government department should define its aims, objectives and targets. The successes or failures of the Government would be determined by this. He reviewed the objectives of the Home Office in this light (listed in Annex

A of Mr Barclay's paper). In respect of official statistics, Mr Barclay noted that these, as was the case with surveys, are subject to error and must be validated. He noted that in international comparisons, misunderstandings may arise even over such basic concepts as "offence", "report", "investigation", "prosecution" and "conviction". Another example is that in the United Kingdom, a reported offence is an "input" statistic: it indicates that a person had come to a police station to report the offence. However, in many other countries, this is in some respects an "output" statistic, in that it reflects the result of an investigation. Mr Barclay concluded by noting that despite — or indeed because of — these possible sources of error, the data can still be used. The process of making the data public and then correcting them in response to criticism is often better than deciding not to publish at all.

In the general discussion on this topic, several points were raised. It was acknowledged that official statistical data are prone to error, but it was pointed out that the victimisation survey literature suggests that police statistics are in fact a relatively good measure of crime. It was also emphasised that supplementary statistical sources can be used to provide a better picture of crime trends. Examples of such sources are public health statistics, in particular regarding violent crime.

One speaker noted that the focus of the "indicators" theme may be misleading, in that it implied that the performance of the criminal justice system is the only factor that affects the level and structure of crime. The point was made that policy-makers and the public should also be made better aware that the crime situation is also affected by economic and other factors. For this reason, such other risk factors have to be taken into consideration.

The question was raised about indicators of those types of crime that are difficult to measure, such as corruption, organized crime and money laundering. One problem noted here is that "common" crime often involves discrete events (such as thefts or assaults) while for example corruption can be an ongoing process. Another example is that money laundering can involve a large sum laundered once, or the same sum laundered in several installments over a longer period of time. The fundamental problem, however, is that the definition of such concepts as "organised crime" is vague, and varies considerably from country to country and time to time (and indeed from one individual observer to the next). One suggestion was to seek indicators of system variables that help in assessing the size and distribution of such crime. It was noted that such entities as organised crime must be approached by dividing it into the different forms (such as trafficking in firearms or stolen motor vehicles), and seeking to develop indicators of each. The positive experience of Dr John Walker in analysing the extent of money laundering in Australia was cited in this connection.

The importance of alerting policy-makers to the utility of indicators of crime trends and of the performance of the criminal justice system was stressed. Such indicators can help policy-makers in better understanding the problems with which they are confronted, and in developing the appropriate response. Regrettably, the importance of research on these indicators is not widely understood for example in many Central and Eastern European countries. Even more widely, policy-makers and the public may have difficulties in understanding the ration-

ality of this ”cost-benefit” approach to the criminal justice system. International surveys can include national components that deal with problems specific to the country. There is also the possibility of developing ”anticipatory crime indicators”, as suggested by Dr Barberet, although the difficulties involved in this were noted, and it was pointed out that such indicators tend to be based ”fears, hopes and a dash of the latest newspaper scares”.

It was suggested that the possibility should be explored of developing an international ”thesaurus” containing a classification of offences from the criminological point of view, and a set of commonly-agreed-upon definitions of the basic criminal justice concepts (such as ”investigation”), perhaps with supplementary information on how the legal definitions in the different countries may vary from these common definitions.

5 Public/private partnerships in crime prevention

The discussion on public / private partnerships in crime prevention was based on case studies. Dr Pawel Mlicki began with a presentation on ”Crime prevention in Central and Eastern Europe: a psychological analysis”. He began by noting that although his paper deals with Central Europe in general, there are considerable differences between the countries. The structures of police are different, and they operate differently.

He noted that although there has been much research on the political, economic and social transition in Central and Eastern Europe, there has been little research on the psychological transformation. For example, although research has been carried out on the police in transition, little is known about police officers in transition. Such research would be important for crime prevention. In seeking to start the cooperative projects needed in crime prevention, either nationally or internationally, it is crucial to know the partners. If we know too little, there is often a mismatch between expectations.

Dr Mlicki noted that a key element of his analysis is the theory of ”learned helplessness”, which had been developed in the United States at the end of the 1960s and the beginning of the 1970s. The theory is based on individual expectations. If an individual is placed in a situation where he or she cannot influence the environment, this individual learns to expect that bad things will occur to him or her, and that there is nothing that he or she can do to prevent this. Even should the environment change to the extent that an individual could in fact influence this environment, under ”learned helplessness” the individual does not realize this change, and remains passive.

There are three dimensions to the theory of ”learned helplessness”: internal vs external, stable vs unstable, and global vs specific. Learned helplessness is internal, stable and global. Failure is regarded as innate, and not due to external circumstances; it is a stable phenomenon, and not something that will change tomorrow; and it applies globally to all aspects of life, and not just to specific aspects.

Dr Mlicki suggested as an application of this theory to the Central and Eastern European countries that under the socialist regime, the public and the individual police officer came to learn that there was nothing that the individual can do to change the environment. This may have been true to a large extent under socialism, but there has been a change in the environment in several respects.

One change has been in the realm of politics. The single-party system and ideology has even replaced by multi-party democracy. At the individual level, political correctness is no longer the basis for the recruiting of police officers. There is greater diversity within the police force. Different political views are allowed and can be publicly discussed. This affects the social identity of the individual police officer, since the greater the variety in one group, the more difficult it is to create a social identity. Consequently, feelings of weakness have increased: the police are no longer a clear-cut group. Moreover, since self-esteem and recognition can now be sought also outside the immediate reference group, that of the police, an additional element emerges that confuses social identity. Finally, in most countries there is no clear crime prevention policy. As a result, every change in Government affects policy, which in turn affects the police. The police are in a ”permanent state of waiting”, and are not quite clear as to what is required of them.

The police in Central and Eastern Europe at least on paper have become more democratic. Consequently, the police are accountable and subject to sanctions. These are obvious characteristics of the organisation, but it creates a new world for the individual police officer. There is more room for individual initiative and personal responsibility. Nonetheless, the expectations are high: the individual police officer must be responsible and accountable. These are qualities that must be learned, but which were not learned under the clear-cut political goals of socialism.

Along with the increase in democracy, the police must be transparent and more open to democratic control. This is a new situation for the police officer. For example, it is no longer possible to manipulate data in order to provide the image of success. At the same time, the police officer in a society in rapid transition is faced with the reality of increased criminality, and cannot ”hide” this. Democratic control (and contacts with Western police organisations) have also led to a delegation of power from the centre to the local level. Individual police officers are more and more often confronted with tasks for which they have to take over full responsibility and accountability.

The openness of society has led to international contacts, which had previously been extremely limited. This has several corollaries for the individual police officer. There are many points of comparison with foreign, and in particular Western police organisations. When compared with Western police organisations, police organisations in Central and Eastern Europe tend to look worse. At the same time, there have been positive results from the comparisons. Earlier, police officials would have said that their priority was to obtain more resources. Now, the priority is on better selection, better training, better organisation, better management, and better management of contacts with the public.

Yet another aspect of greater openness is the fact that the mass media, now that it can write freely, tends to be overcritical of the police. The police often feel

that this criticism is unjustified. The police believe that the public does not realise the risks that the police take, and that the police appear to becoming isolated from society, also on the individual level.

Another fundamental change is in the economic sector. The norms regarding corruption may differ between Western Europe and Central and Eastern Europe; in the latter, corruption tends to be regarded as the legitimate redistribution of wealth. It is widely understood that the police are not paid sufficiently, and corruption is tacitly accepted. At the same time, the shift from a planned economy to a market economy provides individual police officers with other, and more lucrative, job opportunities. The police tend to be young, well-educated and energetic individuals who can often find good jobs elsewhere; this obviously affects recruiting.

Dr Mlicki concluded by stating that, in order to develop a successful strategy for crime prevention, we must supplement our criminological analysis with a psychological analysis. Regrettably, there is almost no research on this aspect. The theory of learned helplessness could provide an interesting starting point for the analysis.

In the general discussion, the utility of the theory of learned helplessness in understanding the situation of the police in Central and Eastern Europe was discussed. Comparisons were made of the experience of various Central and Eastern European countries. The question was raised of the implications of the learned helplessness theory for the strengthening of crime prevention. It was noted that the theory applies to the individual level, but it could also be applied to the organisational level. The environmental factors should be reviewed, and attention should be paid to what should be done to enable the organisation to change its working environment.

Reference was made to the general lack of legitimacy that has confronted many social institutions in Central and Eastern Europe. Dr Mlicki noted that often, the public tends to regard the police as a whole as a legitimate organisation, but individual police officers tend to be regarded in a less positive light

Reference was also made to gender issues. The learned helplessness theory may also help to explain the low level of reporting of harassment of female officers by male officers. Another gender issue that arises is that it is often the male officers who leave for private enterprise; for economic and social reasons, female officers tend to stay in the lower-paying police jobs.

Dr Dragan Petrovec emphasized the differences between the countries of Central and Eastern Europe. The use of the term ”countries in transition” was misleading, as shown by the fact that many Western experts tend to prescribe what is in effect a ”universial medicine” for all such countries and for whatever ”disease” they may suffer from. We should take into account the specific differences and conditions in each separate country, as well as its historical, political and economic background. For this reason, his focus was on one country, Slovenia. He noted that in general, it could be said that under socialism, there was a strong state but weak democracy. Socialism was based on common (corporate) ownership, restrictions on private property and on state regulation of most of the vital areas.

In spite of these socialist ideas modern and democratic criminal law emerged in Slovenia after 1959, although there have been occasional abuses of power, for example in respect of dissidents. There has been a ”withering away of the state”, also in respect of crime prevention and criminal justice. It is true that in criminal justice, the traditional pillars of the police, prosecution, court and corrections remain. Moreover, the social ”self-protection” ideology and practice, and an informal crime prevention system, had been supported by official ideology. This had resulted from the positive experience during the Second World War with a concept called ”total national defence”.

Since 1959, Slovenia as part of Yugoslavia had also used reconciliation boards, which were autonomous judicial authorities. These had been established by law. They were composed of lay members, and had contributed to a decrease in the repressive function of the State. The number of such boards in Yugoslavia had increased somewhat over time, from 5,148 in 1964 to 6,696 in 1972, although the number of cases dealt with had decreased from 79,332 in 1963 to 58,904 in 1971.

Since the transition, there has been a slow reanimation of democracy. Political and economic independence have had side effects. It had been realised that the state as a whole is an expensive enterprise. Financial restrictions had been placed on government activities in education, health care, crime prevention and other fields. Privatization of crime prevention activities (which were formerly the sole prerogative of the police) is a new phenomenon in Central and Eastern Europe.

Security came to be regarded as a financial commodity. Private security agencies emerged. At present, there are eleven agencies in Slovenia, with some 2,000 employees. They cooperate with the police and help in investigations. They are responsible for the security of some 6,000 buildings, and can place in operation 60 mobile squads as well as sophisticated equipment. They provide (almost) any security-related service that the clients may ask for. One of the negative developments in this respect is that there are no unified standards in terms of ethical neutrality, and no strict adherence to rules or to the law.

A more positive development has been the emergence of private initiatives for assistance to victims. Some such agencies receive state support. Among these are eleven centres for victims in the major cities of Slovenia. These agencies carefully select and train their staff members and establish a network among private and public institutions (such as the police, prosecution, centres for social work, medical institutions, schools, mayors and some non-governmental organisations). They are able to provide 24-hours-a-day service for the support of victims, victim referral and advocacy.

Another criminal justice -related development has been the emergence of vigilante movements, which are informal committees that are often established and run by persons who have been victims and who want to prevent the type of crime in question. Such developments do have positive effects, such as the fostering of the interest of citizens in preventing crime, the fostering of private and public cooperation, the reduction of fear of crime in local communities, and an easing of the burden on the police. However, they also seem to have negative effects (which unfortunately too often prevail), for example in the form of aggressive and narrow-minded reactions to deviant behaviour, improper influ-

ence on court decisions, the stigmatizing of suspects (who in fact are often innocent), the ignoring of the presumption of innocence, and the encouragement of xenophobia and hate in general. Dr Petrovec concluded that, in general, crime prevention measures that cause more harm than crime itself – vigilantism being one such example – should be avoided.

In the general discussion, the differences among national experiences in Central and Eastern Europe were noted. For example in respect of reconciliation boards, some of the countries had had positive experiences, which may have contributed to a greater willingness to experiment with such boards after the period of transition.

It was questioned whether vigilante movements actually decrease fear of crime. It was suggested that even if they may lead to local reduction of fear, they may also lead to a general increase in fear.

Mr Karsten Ive began by stressing that criminal acts are the result of a complexity of factors related to motivation, the presence of a target and the absence of capable guardians. Thus, crime prevention requires a multisectoral approach. Since society changes over time, also the crime prevention measures must be adapted. The point of departure must be the local level. This is where the crime is committed, and this is where crime prevention must be carried out. The approach to crime prevention must be made more ”professional”. One way in which this has been done is organisationally, through the establishment of crime prevention councils, such as in Denmark in 1971. The underlying rationale of the Danish Crime Prevention Council is that only joint action will prove successful. The council brings together representatives of over 40 agencies and organisations. This joint approach must also be evident on the local level; social issues, educational institutions and the police must be involved nationally as well as locally.

Crime prevention can be approached through ”objective crime prevention” (situational crime prevention), which assumes that crime will be committed, and that citizens must be empowered to prevent crimes. A second approach is through ”subjective crime prevention” (social crime prevention) that seeks to decrease the number of offenders in society.

Denmark is a society where considerable crime prevention technology exists. This, however, may lead to a bifurcation of society, which in turn may lead to even greater demands for protection. Similar tendencies can be seen in other countries; for example closed circuit televisions are being set up in public areas in for example Norway and in the United Kingdom. The Danish Council prefers to see crime prevention as a tool for keeping society together, and wants to activate members of the public to become involved. The goal should not be solely to reduce crime; the greater goal should be to improve society; for example, such bifurcation should be avoided. This is a difficult goal. Public services have a duty to provide information to the public. Those providing the information must be alert to negative trends in lifestyles of the citizens, so that the appropriate crime prevention information can be provided at as early a stage as possible.

In Denmark, the social welfare authorities, educational institutions and the police have an obligation to promote crime prevention. They have an obligation to identify criminogenic circumstances (in particular misuse of drugs or alcohol)

and respond to such problems. In addition to these three authorities, also other organisations (such as voluntary organisations) have a possibility of cooperating in crime prevention activities. The Council is seeking to build up local networks that have an impact on the daily life of the members of the public. Information is provided on a general level, and in a targetted manner, at groups of young people at risk. Finally, information may be provided on an individual level. In this last respect, the principle is that private organisations should not be involved, due to the need for privacy and confidentiality.

The Council has developed recommendations for how local initiatives should be initiated. These initiatives are generally quite simple in practice. The Council recommends that the local network carrying out these initiatives have three levels, that of management, coordination and implementation. Management brings together the heads of the various local committees and authorities (school committee, social committee, chief constable, head of the school administration and head of the social administration). The coordination level involves social workers, school teachers and police officers. The implementation of any individual initiative may vary considerably; no one blueprint is possible. For example, in response to an increase in shoplifting in one local area the local network may bring together police officers, school teachers and local retail merchants. Provisional groups may be set up in the form of activity groups. For example, if drugs are used by youth groups, these provisional groups may involve police officers, health care workers, members of the youth organisations involved, social workers and representatives of parent associations.

Mr Ive gave as an example the development of a project geared at a number of second-generation Danes who had caused concern by engaging in violent activities in public areas. The project involved mentors who contacted these young people over a three-year period, seeking to engage them in discussions on their behaviour, providing them with skills to earn their livelihood as well as the opportunities to do so. The project started with 40 youths, and 32 persons stayed with the project to the end. The project had also been subjected to cost-benefit analysis, and its financial value to society had been shown.

Mr Ive emphasized that an ad hoc problem-oriented approach is not enough in crime prevention. Such an approach does not allow for the necessary sustained cross-disciplinary approach. An ad hoc approach also does not give sufficient latitude for early intervention, with a sufficient level of professionalism.

In the genderal discussion, the question was raised of how the success of crime prevention programmes can be measured. The ”success” of such programmes can be operationalised in different ways. The Danish evaluation has been based on relapse into crime, and also takes into consideration what type of crime is committed.

Several speakers referred to experiences with crime prevention in the United Kingdom. The Home Office and the Treasury have produced a report called ”Reducing Offending” which reviewed various crime prevention initiatives, and had concluded that they were cost-effective. The report had also emphasized the importance of evaluative research, and had resulted in a decision to invest a considerable sum of money in such evaluative research. It was argued that crime control measures based solely on policing and corrections is insufficient; crime

prevention is possible and it can be effective. An issue that still has to be addressed in the United Kingdom is the fact that the various authorities do not have the same administrative boundaries, nor do they have the same structure of accountability. Changes in this respect are to be expected, meaning that in a manner of speaking also the United Kingdom will be a ”country in transition”.

An example was cited of an attempt to replicate a Dutch model in Poland, that of ”adopt-a-school” where uniformed police officers visit schools to tell young people about drugs. The replication in Poland had brought up the need to consider not only the legal and organisational framework for crime prevention, but also the need to consider the psychological framework, in this case the preferability of using persons other than uniformed police officers to provide information about drugs to school children.

One speaker noted that in most countries, it is the police who have the mandate to prevent and control crime, and the police may be unwilling to share this mandate with other authorities, much less with non-governmental organisations. Along the same lines, it was pointed out that in many countries the public, in turn, may have a very poor image of the police, as shown by the results of the International Crime Victim Survey. Nonetheless, the public may have very high expectations of police performance. Even in countries which have been successful in preventing and controlling crime, the perception of police performance may be decreasing due to this unrealistically high expectations. This is due to the fact that only the police are regarded as being responsible for crime prevention and control, and the police are accountable for any failures. Indeed, if there is an increase in reporting — generally regarded as a positive development — this may lead to a lowering of the clearance rate, which may in turn be regarded as a ”failure”.

The importance of fostering crime prevention programmes and community policing models in developing countries and countries in transition was emphasized. It was noted that there is no international crime prevention strategy, no strategy for example for developing partnership between the various authorities and organisations involved in the different countries. The importance of an international approach was also shown by the fact that in many cases, action solely on the local or even the national level can be insufficient; for example drugs and firearms are trafficked internationally. It was suggested that the Tenth United Nations Congress workshop on public / private partnerships in crime prevention could also serve as a forum for addressing the potential for such an international strategy.

6 Crimes related to the computer network

Dr Andrzej Adamski noted that he had approached the subject from the criminological perspective, and had therefore titled his paper ”Crimes related to the computer network. Threats and opportunities: Criminological perspective”. This was due in particular to the fact that not only was the issue a new one for the United Nations, it was a new one for most countries. Crimes related to the computer network were a side-effect of technological development. The main

paper deals with four points: (1) the definition of crimes related to the computer network, (2) the prevalence of such crime, (3) who are the ”network criminals”, and (4) how to prevent such crime. He noted in passing that in relying on the available research and literature, he had made heavy reliance on the computer network: technological development thus has its benefits.

A computer system can be seen as both an object and as a tool of criminal activity. In the first case, offences involving a computer network can involve three security aspects, the availability of the network (with the crime involving denial of service), the integrity of the network (the deliberate introduction of a malicious programme into the system) and the confidentiality of data (breaking into the network, eavesdropping). In the second case, ”old” forms of crime can be committed digitally. Examples are telecommunications and marketing fraud, deceptive advertising, and securities fraud.

There are few studies of network-related crime as such. However, there are surveys in for example the United States, the United Kingdom and Australia that ask various respondent groups about the perception of the threat posed by computer-related crime. Moreover, the research has to some extent been replicated, thus providing some information on trends. The results indicate that most computer abuses are not related to network-specific incidents, such as hacking, but for example with the introduction of computer viruses. Secondly, more offences are apparently committed by ”insiders” (employees) than by intruders. Thirdly, there appears to be a positive correlation between the detection of incidents and the development of measures for monitoring. Fourthly, when the number of computer hosts are taken into account, it would appear that although the amount of network-related crime is increasing, the individual victimisation risk is in fact decreasing. This reflects the fact that the growth of the Internet is faster than the increase in criminal incidents.

According to the estimates of computer security experts, most ”hackers” are juveniles. Moreover, these estimates suggest that only 1% of incidents involve a criminal motivation; 99% could be termed ”recreational” hacking. This raises the criminal policy question of how to deal with such offenders. Dr Adamski mentioned that there has already been a proposal to lower the age of criminal responsibility in respect of hackers in the United States.

Regarding the reduction of the possibility of such crime, priority should clearly be given to technological means. This refers to target-hardening measures in particular. A recent survey of security measures demonstrated the very low level of security awareness, and the fact that the control of access to the computer network was very lax. Nonetheless, when representatives of the same organisations were asked about the seriousness of the danger, over 80% stated that they were deeply concerned about the matter.

Increasing the risk of apprehension involves, first of all, the training of law enforcement officers. Police forces should establish trained units specifically devoted to computer-related crime. A second element is cooperation, including cooperation with service providers. Such cooperation should be national and international. A third element in many countries would be the reform of criminal procedure, since often criminal procedure does not envisage the needs of the investigation of computer-related crime.

Dr Adamski concluded by noting that when he started working on the paper, he had had a very pessimistic view of the situation. In the preparing the paper, he had come to realize that some of the reported data on computer crime had been misleading, and tended to exaggerate the number and seriousness of incidents. Many estimates were based on small samples that had then been extrapolated to arrive at figures that were allegedly more global.

In his commentary, Mr Antti Pihlajamäki noted that Dr Adamski's paper had taken a criminological approach. The approach of the criminal justice practitioner was somewhat different. The practitioner is less interested in why a person committed a crime, and more in how this crime had been committed. His commentary looked at the situation from the point of view of Finnish law. This was justified because, since technological development in Finland was very advanced, also the legislation was advanced.

Mr Pihlajamäki noted that the number of reported "information crimes" in Finland was quite low. This could, of course, be due to the various reasons for non-reporting noted by Dr Adamski in his main paper. Mr Pihlajamäki stated that although the legislation in Finland was advanced, there was still reason for developing the law. One reason for this was that some of the provisions on the "old" offences (to use Dr Adamski's terminology) could be extended to cover information crime, but such expansive interpretation of criminal law was against the principles of criminal law in Finland.

Criminal law and procedural law was underdeveloped nationally and in particular internationally. This lack of international development, international concordance and international procedural cooperation was a problem because information crime is often an international crime. The problems have become evident within the framework of the Committee of Experts on Crime in Cyberspace, of the Council of Europe.

In his commentary, Professor Henrik Kaspersen raised the general question of the definition and the seriousness of computer crime. He noted the difficulties in obtaining comparable data. The statistics and the views of victims tend to be unreliable. Few offences are reported to the authorities; one estimate is that the reporting rate is only about 5%. One of the reasons many countries have enacted laws in this field already since the 1970s was in order to clearly stipulate the limits of acceptable behaviour.

Professor Kaspersen noted that hacking can in itself be a precursor to other offences, and its seriousness should thus not be underestimated. He also noted his disagreement with the suggestion that hacking can be "innocent fun". Hacking compromises system security, and those responsible for this system security may have to invest considerable resources in making their system more secure. This additional expenditure of resources is in itself is a damage caused by hacking.

As for prevention, Professor Kaspersen noted that computers as such are unsecured. Most computer users are not aware of the risks involved when computers are networked. Something should be done by the industry or the government in order to promote security awareness. This same process is taking place in connection with the telephone systems. The cooperation of industry must be secured; they must be made aware that the product is unsafe. The Government

should set standards, and should make persons and corporations liable for violation of these standards. An awareness programme should be directed at the potential victims. Furthermore, victims should be given information on the possible threats and given different alternatives, so that the victim can make informed choices. There are already technical means available by which the potential victims can decrease the risk of computer crimes, although clearly more work on the development of such means is necessary. Finally, what is needed is well-done risk assessments.

In the general discussion, reference was made to the possible application of product liability to this issue, in order to encourage manufacturers to improve security technology. Potential users could also be provided with more information on how to protect themselves against risks associated with the use of the product, in this case a computer. It was suggested, however, that high standards of security are in fact not possible in computer systems, and thus the application of product liability would not appear realistic. Moreover, product liability is usually applied to safety issues, for example to the danger that a product may have for the health of the user. This analogy fits poorly with the use of computer hardware or computer software, since the health of the user is not at risk.

Professor Kaspersen emphasized the importance of competition in the computer software market. Greater competition could also benefit the user in that software will be developed that promotes the security of computer networks.

Another speaker raised the international ramifications of computer crime. He noted the question of motivation, and the seriousness with which hacking should be regarded. An analogy was drawn to the changing attitudes towards terrorism. Terrorism at one time was considered primarily a political offence. However, to an increasing degree terrorism is directed at non-political targets, or at society as a whole; an example of this is the so-called Unabomber case. It is possible that hacking may come to have more and more serious connotations. The speaker also noted that there is a large gap in the awareness of the problem between developed countries and the developing countries; this may be due to the fact that 95% of the present ”computer power” is in the Western world. The developing countries often tend to have a low level of awareness of the dangers of computer crime also to the developing countries themselves. A third and related issue is that of cooperation. Some countries are already requesting help in developing the appropriate legislation and structure for preventing and controlling computer crime.

One speaker noted that one computer-related crime so far not discussed at the VI Colloquium was software piracy, a problem that is very widespread in a number of countries. Mr Kaspersen noted that there were two conflicting tendencies, one to expand the scope of intellectual property rights, another quite the reverse to decrease this scope. He recognized the commercial interests involved, but nonetheless did not regard it as a priority when dealing with computer crime. Furthermore, he noted that there is a trend among producers of copyrighted information to look to other distribution channels and protection mechanisms. They realize that the open Internet environment will cause immense problems for attempts to prevent and control copyright infringement.

Another speaker referred to the use of computers for illegal purposes, such as the spread of child pornography, or money laundering. The speaker suggested that special police units should monitor those web-sites that have been used by criminal organisations in order to detect the criminal activities. Dr Adamski noted that police forces have in fact used hackers to monitor such criminal activities. Moreover, in some countries the investigative measures allowed by law have been developed in order to make these more applicable to the investigation of computer crime. Mr Kaspersen raised the question of the desirability of police monitoring of the Internet. He also noted that the use of hackers to assist the police raises some problems. For example, should such hackers destroy web-sites or otherwise interfere with the computer network, this is an offence in itself, even if they act as agents of the police. Also police agents are bound by the law. Much less should ”self-help” in policing the computer network be permitted, if this involves illegal access to computer networks.

One speaker referred to problems associated with so-called ”chat clubs”, which may raise concerns regarding the possibility of inappropriate contacts, especially if the chat clubs involve children or young persons. Dr Adamski emphasized the controversial nature of the issue of the responsibility of the internet service provider to control the contents of the server. Such controls have been opposed by various civil liberty organisations, on the grounds that it constitutes censorship. Mr Kaspersen noted that the protection of children need not be a matter of civil liberties. Parents should be empowered to do so, for example by surfing the Internet together with their children, and by teaching their children responsible behaviour. Such control need not involve censorship or other violations of civil liberties.

Mr Kaspersen referred to the present work within the framework of the Council of Europe on an ”Internet convention”, which would promote the investigation, prosecution and adjudication of computer crimes. The convention would be open also to non-member States of the Council of Europe.

Dr Adamski reviewed the needs for international cooperation. He referred to the ten-point action plan adopted by the ”Group of 8” (P-8) at their meeting in May 1998 in Birmingham, referred to in his paper. Some more specific guidelines on the ten points are being developed. He concluded by questioning the role of the penal law and of criminal justice in controlling computer crime.

7 Closing of the seminar

The VI European Colloquium was closed by Director Joutsen who thanked all of the participants for their active participation, as presenters of the main papers, as commentators and as participants. He noted that the edited report on the VI Colloquium, together with the papers, would be published, in paper copy and electronically on HEUNI’s web site.

Director Joutsen thanked the HEUNI staff members who had been involved in the preparations for the VI European Colloquium, including Ms Kristiina Kangaspunta, Ms Terhi Viljanen, Ms Kirsi Nissilä, Ms Natalia Ollus and Mr Sami Nevala, and closed the VI Colloquium.

Combatting Corruption: Acts and Attitudes

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The essentials of corruption

In 1517 a Dominican monk called Johann Tetzel sold letters of indulgence near Wittemberg in Germany. The profits were intended for the new archbishop of Mainz, Albrecht von Hohenzollern to recoup his high expenses incurred on entering his dignity. The buyers were told that purchasing such letters would shorten their stay in purgatory (Elton, 1971). Many pious Christians such as Martin Luther and Desiderius Erasmus were offended by this commercial display of religious entrepreneurial skills and condemned it as ”corrupt”. Was this qualification correct? Or was Tetzel just a fraudster and the whole enterprise a huge fraud and deceit? This depends on how one interprets the ”rules and regime of purgatory”. If these are Divine rules under a heavenly regime, known to nobody, while the Rule Maker on High is accountable to no one, the promise of ‘buying oneself out of the purgatory’ may theologically be considered a deceit or a fraud, but not corruption. Tetzel was guilty of selling worthless papers, but he was not guilty of corruption, since there is no decision-maker who might have freedom to comply or freedom to bend the rules of decision-making with which he should comply.[5]

This historical ‘theological’ introduction contains in a nutshell the components of the concept of corruption. On the decision side the components are: a *decision-maker* whose decisions are guided by *rules and criteria*, from which he has the *power* to deviate and who is in principle *accountable* for the propriety of his decision-making to another authority. Absolute rulers and leaders, such as the previous Tsars of Russia (before the revolt of 1905) might be arbitrary and whimsical, but since they are unaccountable they are also ‘beyond corruption’. Corruption is also directly related to discretionary freedom or power in the decision-making process. When decision outcomes are predestined (another theological concept) there is nothing that can be corrupted. Powerless people are ”below corruption”. One of the problems of a corruptor is to find out who has the real power to perform his or her corrupt act: corruptors may also become a victim of deceit by new Tetzels (Della Porta and Vannucci, 1997).

5 This brief account does no justice to the complicated theological debate of salvation by faith alone and the rejection of the intermediary priesthood, with which the reformation started.

Two additional components are still missing: (a) the *exchange relation* between a decision-maker and an interested person offering or promising an advantage in exchange for a desired decision outcome and (b) the *hidden*, improper nature of this exchange relation. If the decision-maker has to justify his or her decision, this exchange relationship must remain hidden and has to be replaced by deceitful, false justifications which are in agreement with the accepted criteria of decision-making.

Defining corruption

Ordinary, daily concepts such as corruption are difficult to delineate, because they are used in so many overlapping contexts. Therefore it can be approached from various complimentary angles (Bull and Newell, 1997) which are parts of the daily life in which corruption occurs: it can be approached from a legal, economic, political or cultural comparative perspective (Lancaster and Montinola, 1997). Most definitions contain one or more of the components described above and are frequently overlapping. Looking for the lowest common denominator to be found in the literature (Wertheim and Brasz, 1961; Hoetjes, 1982, Friedrich, 1989 and Huberts, 1992) I come to the following definition:

> Corruption is an *improbity or decay in the decision-making process* in which a decision-maker (in a private corporation or in a public service) consents to deviate or demands deviation from the criterion which should rule his or her decision-making, in exchange for a reward or for the promise or expectation of a reward, while these motives influencing his or her decision-making cannot be part of the justification of the decision.

This definition is a behavioural one: its focus is on the *individual* decision-maker. It abstracts from politics and public administration, a legal system or public opinion. As such it is in agreement with the principal-agent model presented by Groenendijks (1997). It also abstracts from the legal system or the contents of the reward: corruption as defined here does not need codified rules which may be broken or the well-known 'brown envelopes under the table'. However, this individual decision-maker approach renders the definition rather broad in its application. Strictly interpreted it may even be applicable in situations which are considered outside its usual range of application, such as education. For example, the decision-making parent may be induced to abandon his or her principles of decision-making in favour of an advantageous trade-off in terms of love and favours, such as the child bribing his dad:'If you let me see "Star Wars", I will wash the dishes. But do not tell mom!' The tired dad accepts the offer and allows sonny to watch the telly instead of doing his homework, as had been agreed upon with mom. The father does not need to do the dishes and in addition gets some appreciation from his son. From the social-psychological point of view corruption is not exceptionable behaviour; it is all too human indeed. It permeates many of our human relationships in which we have to make decisions. As Deflem (1995) observes, it is not a feature of systems but a type of social (inter)action. We all have principles, values and moral standards which are supposed to guide

our small and big daily decisions in respect of others, but who among us lives the righteous life of virtue, never allowing a deviation from the norm 'in favour of and in return for'? Puritanical societies may claim to follow strictly the narrow path of virtue, but they are rarely associated with anything but rigidity and barren cultures and hypocrisy, when the unsuccessfully smothered sinful tendencies surface notwithstanding and have to be covered up. Psychologically 'corruption' is not an abnormal state of mind.

The broad reach of this definition is as such not problematic. It is precise and capable of encompassing more specific definitions applicable to the relevant sectors of social life, whether public, business or private, such as the situations described by Gardener (1993). As a matter of fact it should also be able to encompass historical variations of corruption (Johnston, 1992; Beare, 1997) or national variations owing to culturally different concepts of proper decision-making and accountability. This means that specific operationalisations may be deduced from this definition context.

The concept of corruption should be clearly differentiated from fraud, embezzlement and the sheer abuse of power, to enrich oneself or one's associates. Corruption is not about putting one's hand in the till and other acts which prejudice the employer or the state, though such actions are frequently associated with corruption. Technically corruption may entail fraud (and vice versa), but that depends on the 'administrative' requirements of the surrounding legal system. Likewise, stealing from the boss or from the state as such is not corrupt, although corruption may be instrumental, for example the purchase of silence from those who are informed. This may induce questions with very complicated answers such as: were presidents such as Suharto, Marcos or Mobutu just thieves or were they corrupt? Though such real-life situations may be very confusing, this behavioural definition maintains the conceptual dividing lines. It also provides a suitable compliment to the methodological questions related to cross-cultural measurement, raised by Lancaster and Montinola (1997).

The observation that corruption itself is not abnormal behaviour should not be confused with its political and economic appraisal over the last decades: the moral appreciation and tolerance for this phenomenon has changed dramatically in the last years and is nowadays found in juxtaposition with organised crime and money-laundering (Goldstock, 1993; Arlacchi, 1993; Jacobs, et. al., 1994). Apart from this moral perspective, the empirical basis of this phenomenon are the decision-makers. Nevertheless, this behaviour has meaning only in the decision-maker's social environment, either in politics, public administration or trade and industry. In the next section I will project this decision-maker in his or her various social roles.

A classification of corruption

If the individual decision-maker and his or her social position are taken as the point of departure, we may have to describe a large and somewhat chaotic range of opportunities of corruption. In order to create some order I have made a simple

Table 1. Categories of corruption.

	Public	Private	Politics
Public sector	X	X	X
Private Sector		X	X
Politics			X

classification based on a rough functional division of the decision situation: the working environment in which the above components of corruption are present. We have decision-makers in the public sectors, in the private sector and in politics (Van Duyne, 1996). Between and *within* these sectors corrupt exchange relationships may develop which influence the decision-making process in an improper way.

This classification produces nine categories of corruption, if we differentiate between corruptor and corruptee, between the person who induces or initiates the corrupt exchange and who accepts it. In general it is difficult to make such a differentiation. In simple cases this difference may be discerned: a civil servant makes its clear he or she will not stamp the paper if . . . . Or: a contractor makes it clear that granting the contract will result in some 'extras'. In the typology of Deflem (1995) these are simple cases of *monetary corruption*. However, in cases of what Deflem calls *bureaucratic corruption* it is not so easy to discern who initiated the corruption. When corruption has been systematised, as in Indonesia, Russia or Italy, corruptors and corruptees frequently change roles. Who started the corrupt deal in the Agusta affair? For this reason I have disregarded the three extra categories based on which party takes the initiative.

Another aspect which remains implicit in our definition, is the transition of a corrupt relationship into blackmail. Entering an improper exchange relationship can imply engaging in lifelong '(im)moral bondage', from which one cannot walk away at will. The phrase 'You owe me a favour' may be a reminder as well as a threat.

1 Public sector corruption between officials

There is so little known about the potential occurrence of corruption between civil servants that one may ask whether it exists at all. Only the Dutch journalistic investigator Bouman (1977) has devoted attention to this phenomenon. One of the reasons for this blind spot may be that to outside observers civil servants in their (inter)departmental dealings do not operate in such visible decision situations, and the 'venal' exchange relation is more difficult to recognise. Moreover, civil servants do not bribe each other with the proverbial thick envelopes for which they do not even have the money. If an improper exchange relation develops in a decision situation the pay-off will more likely be in terms of

non-monetary benefits or favours. Nor need these rewards reflect *personal* advantage: the 'official objectives' of the department may be served by the decision so that the appearance of probity may be upheld. Such behaviour may even be admired as a display of the 'clever use of sneaky alleys', 'unorthodox management', 'greasing good interdepartmental relations' or other forms of 'daring leadership' (Chibnal and Saunders, 1977). As long as there are no rumours about direct personal gains related to the decisions made between civil servants, it is very unlikely that the heavy negative label of corruption will be used. A few examples may help to illustrate this.

- A senior civil servant has a private consultancy firm which silently acts as an advisor for the building department of the town council. The head of that department discovers this but consents to the arrangement, because the civil servant knows how to wrangle difficult assignments.
- The heads of the responsible ministry and the municipal authorities come to a mutually satisfactory agreement about the assignment of a major project to a dubious waste processor, despite serious warnings.
- The research department or the scientific advisor of a ministry is cajoled into producing the 'desired', but wrong figures concerning drug addiction and consumption; or the 'right' figures concerning sick-leave of teachers. (In these cases the withholding of the reward functioned as blackmail in the background).

Though it is difficult to apply a *legal* definition of corruption to such murky decision situations, I consider them important social-psychological breeding grounds for more direct and discernable forms of corruption. For example, if one accepts the provision of wrong information either for fear of missing a promotion or because one seeks to improve the relationship with a more important (section of the) department, one not only accept a corrupt decision situation, but one also sets a precedent of fraud and deceit. The former socialist countries of Central and Eastern Europe provide good examples of this mixture of corruption and public deceit: either for personal gain or for fear of demotion, departments, production sectors and production units knew that any figure they produced was false. One can say that virtually all statistics were 'bought'. No small wonder that corruption developed in every branch of public life, a social feature which was to be continued and expanded vastly during and after the transition to a market economy. As far as the Soviet Union (and its successor states) is concerned the phenomenon grew with the unfolding of organised (economic) crime since the last years of the Brezhnjev's gerontocratic rule (Rawlinson, 1996)[6]

6 The demise of the Soviet state liberated a considerable amount of capital from the ubiquitous underground economy Sinuraja (1995), from which the nomenclature had always profited by striking an alliance with the *Vor v Zakonyi* (thieves-in-law) and the new entrepreneurial professional criminals, the *avtoritety* (Handelman, 1994; Kelly c.s., 1996; Waller and Yasmann, 1996).

2 Public/private sector corruption

The most familiar form of corruption is between a private person or corporation and an official. However, this seemingly simple category covers various subcategories and levels of corruption. The simplest form is one-on-one bribery: an individual wants a service to which he or she is not entitled, or what the service more quickly than is usual and offers a bribe. One may call this 'front office' corruption. The service to the corruptor is relatively simple and the material gains are rather small: a stamp, a licence which is provided outside the normal procedure, a parking ticket which is cancelled for half of the fine. Such individual bribery may occur in every department, even when it is well managed. If that is the case one speaks of the 'few rotten apples in the barrel'. However, this qualification may be a neutralisation technique of a negligent management, which does not want to recognise that the barrel itself is affected, even if the management is not itself willfully implicated (Van Duyne, 1994).

This leads to the higher level of managerial venality: a morally questionable management which is poorly supervised and which wields broad discretionary powers, which makes it attractive for valuable exchange relations. This is not the playground for the individual citizen with his or her petty requests, but for people with power. Heads of departments or (semi) government agencies bestowed with the authority to grant licences meet business interests, which requires sensitive and usually complicated extra-ordinary decisions procedures, which are all but characterised by transparency (Vahlenkamp and Knauß, 1995). People of influence who have a perverted 'credit of trust' (Della Porta and Vannuci, 1997) know how to work according to the bureaucratic stealth procedure:'soaking', 'predigesting' the desired decision, followed by creating an atmosphere of complaisance in which colleagues are not supposed to be so frank as to say 'no'. The atmosphere of such frankness has disappeared long ago. In other words, corruption may be imbedded in a strategy of 'decision cooking', though such strategy may succeed only in a dirty and murky organisational kitchen.

- The simplest form is of course one-on-one bribery: the payment of 'backhanders' to officials: an applicant firm which has been granted a building contract, a 'difficult' export licence or 'valuable advice' on how to circumvent export quotas. A reward may be provided for this aid in cash or by something of an equivalent value such as free travel or free decoration of the official's home or estate.
- In cases of multi-layer decision-making the decision-making process is spread, since the request has to be channelled through the hierarchical corridors of the bureaucracy. Here improper decision-making becomes a social-psychological affair, requiring smooth preparation and an accommodating rubber stamping attitude by several officials. Corruption becomes a ramified departmental or sectional business, which contains several variations. In this connection, it is enough to mention two types:
  a) There are no daily relations between the lower management or executives and the 'outside world', but the head of the department is corrupt. However, it is not easy to conceal corrupt relationships and suspicions easily arise.

The lower management face a difficult choice between showing disagreement or going along and becoming morally implicated, even if they are not actually a part of the scheme. In the end, they frequently become a part of the scheme by being rewarded for their silence, ranging from small favours to speedy promotions. Those who feel uneasy and frown upon what they observe or surmise are considered a nuisance and removed to 'safe places', leave the organisation or, if they are really troublesome, are threatened with dishonourable dismissal. Sometimes an individual, disgruntled with the rotten climate, becomes a whistleblower, a very perilous undertaking, where legal protection is either absent or imperfectly codified (De Maria, 1997, Bovens, 1987).

b) It also happens that an entire public service unit has become corrupt in its relationships with firms or individuals, without the knowledge or complicity of the management. This happened in the public transport department of Amsterdam. While the management locked itself away in its wooden panelled boardrooms, seeing and hearing nothing, gross mismanagement of assets and contracting out to corrupting entrepreneurs (who were 'induced' or 'forced' to do so) had become daily practice, according to the investigator. In another case an entire section of a customs unit took part in a systematic VAT scheme to stamp T1-forms that falsely claimed export from the EU to third countries (Van Duyne, 1995).

In such cases the corrupt attitude has become deeply rooted in the organisational culture of the department. Such a culture will be continued by (sub)conscious personnel policy that is aimed at creating a staff with a comparable attitude, eschewing new staff which may 'not feel comfortable in our surroundings'. I will return to this important 'human resource' management in later sections.

3 Public sector/political corruption

The following category concerns the interaction between civil servants and the holders of a political office, such as aldermen, members of parliament or ministers. In the interplay between these actors the decision-makers may be the civil servants as well as the politicians. More important is the question of the improper exchange relation of interests. What are the improper favours and what are the pay-offs? It is likely that the pay-offs will consist of money or something which can be valued in monetary terms. The favour to be returned will rather be of a personal nature.

- A local political dignitary intimates to the head of the environmental department that if he tolerates a higher level of pollution then would normally be permissible he need not worry about his career. It appears that the local politician is himself a pig farmer who is in breach of the Manure Disposal Regulation (Van de Berg, 1992).
- The reverse situation occurs when a political figure who wishes to be nominated for a high position in the public service is told 'not to rock the boat' by

insisting on a critical investigation into the activities of a department. His 'correct' voting behaviour is 'bought' by the consideration of winning the support of 'important others' in the department where later the decision about his nomination will be taken.

This is an area with many grey transition zones which provide the social cultural landscape in which 'hard core' corruption can grow and thrive. Hoetjes (1991) calls such a landscape 'corruptogenic'. I think such a euphemism does not do justice to this phenomenon. If influence peddling, pulling strings and the making of pay-offs in terms of 'mutual aid' become the background colour of decision-making, I would rather call such a landscape outright corrupt.

The problem with this category of decision-making is that it escapes the legal definition of corruption, while the corrupt conduct is difficult to prove because of the frequent ambiguity of the decision-making criteria. Nevertheless such conduct is covered by our definition, since the decision criteria which are afterwards presented are mere pretenses to veil the real underlying exchange relationship.

The decision situations in this category are not hypothetical. Within elite groups in countries such as Belgium, France and Italy it is quite a political reward for a high ranking party member to become the top civil servant in the town council or even the mayor (for France, see Becquard-Leclerq, 1990). These are no neutral nominations based on administrative skills, but politically highly coveted places as 'warehouses of rewards' to bestow on political friends, on finds in the business community, eager for profitable contracts and the 'respectable' network of yes-men who get the 'nickels and dimes' in the form of smaller jobs and favours. Does not this corrupt situation look very similar to the promotion of a political figure to the post of mayor of Paris or Bordeaux? In brief, they are the most favourable positions to create a personal party machine for the next presidential election. Which mayor of Paris, later to become president, has not been tainted with (the suspicion of) corruption?

It is interesting to observe that in this climate all participants usually oppose any attempt to introduce decision criteria and to further transparency. Take for example the tenacity with which the Belgian elite or the British Conservative Party (Doig, 1996) resisted (or rather delayed) demands for transparency in these matters. Is it not 'only human' that one does not vote against the interests of an organisation or department where one covets a high position? The danger of the 'only human' argument is that it veils the lack of awareness of injustice (*Unrechtsbewustsein*, Vahlenkamp and Knauß, 1995) and the accompanying declining slope of morality.

4 Private sector corruption

Corruption in the private sector is mainly to be observed in trade and industry. The most obvious situation of corruption is the negotiation of contracts in which the negotiator solicits for 'an extra' or is 'seduced' (or hints that he or she very much would like to be seduced) in return for the coveted order. This is an

inter-business corruption, which does not exclude the potential for internal corruption within a firm: the mechanism which has been described in the section of corruption between civil servants applies here as well. For example, the stock manager may be bribed to allow the embezzlement or the unauthorised 'borrowing' of equipment by providing false receipts.

It is important to be precise in discerning neighbouring phenomena such as fraud and corruption, while recognizing the ways they interact technically. Systematic business fraud is rarely an activity carried out by one person alone. It is difficult without buying at least the silent consent of someone else. As soon as the corrupt scheme becomes more complicated it requires some accountancy skills to make the figures 'balance': for example, the payments for the bribes have to be accounted for by higher invoices or by fictitious payments to another firm. In its turn this firm surmises (and condones) something improper and will also demand a piece of the corrupt pie for its false invoices. Corruption gradually spreads, leading to a corrupt market and to a deterioration of business morality.

A few examples can be taken from the broad spectrum of the fraud squads and the fiscal police:

- *The black accounts*: unrecorded or black money flows in a firm create accountancy problems which may be solved by 'soliciting' third parties to provide aid in the form of inflated purchasing invoices, for example to cover the unrecorded (black) buying of goods or the extra payments of wages. The return favour may be a coveted contract or the promise (or hope) of establishing a long-term profitable business relationship. If such cases are discovered by the fiscal police, they will normally not be labelled and recorded as corruption but as tax fraud. In the construction industry (subcontracting with black labour) and VAT scams such corrupt business practices have been the cornerstones of extensive fraudulent schemes (Aronowitz, et. al., 1996; Van Duyne, 1993; 1995).
- *Price manipulation*: this phenomenon implies the corrupt cooperation of several partners in a number of related deals intended to influence prices to the detriment of third parties. In the real estate market it frequently occurs that brokers are bribed to inflate the assessed value of real estate, which is sold and resold by a network of real estate dealers in order to increase artificially the price of the property. This mechanism may be used to launder black money or to obtain inflated mortgages to the detriment of the mortgage banks.
- *Sales manipulation*: this is the well-known practice of using lavish gifts to seduce clients into buying products or services. This is an age-old and common practice and every firm which has a purchasing department knows its representatives may be bribed by overly lavish gifts into buying more expensive products or contracts from the most generous firm. In the field of public health, doctors are less likely to be labelled corrupt even though they nevertheless accept gifts, free journeys to summer courses and other favours from the pharmaceutical industry, favours which are intended to induce them to prescribe the more expensive brands instead of the cheaper generic brands from the parallel market.

- *Bidding manipulation*: this is the widely spread practice of tampering with the regulations concerning fair bidding practices, regulations which are designed to lead to the assignment of the contract to the lowest bidder offering the most efficient execution of the job. In this area, information is the most valued and traded article: how can one penetrate the principal and obtain information about the competing bidders? Andvig (1995) provides a lively description of information brokers who buy information from employees to sell it to the bidding suppliers. Information brokerage with all its corrupting side effects has developed into a global business (De Waal Malefijt, 1996; Hoogenboom, 1996). If the number of suppliers to the principals is limited, there may also develop a conspiratorial ring of entrepreneurs who grant each other contracts by rotation: by consent they determine the lowest bid. Strictly speaking this is not corruption but bid-rigging, although such a conspiracy operates most smoothly if it is greased with inside information, which has its price (Dohmen and Langenberg, 1994).

These are not exotic examples, nor do they concern a gradual slipping into a corruptive exchange relationship.[7] Instead, in the branches of trade and industry in which they occur they signify an already decayed moral landscape, in which many actors manage to neutralise their behaviour by calling it 'marginal', invoking the 'everyone does it' excuse or (preferably) by referring to the need to act as a 'sharp businessman' in order to survive in a world of cut-throat competition and marginalised profits. When businessmen operate in a semi-closed network, the qualification of being a 'sharp businessman' may be somewhat self-glorifying: as soon as entrepreneurs, cushioned by the protecting circle of their corruptive network, are on their own, it remains quite uncertain whether their erstwhile success was due to their imagined business skills. The entrepreneurial landscape in the construction industry as described by Dohmen and Langenberg (1994) for the southern Netherlands, and by Ludwig (1992a), Müller (1994), Kilian (1996) and Stemmer and Augustin (1996) for Germany (e.g. Berlin) revealed a widely accepted practice of corruption, or at least a 'mutual aid' system in tax evasion, subsidy fraud and illegal price setting. Complying with the 'rules' of such circles appeared to contribute more to the profits of the participants then did their professional acumen.

5 Private sector/political corruption

In every country there is a continuous interaction between the private sector and the holders of political office. As soon as the first merchants became a distinct group they needed the protection of the (royal) authorities, who in their turn needed money in the form of taxes. Meanwhile the interactions of the modern

7 At the time of writing an extensive fiscal fraud case involving a Dutch bank and several senior members of pension funds was revealed. Large amounts of undeclared money had been transferred to Swiss accounts in order to be reinvested on the stock exchange. Some senior officers of the pension funds had been bribed to go along.

state have become vastly more complicated. Though in its simplest form the stereotypical businessman only wants (big) money, while the politician strives for (more) power, they change roles frequently. In doing so, they frequently do not shed some old habits, such as their lust for money or power. History has shown that this mixture yields an interesting potential for corruption. Various combinations have been revealed of which only the following are presented here:

- *Party interests*: political figures have corrupt relationships with businessmen, not for personal gains, but to further the interests of their political party. These interests are particularly at stake at times of (re)-election, which are increasingly costly. This has provided the traditional playground for exchange relationships with private entrepreneurs, ranging from 'classical' organised crime (Arlacchi, 1986; Abadinsky, 1991) to respectable building contractors (Ludwig, 1992b). Every monetary support is welcome, but in politics and business there is 'no such thing as a free lunch': not all firms contributing to political parties do so for ideological reasons, but as an investment in the benevolent attitude of the benefiting party or office holder towards later favours in the form of contracts. This is particularly valuable when the elected office holder has an important role in the allocation of such contracts (as is the case in France; Ruggiero, 1996). Depending on the social-political culture such expectations are expressed explicitly in a backstage deal or are implicitly assumed to be honoured. Although the politicians who are involved invariably express their 'selflessness' (as did the accused in the Belgian Agusta scandal), there are good reasons to be suspicious, not the least because coming to be known as a skilled fund raiser will evidently increase one's prestige and his or her rank in the hierarchy.
- *Personal enrichment*: when improper relationships 'on behalf of the party' are accepted as non-deviant conduct, the climate is such that the party will not insist that profitable fund-raisers will fully empty their pockets on behalf of their party. No one will ask whether there is a personal rake-off for the sly fund-raisers themselves. Why should they not ask for personal favours in return for their profitable interventions 'in high circles' on behalf of their generous business friends? In Europe it is not only Italy to which one can point the finger. Also in Britain during the conservative era, and in France, Spain and Belgium, cases have been discovered that have lead to dismissals and arrests (and to accompanying attempts to cover up the matter).
- *Conflict of interest*, which may more appropriately be called a co-mingling of interests, because most corrupt politicians or businessmen do not feel any conflict, such as the unrepentant Berlusconi, for whom a public office appears to be an extension of his business-empire. Apart from this extreme, but not exceptional caricature, the interaction or rather the entanglement is frequently subtle and veiled. As can be observed in the improper exchange relationships between (top) civil servants and politicians, the most efficient grease consists of highly valued jobs. Which politician will vote for strict environmental regulations when he or she covets joining the valued ranks of the 'captains of (polluting) industry'? Conversely, a businessman who has become a politician may keep his interest in 'his' branch of industry by retaining his seat in the

boards of administration of his previous corporations or in a company's board of directors. In the Netherlands such a situation induced a high-ranking Member of Parliament connected to the pharmaceutical industry, to carry his weight in a decision-making procedure concerning the pricing policy on medicines by addressing the responsible minister directly on behalf of his firm. This was more then lobbying: it was sheer influence peddling.

There has always been an interaction between the private sectors of trade and industry and there are many advocates who plead for more participation of professional politicians in business life so that they can 'enrich their insight' in 'real life'. There is nothing against such mental enrichment, as long as the various roles are transparently marked and separate. However, when this principle becomes diluted and the demand for accountability is no longer insisted upon, the likelihood of material enrichment becomes bigger. As soon as more politicians and businessmen are engaged in such selfish relationships, neutralising arguments ('politicians should not live in ivory towers'; 'businessman may be prominent political managers while being in touch with society') and mutual covering of interests will become a part of the elite life of 'highly placed circles'. We may then enter the next stage of corruption.

6 Corruption between politicians

Some may consider corruption between politicians a tautology: is the stage of politics not full of dishonesty and corruption? Are politicians not continually engaged in mutual trade-offs of all kind? Although I agree that the political scene is frequently not of the highest moral standards, puritanical righteousness is seldom if ever the success formula in an open multi-party democratic system. For example, coalition-building requires some deviation from certain principles in a spirit of give-and-take in order to keep negotiations open. This does not mean that political decision-making processes could not be improper in the sense of being *reprehensible*. According to our definition this is the case when the exchange of interests should not have been an element in the considerations of the decision-making and therefore has to remain hidden. In such a case the principle of accountability will be violated: the exchange of interests is kept from the records and will not be a part of the *public* justification or explanation, which is essential in a democratic system. Although the principle of corruption remains the same, it will oftentimes be difficult to label a murky incident of decision-making as 'corrupt'. There are many and broad grey transition zones in this field indeed. I will therefore give only a few recognizable examples.

- *Cover-ups*: although it is not a corrupt act to cover up the evidence of mistakes and improper conduct, cover-ups may very well slip into decision situations and become the hidden trade-off in an exchange relation when the support of a third person or party is necessary to keep an embarrassing situation in the closet. This is not necessarily an inter-party exchange of interests. Silence or the right voting behaviour may also be 'bought' within one party, for example by the offer of a job or a promotion (or conversely by the threat of 'an early

end to a promising career'). The mutual cover-up may become a part of the political craft between and within parties: 'If my scandal is disclosed, than I . . . '. The outcome of such a political climate will be a silent collective harbouring of skeletons in the political closet: the skeleton of your political neighbour may be traded off against your own embarrassing past. The network of solidarity has turned into a network of balanced blackmail, into a kind of collective negative reward.

- *Nepotism* itself is not necessarily a corrupt act: helping relatives, friends or members of one's own closed circle in order to obtain a job is as old as state building. During the eighteenth century selling jobs was a normal practice in most parts of Europe.[8] However, it infringes the modern criterion of competence: the right person in the right place without a leg up. As we have seen before, jobs represent important assets in the hands of politicians. Already Louis XIV realised that he could turn an unruly nobility into a herd of creepers by bestowing jobs in his court. In modern times such a job-creating clientilistic situation is a pervasive breeding ground for corruption, as can be observed in every country where the elite vehemently opposes any attempt to privatise large sections of state-owned corporations. Being in charge of such a corporation (or having influence) means that one can create a retinue of dependent yes-men or grateful persons who will later feel obliged to return the favour. The service in return may be collected years later: 'You owe me a favour' may very effectively affect the decision situation. Corruption does not need to consist of an immediate exchange of interests. Providing jobs may be considered an ideal exchange relation between politicians (and senior civil servants): it costs no money, and it is hardly considered corruption. It is certainly not considered corruption by most players in this field: 'Those who hold themselves incorruptible bend like a thin cane as soon as they feel the slightest breeze which may affect their career' (Van Duyne, 1996).[9]

Corruption between politicians may become more than just a reprehensible exchange of interests. It may develop into a polluted political climate in which democratic and accountable decision-making will be so deeply eroded that only a few insiders know how decisions are being made. This intransparency reinforces corruption, because the only way to serve your interests and to penetrate this opacity is to become a part of the personal clientilistic network: you must have a patron who acts as a guide or who may even provide you with a position, which allows you to build up your own retinue. In such a corrupt political landscape it is almost pointless to look for evidence of individual cases of corruption: these are just surface symptoms. Oftentimes the trade-off, the bribe,

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8 For a brief overview, see Swart (1949/1990). For the monarchies the selling of offices was an efficient way of extracting money while avoiding the costs of running the office, such as the costs of the collection of taxes. Also in the Dutch Republic the sale of offices and contracts between families to transfer such office-property was widespread and accepted.

9 Becquart-Leclercq (1990) describes the way successful French mayors establish a kind of personal fiefdom by a mixture of privileges bestowed on political friends, friendly decisions, nominations, etc., thereby creating a network of solidarity. The concept of 'fiefdom' will be discussed later.

is a silent agreement or even a 'moral code' of later favours: only outsiders or beginners need a verbatim agreement. While the number of corruptors and corruptees is increasing and they are changing their roles, hard evidence evaporates, such as the awareness of (im)probity. Reminders of 'accountability' and transparency are waved away as 'bookish' principles which have nothing to do with the 'subtleties of real political life'.

These categories of corruption cover most corrupt decision-making situations. Together they do not provide a new model, although most of the existing explanatory models can easily be fitted into this scheme. An important element of this scheme has not yet been elaborated: the role of the leader.

Corruption as a leadership disease

Like the proverbial fish that starts to rot from the head downwards, in organisations corruption develops frequently (but not always) as a top-down disease. As may already be deduced from the description of the six categories of corruption, this process is quite human and the transition from non-corrupt but questionable conduct to the first stages of corruption may unfold even to the participants themselves as an unnoticed growth process. To sketch this process in this section I will not describe the obvious and blatant forms of corruption, but elaborate on this 'twilight' zone, in which it is not so easy to recognize corrupt conduct, while the symptoms may easily be explained away as normal management practice.

One can say that there is a self-evident relationship between corruption and the hierarchical position in an organisation: the higher one is placed in an organisation and the more one can decide, the more one is vulnerable to corruption. This is not necessarily a general truth: there are cases of honest, but disorderly and sloppy managers, who appear to be blind to what is happening in the lower echelons. Nevertheless, in both cases corruption has developed into an organisational disease, because of defective leadership, which allows standards for proper conduct to erode. In this section I will examine this leadership disease.

The hidden seeds of leadership corruption

The tragedy of corruption is hidden in the paradox that it does not need to be alien to (technically) successful leadership: it can develop alongside successful management during which it may remain unseen (at first) or veiled and denied (during later stages) by the halo effect of the successes of the praised leader. If the road to hell is paved with good intentions, the road to corruption may follow the shining path of success. Depending on the surrounding social-political climate, the first steps on this road are not causally connected to corruption and they may even be rationalised under the heading 'the good leader deserves the best'. There is a built-in corruptive trap in this rationale.

The phase of extravagance

Let me summarize the successful career of a good secretary of state for defence who did not succeed in becoming a minister. Before becoming secretary of state the politician had been mayor of a provincial town in the province of North Holland. After he had been installed as mayor his expenses for representation began to increase, first gradually, but soon more than tenfold. Despite (in his opinion because of) this expensive way of fulfilling his office he tried hard to defend the interests of the decaying maritime town. If only he had been able to justify his expenses for copious meals, his taxi drivers waiting for hours while their metres kept running, and other symbols of being-there-as-the-important-mayor, or had simply taken care to collect the bills and receipts, he might have got away with such squandering and gaudy conduct, as silent complaints about this apparently wasteful leader had been kept inside. As secretary of state he topped this display of extravagance by ordering an expensive but unsuitable aeroplane for his many trips to his foreign colleagues, against all expert advice! Otherwise his department and Parliament were satisfied with his handling of sensitive defence policy issues at a time of shrinkage after the end of the Cold War, and they swallowed his financial exploits. He survived his first term without too much criticism. But during the following general elections the clouds of the past appeared in the sky: journalists started to dig into his financial history as mayor. Even though formally no misconduct has been established, seniors in his party began considering him a 'bad example' of sloppy, indulgent public administration and his name simply stopped being mentioned for a second term.

There is not the slightest indication that this secretary of state might have been corrupt or sleazy. Even so, his extravagant conduct may be considered the first phase in the development of a leadership style which deviates from proper managing standards. It first affects the principle of proper parsimonious 'housekeeping' in the use of the finances and assets of the organisation. Secondly the related accountability and the tangible demonstrations of this, such as keeping the receipts for the expenses, were neglected. In addition it sets the example for middle management and for other staff.

While sketching and illustrating the winding road towards corruption, I will extend this still 'innocent' example with other non-hypothetical modes of conduct of questionable leadership. My starting point is still the outwardly successful and praised leader.

The erosion of accountability

A successful leader, such as our secretary of state, faces an intricate paradox: the more successful he is the more people will understandably not only trust him, but will also make allowances for his whims in other matters. What is the paradox? The paradox is that the increase in trust is inversely related to the principle of accountability but also to the mental openness to critical evaluation of the deeds of the leader. Psychologically the successful leader will gradually be deprived of negative feedback, simply because of his or her success. Later, on the occasions when his or her acumen or good luck has left him or her, mildly

expressed concern or critical evaluation (even with a positive intention) is not welcomed or will be treated with impatience.

This may be an important phase in the development of the leader and of his or her organisation. Will the leader still maintain a sufficient degree of self-criticism and will he or she accept it from others or will the leader develop a real aversion for a critical exchange of opinion and independent minds? If the latter tendency develops, one may observe a professional leadership deformation in which compliance with the principle of accountability and transparency will gradually be circumvented or avoided, if there is no obligatory external auditing. Internal auditing tends to turn into a fig leaf of 'plausible' explanations for unplausible expenses. Those who still have the nerve to ask questions are browbeaten in the social climate of going along with the boss. Bookkeepers or administrators who become exasperated with the continuous undermining of their professional ethics and standards leave the organisation one by one. Those who stay may feel subjected to such continuous humiliation or embarrassment that they may ultimately become whistle blowers.

Those who leave will naturally be replaced by new staff who fit better into the 'profile' of the organisation which is characterised by an acceptance of or a devotion to the hierarchy of the organisation. This comes down to accepting the results of the erosion of the principle of accountability: the opacity of the organisation in general and the intransparency of personal decision-making in particular. To those who acquiesce in this situation things so far look transparent; it seems as if the organisation depends on the clear rule of one man, not on the rule of principles and standards.

The ownership phase

Meanwhile we have reached an important transition phase: while incorporating the standards of decision-making in his or her own person, the leader of the organisation starts behaving as the *owner* of the organisation. He or she virtually owns the place, the assets and the people, since the leader feels that he or she is the (indispensable) one who has the 'natural' right to decide what to do with all of it. Although the leader may still pay lip service to conventional standards and principles of management, he or she determines what is responsible management. There is some subtle difference with the display of extravagance with which I started this description. While there will not be less squandering, we now face the blurring of the use of the assets of the organisation for private and organisational aims, understandable if one 'owns' the place. With expenditure for 'entertainment purposes' already high, it is increasingly unclear whether the expenses are made for the promotion of the organisation or for the needs of the leader to live in the lap of luxury. This 'need' will be rationalised as 'necessity' (in the early stages) or just taken for granted later (the 'natural' rights of the leader). Case studies and investigations by the police or accountants repeatedly reveal an exorbitant 'declaration behaviour' of managers who considered their department or company virtually as their own household, the assets of which they could disburse at will, mixing private and business expenses 'all for the good of the firm'.

Court building and Caligula appointments

Within the organisation two social processes consolidate and eventually further the growth towards corruption: court building and an unaccountable *recruitment procedure* of new staff, which is related to court building.

As stated before, a leader who is accustomed to unaccountability shies away from employees who might display an independent mind: the very symptom of it may be enough. Such a leader needs an inner circle of reliable yes-men for his or her daily monologues and the daily management, just as the feudal lord needed his chancellor and retainers sitting around and subserviently listening to him. For middle management, usually the mainstay of the organisation, this negative role model can be highly contagious. Their loyalty to the organisation is likely to wane, to be replaced by a personal orientation to getting a share in the spoils and prerogatives of the leader. To 'earn' such privileges one has to be somewhat 'like the boss' in the first place: either in ideas, tastes, values and (very important) laughing about the boss's jokes. Displaying some real skill, but -more importantly- avoiding the risks inherent in independent actions, may also contribute to moving up the ladder to the panelled board rooms of the inner circle. This inner circle of the organisation develops like a court, guarding its precious position and sharing the same opinions and prejudices, particularly towards the 'others' lower in the hierarchy or in the outside world.

This court building has far reaching social-psychological consequences. I mentioned already the pressure on the staff (and its morale) and the bias towards an obedient 'profile'. This tendency may become a dominant trait in human resource management. A tendency to share the same attitudes, reflected in feelings and values, grows into overriding selection mechanisms which are applied to newcomers as well as to the existing lower level staff. It leads to one of the most important losses in decision-making standards: a deterioration in the *recruitment standard* which is supposed to protect the minimum quality of human capital.

Given the building of an organisational court, recruitment develops more along the line of who is liked by the leader and the leader's underlings than along the lines of selection according to the required skills. This does not imply that no one will pay attention to quality, but it does imply a shift in emphasis which may become increasingly biassed. One can say that applicants who have an independent mind will, even if they display the required skills, have a lower probability of being appointed. This likelihood is inversely related to the distance to the leader: the nearer to the leader the more important it is to reveal the 'right character' (towards the leader and the leader's court), not the technical skills. It goes without saying that becoming a member of the inner court itself will turn out to be more a character and personality contest than a contest of quality and skills.

Within this context the phenomenon of *favouritism* is more likely than not to slip in. The leader is in a position to 'reward a good personality' at will or to appoint someone from outside, because he or she wants to bestow a favour (or worse, because the leader owes a favour). Consequently one may witness what I have called in Van Duyne (1996) '*Caligula appointments*': in the same way as

emperor Caligula, the 'owner' of the Roman Empire, could appoint his horse a consul (according to legend) the 'owner-boss' may feel free to appoint whoever he or she likes, irrespective of quality. This quality is usually mediocre at best, since talented people tend to become troublesome one day, unless they match their talents with an even greater lack of 'spine' and cynicism.

From favouritism to clientilism

Caligula appointments are not necessarily unambiguous symptoms of clientilism, although at this stage we are on the very threshold of it. When it is a favour bestowed on someone, it is a one-sided generous action. However, very few people are so generous or full of self-denial as not to turn such a one-sided gesture into a two-sided exchange, nor is the favourite in a position to neglect his or her benefactor. Having once 'received' a position in the organisation, the recruit is the boss' pet and realises that he or she should not bite the hand that feeds him or her, which means that the new recruit will always lend support. Such Caligula appointees are usually not harmless lower employees helped with a meaningless just-being-there job, but frequently the omnipresent 'right hand' of the leader, having a power position of their own, although it will only be a derivative one. Caligula appointees will try to strengthen their position by attracting their own little Caligula appointees, while the other courtiers will sense the importance of following the example in nominating their own retainers or little Caligula clones. Gradually clientilism permeates the social fabric and the way of running the organisation. When a Caligula can appoint his horse a consul, the ménagement may become a ménagerie.

We can say that the organisation has now passed the threshold of corruption. The proper decision-making standards have been eroded and replaced by complicated social exchange mechanisms such as: we vote for the suggestions of our benefactors lest their protection or the flow of their favours might dry up. This attitude radiates downwards along the ladder of the hierarchy, while the organisational aims have been replaced by an internal competition for the crumbs which have remained from the bigger spoils. As the staff has already been 'cleansed' of any independent minds or professionals who would uphold their standards, the lower executive echelons are likely to copy the examples of the boss and his or her underlings. In some way they may feel justified in acting as 'shareholders' in the firm, which has developed some features of a mediaeval 'fief ', including the privileges and prerogatives of the boss and the derivative privileges of his or her retinue and their retainers. From the psychological point of view this is quite understandable. It is much more satisfying to wield some personal power than it is to be part of a system of abstract, impersonal standards. Psychologically, the objective Weberian bureaucratic standards may seem a deviation from the human tendency towards such personal households or 'fiefs'. The pre-bureaucratic management principles of mediaeval and early capitalist times are a very natural outcome of a personal leadership style indeed.

In this example the development of clientilism has been described as a social-psychological growth process, isolated from the surrounding culture, although it may be embedded in a wider social system. The reason for describing

it in isolation is that it demonstrates the gradual 'sneaky' but psychologically 'normal' growth of corruption. I consider clientilism the first unambiguous symptom of it. Allowing clientilism to become part of the recruiting process implies deviating from the decision-making standard of recruiting the best. The personal exchange relation starts permeating the decisions: I will appoint you and further your career if I can rely on your support. Or: I will support you if you help me with a job or promotion. Within the right social climate (as is the case with 'gentlemen' in higher circles), it is most unusual and vulgar to express such things. Of course not! Nothing has happened but that we have 'helped some friends'. Who will call this corrupt, when this is exactly 'what friends are for'?

When we summarize the growth process of corruption within our hypothetical organisation, we have described an organisation managed like a personal household, in which decision-making is no longer considered a rational process potentially tested against standards and accountable to others. It has become the product of the unquestioned personal insight of the leader, who is supported by his or her court of yes-men who tend to reproduce his or her example in matters of (ab)using the organisational assets as well as in matters of personal court building. A personal decision-making habit has developed and it is considered natural that the outcome of decisions are favours bestowed on favourites or clients, while withholding a favour is considered a punishment. In such an organisation the seeds of corruption have sprouted and grown, shaping a non-transparent landscape. The extent of corruption depends on collateral factors, such as the surrounding political and business culture.

Corruption in a broader landscape

As is the case with every disease, the leadership disease described in the previous section may have many manifestations. These depend on the nature of the interactions with the environment, which determines the rules of external accountability. This external accountability may be imposed by the law and the enforcement policy as well as by normal business practice and public morality. For example, all countries with a capitalist market economy will have a kind of corporate law stipulating the minimal administrative requirements regarding the external accountability. These not only safeguard the interests of the public finances, safeguarded by the Inland Revenue Service, but also those of private debtors and investors. In addition, public morality will contain mainly unwritten and unsystematised and sometimes populist standards for the accountability of public services and political office holders. The emergence and development of the disease, growing from circumventing (some) rules, possibly followed by purposeful evasion of accountability and eventually in the end leading to venality (although this linear development is not necessary) has to be projected against this background of positive law (and the enforcement of it) and public morality at large.

Commercial fraud, corruption and accountability

In a commercial organisation external accountability is financial in the first place, leaving the entrepreneurs within their enterprise much legal latitude to act as they deem fit. There is nothing wrong with that and it should be pointed out that in the context of a legitimate enterprise some aspects of the suggested 'leadership disease' are legally not an expression of any venality; indeed, they are even heavily protected by private law. For example, the 'ownership' concept: in one-man firms, majority shareholderships or family enterprises such 'ownership feelings' by a boss or by a group of principals has a well-established legal basis. The managers/owners have the freedom to appoint whom they like and dismiss them at will (within the requirements of labour laws) without any corruption, simply because there are no impersonal decision standards or codes of proper conduct for these matters. This management may be considered whimsical, unethical, dishonest and deceitful towards the staff, but as long as the owner(s) of the enterprise do not defraud other entrepreneurs, the customers or the public finances, there is no violation of applicable accountability standards for the decision-making within the firm. Hence, in principle there need be no erosion towards corruption despite possibly blatant unethical conduct.

Where does corruption come into play? Let us analyse the development of corruption from inside to outside: from corruption within the enterprise to corruption with the outside word. Our point of departure is the simple baseline of a small firm in a surrounding with little corruption.

Complicity and inducement

Psychologically corruption within a company is likely to start as a form of seduction or inducement into complicity with the wrongdoing of the manager or someone in charge of a section. A need may arise to share the spoils. The perpetrators either find out that it is technically impossible to carry out the scheme themselves, or their misconduct is detected and they attempt to buy their way out: 'If you keep quiet (decision not to report) there is something in it for you, too.' This basic interaction is likely to grow with the size of the company and the scale of the transgression; for the simple technical reason of internal and external rules of accountability, the books must 'balance'. For example, the systematic embezzler within a firm who has no access to the ledgers will soon need the support of the bookkeeper. Only bookkeepers who operate "solo" may be in a position to defraud their boss or firm without needing to buy silence or complicity. In the CID files describing the scams of companies or their staff this corruptive element is frequently neglected, and remains in the shade of the basic offences: the suspects who were corrupted into complicity are labelled only as accomplices, not as corruptees. From the investigatory or prosecutorial perspective this 'neglect' is understandable: when managers bribe their own staff or this bribing takes place at the executive level, this is not covered by the penal code as corruption but as criminal incitement. Also in the literature on corporate misconduct one does not find this conduct described as corruption, but as a

deviation from professional ethics. For example, the cases of corporate (criminal) misconduct summarised by Mokhiber (1988) are described in terms of conflict of interest, criminal neglect, pressure on staff ('do you value your job?', 'Who pays your salary?'). These are correct qualifications, but they are not labelled in terms of corruption, which also applies.

When the dishonest scheme unfolds and grows, this simple baseline of corruption becomes increasingly ramified, although the extent and nature of it is technically a derivative of the basic offence and of the branch of trade or industry. When we first look at the inside ramifications and assume a fraudulent managing director (or his or her adjunct), the first person who is at risk to be bribed is the bookkeeper or accountant. When the objective is 'only' embezzlement, the ramification will remain very restricted. However, if the core business of the company itself is involved, the fraudulent provision of (legal) goods and services, the ramifications of corruption are bound to sprout along the sensitive points of accountability. In such cases, not only does the money flow have to be tampered with, but also the stock of goods and the registration of the services (such as the work hour registration) have to balance fictively. Rewards (and its shadow side, threats) follow the control points of the paper work. The following example from Van Duyne (1995) may illustrate the development in which fraud, corruption and violence were intertwined.

> Boris Rawfist was an important link in the fraud scams in the meat industry in the Dutch southern province Brabant, where he ruled as a despot over his meat company. As the profit margins in the meat industry are meagre indeed, he has found fraudulent ways to increase his net profits. His staff complied: if he could not corrupt his staff, he threatened them verbally and physically. However, when he needed a new accountant, he forgot to get the accountant accustomed to his way of doing business. One day the accountant learned that the whole paperwork of the company was a complete fraud, and every employee appeared to have been bought with black payments or intimidated into compliance. He reacted naively and told his boss, who exploded into his usual rage, waving his heavy fists, calling him names, alternating this with promises of a good salary. The accountant took the threats and his professional ethics more seriously than the promises and left in fear and disgust. After his dismissal he became victim of continuous threats. His place was taken over by the boss's relatives, who did not need to be bought because they already shared in the spoils.

A similar development could be observed in a case of organised toxic waste fraud at a disposal plant in the Rotterdam harbour. The company started as a legitimate firm. However, the managers soon began to tamper with all the procedures of disposal and processing, which implied creating a phoney paper trail of the successive control steps in the recycling of the waste. This was facilitated by a mixture of 'ethical cleansing' of the staff and high wages for those who were willing to comply with the fraudulent system set up at the control points of all the processing units of the plant. Needless to say, the plant was being run by very satisfied employees (Eshuis and Van den Berg, 1996). This collective satisfaction with the generous rewards for law-breaking was no longer experi-

enced as collective corruption, but as a natural consequence of daringly successful management, which was finally being disturbed by a 'narrow-minded bureaucracy'. In two other companies (one waste processing firm and one construction firm) of which the managers were prosecuted, the incensed employees, who might have feared losing their surplus income, took to the streets to demonstrate on behalf of their 'hero-managers' who had 'only defied the system' in making the company profitable again. All of these are local Dutch examples. However, it would be of interest to review international fraud cases such as the Guinness affair, the Banco Ambrosiano case or the BCCI case also from this perspective of complicity and inducement (Kochan & Pym, 1987; Cornwell, 1984; Adams and Frantz, 1992)

The legitimate market, commercial fraud and corruption

Fraudulent and corrupt firms as described above operate in real markets, selling real goods and services made cheaply through fraudulent means to 'non-criminal' entrepreneurs. This requires some stability and satisfied customers. Therefore, we should also look at the surrounding entrepreneurial landscape of traders who benefit from these scams. In order not to confuse commercial fraud conspiracies with corruption, I differentiate between the two conducts: on the one hand the mutual intentions of the perpetrators are already directed towards a common fraud scheme, and on the other hand there may be a need to bribe a fellow entrepreneur into complicity. The difference is important, conceptually as well as from the perpetrator's point of view, although in the dynamics of the fraud scheme the difference may soon fade away.

Corruption in the context of fraud may be considered an investment in safety, albeit an ambiguous one. Operating within the well-known and relatively safe 'fraudulent orbit' of fellow fraudsters provides relative safety, but the commercial outlets may turn out to be too narrow. As soon as fraudsters expand their business they have to leave their circle and must enter the broader legitimate market, operating below market price (for example because of VAT or EU-fraud), facing an increased risk of disclosure; the same is true of the eager buyers, who may have to answer awkward questions from the fiscal inspector ('You have changed from your regular supplier to one who is really very cheap, haven't you? Were you not aware . . . . ?'). Since most people are not only greedy but want to avoid risk, making people accept such risks requires the provision of 'extras' to the management (or the purchasing director) to enter the scheme, either silently or explicitly. These extras are more than the 'odd side of a smoked salmon or a bottle of champagne', creating moral and commercial dilemmas for those wavering between tough or fair competition (Levi, 1987).The more the external accountability is at risk, the higher the price, but also the more elaborate the mutual constructions to veil (parts of) the transactions. Fraud investigations reveal a variety of corruptive involvement, ranging from minor 'blind-eye' corruption to direct payments to keep the corrupted customer happy. Needless to say, the demarcation lines between the various shades of corruption are faint indeed.

Willingly accepting cheap goods or services supplied by a fraudster is the 'lowest degree' of corruption, which may not even be recognized as such. For example the Belgian import-manager of a multinational electronics firm bought his products from an enterprise engaged in Dutch-Belgian VAT-fraud carousels. He broke the internal rules but stated that he 'only bought cheap products', pretending to be unaware of the criminal backgrounds of his suppliers. The managers who condoned his 'sharp business practice' at first, sharpened the rules after disclosures by the Belgian fiscal police. As since that time the general management could no longer close its eyes to this criminal involvement, the executive manager faced an increased risk, which was overcome by some additional favours: he got extra consignments of videos to sell for himself. It is interesting to note the continuous scale of corruptive involvement, from one extreme of 'turning a blind eye' to the other of being bribed pure and simple. In between these two extremes one can situate the benefiting firm which accepts unclear invoices against cash payments. Detectives and prosecutors are well aware of the shortcomings of the legal definition of corruption. Is the manager of a milkpowder plant corrupt if he buys very cheap milkpowder from unknown suppliers, who were engaged in a EU-scam with Baltic organised crime figures, or is he merely a 'sharp businessman' finding his ways to cheap, but dubious offers (Van Duyne, 1995)? Although the fiscal police could not detect any technical legal defects in the paper work of the purchasing milkpowder plant (no black payments or phoney firms), they still suspected him of being bribed into becoming a most favoured customer of the organised combine. However, he could formally account for his decision to buy from the cheapest supplier, since this is the most 'normal business' practice indeed.

It is interesting to observe that the division of roles between corruptors and corruptees is highly flexible. Full accomplices in a successful scam may even be bribed by legitimate traders striving to become a beneficiary of the combine so that also they can obtain cheap products or services (or alternatively they may be blackmailed by threatening to report their scam to the authorities), while the traders in their turn may bribe other merchants further down the distribution line. Those who have been bribed may, after some time, be accepted into the inner circle of the scam, profiting from the fraud rather then from the pay-offs. In addition to the full participants, it may be necessary to buy the assistance of 'service men'. At the low end of the expert scale are the universal dummy straw men serving as directors, and at the high end are the professionals, such as lawyers or accountants, who straighten out the paperwork and design the legal structures in order to keep the kingpins 'out of the heat'.

There are sufficient examples of such legitimate markets 'layered' with commercial fraud and collateral corruption, although the extent to which these appear varies by jurisdiction: the European meat industry; the (parallel) cigarette trade; the construction industry and the garment industry to mention a few branches (Van Duyne, 1995; Koch, 1988). Recently the market in computer chips has witnessed large-scale fraud patterns. With respect to the number of people involved one may differentiate roughly between the '*product producing/processing'* branches and the '*service providing'* branches.

Branches that handle *goods* (fraudulently) are more likely to operate within narrow social channels up to the last distribution link with the retail market. They can restrict any information about the transgressions to the confines of management and the necessary executive staff. The *service* providing enterprises are usually highly labour-intensive production units, for example subcontractors in the construction industry that serve numerous customers. They operate in a broader social-economic circle. This increases their external accountability risks, requiring more elaborate fraud constructions, frequently cross-border. This is difficult to accomplish without at least the (tacit) aid of professionals. Alternatively, if such professional finesse or opportunity is not available, fraudsters may resort to a 'cash and bust' method: installing a strawman, cashing in the profits, stripping the company of its assets and letting the debts pile up, which is followed by its final bust. Although this may sound robust and easy, it requires much connivance, whether or not bought. The (black) labourers have to accept frequent changes of (phoney) management, while the background managers remain the same. The customers or principal contractors have to rely similarly on the contractual performance of the hired labour within so much 'flexibility'. They have learned to rely on these subcontractors, who provide good and cheap work as well as extras.[10]

Doing business, the authorities and levels of corruption

The previous section provided a sketch of the interactions between corruption and fraud within and between companies, the technical form of which will be determined by the requirements of external accountability. However, it is not only the techniques of circumventing the accountability risks which interest us here. Of equal importance is the interaction with the authorities: the regulatory bodies or law enforcement agencies. These players in the public field are supposed to have a formal 'bureaucratic' role, but depending on the policies of their departments (and the interests at stake) they are not detached controllers and umpires. Oftentimes regulatory authorities have high stakes in the branches of trade and industry which they supervise, for example the ministries of trade and industry, agriculture or finance. These interests may play a very sensitive and sometimes personal role in the encounters with the entrepreneurs. When their way of doing business is such that they have problems with their external accountability, they must find ways to circumvent its unwelcome consequences. This requires investing in the authorities in financial as well as social terms.

In the hard life of business such corruption investment is cost-increasing with an uncertain or even counterproductive outcome if the corruptee proves ineffective in his or her social leverage or is exposed himself or herself. Corruption

10 Since the mid-1980s this mutual interest between criminal subcontractors and the principals has been eliminated in the Netherlands, as the principals have been made liable for the unpaid taxes and social security payments due by the defrauding subcontractor.

always implies a spreading of information which increases the accountability risks. Hence, a smart corruptor will act on the basis of the requirements of his or her core business. A crime-entrepreneur who operates primarily in an illicit manner has another core business than does a legitimate entrepreneur who has some improper transactions to hide. Some have broad interests for the simple reason of the scale of their business, others have their daily worry of moving goods and services against moneys, which is the hamstring of their accountability. At what level will there develop an interaction with the authorities and/or office holders in order to affect decision processes, if alone on the level of law enforcement?

There are three types of entrepreneurial interests, corresponding with three levels of corruption. (a) The daily concern about the market operations: getting the goods and services into the market. (b) Neutralising undesirable effects of the authorities, whether in the regulatory or penal law enforcement. (c) Gaining supporters or protectors who are in strategic positions. This may lead to three levels of corruption (Van Duyne, 1997):

- the executive level;
- the law enforcement level; and
- the strategic level.

These levels are not mutually exclusive and they may even overlap. Let us look at them one by one.

Executive corruption

As stated above, this type of corruption concerns the daily practice of entrepreneurs. In the section on public/private sector corruption, I called this 'front office' corruption: a stamp, a licence or a blind eye by an inspector. Although I noted that the monetary values of the bribes often happen to be petty, systematisation of this front office corruption is the 'golden key' for companies that defraud only marginally or for full-fledged crime-entrepreneurs that are developing a wholesale crime-business. For example, EU fraud schemes with pretended *transit goods*, for which no taxes or excises are levied if they are duly exported, but which are sold illegally on the inner market of the EU. Such schemes expanded quickly and grew into a wholesale organised criminal business owing to intermediaries who had access to corrupt customs officers in various member states of the EU. While shielding the corrupt officials, they returned the T1-documents with the necessary stamps of the last customs office of export. Of course, many fraudsters resort to (badly) counterfeited stamps, which sooner or later are detected after which the fraudsters have to resort to new techniques or go into hiding. Having a corrupt customs officer on one's payroll means more efficient handling of the documents, and at the same time the detection rate is considerably lowered. The successful VAT and EU cross-border fraud schemes involved widespread corruption in Spain, Germany and the Netherlands (Van Duyne, 1990; 1995). Toxic waste fraud between the Netherlands and Belgium was

facilitated by the availability of corrupt deposit site guards (who appeared to be only the lowest ranking corrupt officials in the entire chain; Van Duyne, 1990). An extensive network of traffickers in women in Belgium was similarly served by some civil servants and a few supervising police who were greased with some free extra sexual services (Stoop, 1992).

Executive corruption is not always initiated by fraudulent companies or crime-entrepreneurs. The officials who wield some power to withhold from entrepreneurs their lawful rights or serve them so nerve-rackingly slowly, can make clear that 'some extras may speed up things'. Businessmen even rate countries according to the corrupt 'extras' needed at the executive level to get anything done (Lancaster and Montinola, 1997). Needless to say such 'enterprising' venal officials are much valued by crime-entrepreneurs.

Law enforcement level

Depending on the nature of their tense relationship with the law, entrepreneurs may be willing to 'invest' in law enforcement officials in order to keep the criminal investigators at bay. This applies to crime-entrepreneurs as well as to legitimate, 'respectable' entrepreneurs who have to be concerned about the consequences of the criminal defects in their paper work. As is the case with executive corruption there is some economy-of-scale effect in this level of corruption as well. Although there is some wisdom in the proverb 'better envied than pitied', successful (crime)-entrepreneurs see their risks increase with their success, just because the competitors are green with envy and keen to inform the law enforcement agencies.

It goes without saying that criminal entrepreneurs value complete immunity above all, although such an objective is difficult to obtain in complex (or frequently chaotic) organisations such as the police or the special agencies. Even in the most rotten organisations there is always the chance of a conscientious official nullifying the attempts of his or her corrupt colleagues. If this objective proves hard to realise, criminal entrepreneurs are at any rate anxious to learn about the 'information position' of the CID or the special investigative branches. 'Is there an investigation going on? What do the detectives know? Is there a 'rat' in one's own house?' This is most valuable information. At the law enforcement level corruption is basically a weapon in the 'information game' between criminal entrepreneurs and the crime squads, both sides probing the weak sides of their opponents: the police 'corrupting' criminals into become informants, and criminals corrupting the police into providing them with information. Although it occurs frequently that law enforcement officers literally sell information to criminals, an internal affairs investigator conveyed to me that most of his cases concerned overzealous CID detectives who thought that they could recruit a criminal informant against a 'Mr. Big' by giving him some 'innocent' police information about his 'own case'. Afterwards this information is not considered that innocent, and despite his 'noble intentions' the CID officer gets the label 'corrupt'. Oftentimes in the process of an undercover investigation, the unauthorised information exchange and the social relationships between the inform-

ants and the CID officers become so entangled that the roles of the suspects and the investigators get very confused indeed.[11]

Developing corrupt bridgeheads in order to interfere with investigations requires more than investments in the investigative frontline. Also law breakers know that prevention is better than cure and that preventing an investigation from getting started is better than frontline interventions with uncertain outcomes. The difficulties French, Italian and Belgian investigative magistrates experience in pursuing highly placed targets show the importance of pulling strings at the 'command level'. At this point we arrive at a higher level of corruption.

Strategic corruption

The previous levels of corruption are primarily tied to the daily unlawful operations or are intended to be instrumental in reducing (or preferably in eliminating) the threat from the authorities. At the end of the previous sections I indicated the importance of systematically preventing the authorities from carrying out their duties. This requires access to a strategic command level, which touches the nerves of a state ruled by law. What are the conditions for penetrating that high and who has the capacity to accomplish such a feat?

A recently expressed worry, which sometimes grows into a moral panic, concerns the potential of *organised crime* to penetrate these 'command rooms' of society. Do organised criminals develop such a broad and more far-reaching corruption strategy? There is no general answer to this question, since it depends very much on the type of (crime-)entrepreneurs and on the society in which they operate. Most crime-entrepreneurs stem from the mainly cash-based *underground economy*: the self-made thugs and heavies, used to equate power with compulsion through violence or with easy compliance bought with packs of money. In countries where violence and corrupt governance are endemic, such as Colombia (Visser, 1991), Russia (Handelman, 1994), Turkey (Bovenkerk and Yesilgöz, 1998) or Italy (Savona, 1995) (to mention only a few examples), this approach may result in temporal, but always much contested power, which has to be upheld by increasingly violent and expensive means, which usually prove to be self-destructive in the end. Power that is based on violence never provides an easy seat. In the words of Tayllerand to Napoleon:'Sire, with bayonets you can do all sort of things, but you cannot sit on them'. Do such crime-entrepreneurs also strive strategically to establish a stable power position which gives them a 'seat' in society, albeit with corrupt legs?

For most jurisdictions in the industrialised Western hemisphere the answer to this question depends on the congruence between crime-entrepreneur and their surrounding social-economic landscape. Looking at the category of crime-entrepreneurs from the 'traditional' underground economy, the answer is 'yes, but rarely', to which one may add 'and rarely with enduring results'. There are

11 This happened in a large-scale investigation against some supposed "top-ten" hashish traffickers in the Netherlands, during which secret investigators were too closely involved in the affairs of a criminal infiltrator who smuggled staggering amounts of hashish (Middelburg and Van Es, 1994).

several reasons for this. In the first place the power structures in most Western jurisdictions are complex networks that are characterised by many public controls, checks and balances. In these power control mechanisms the media play an important role in spotting and exposing the rise to power of a personality with a questionable background. After all, nothing sells better than scandals, which are very important in exposing and repressing corruption (Sherman, 1978). Therefore, the first thing a crime-entrepreneur has to do is to manipulate, bully or get hold of the media. For most crime-entrepreneurs this is usually 'a few bridges too far', not only because of the great technical difficulties, but for a more important and more mundane reason: the psychological attitude of these underground entrepreneurs. Most are self-made men with a limited social interest and are not very eager to expand their acquaintanceship beyond what they feel to be safe. Even those who appear to be rolling in wealth, appear to show little strategic shrewdness in using their criminal funds to establish social bridgeheads near power junctions. Even the wealthiest of these heavies did not show much interest in translating their financial power potential into real upper world power (Van Duyne, 1997). They indulged in the power they could wield over their *fellow* crime-entrepreneurs, however. But beyond this social circle of like-minded Lombroso-heads they face grave social uncertainties in socialising with crooked potential aides in higher classes:'Can you trust these educated city slickers?' However, there are favourable circumstances which facilitate this rise to a higher social circle: a docile press, compliant politicians who are dependent on crime-money at election time and the avoidance of public disorder or nuisance. This may result in a lon-lasting strategic alliance between organised crime and a local authority such as a town council, even in a democratic jurisdiction, as has been elaborated by Gardiner (1970) in his description of the corrupt relationship between the Democratic party and organised crime in an American town.

More interesting examples of social power development are provided by the category of *business crime*-entrepreneurs who operate in the upper world, delivering legitimate cheap products and services for which they receive social recognition or even respect. The established business crime-entrepreneurs do not need to climb the social ladder from bottom upwards. They are used to moving easily around in higher circles consisting of the ubiquitous 'friends of friends' (as long as there are mutual profits). Whether they use 'friends' to exercise power indirectly or come into the open is a matter of taste and risk evaluation.

No matter whether they come out into the open or remain behind their screens of 'friends', they act with the self-confidence of being smarter than the law, not hampered by any bad conscience. They consider themselves just 'sharp businessmen', daring and inventive entrepreneurs (Levi, 1981), such as the Belgian oil baron (Van Duyne and Block, 1995) or the Dutch meat wholesaler, against whom every prosecution grounded to a halt. The adventurous Italians Parretti and Fiorini, who contributed to the fall of the Bank Crédit Lyonnais, at any rate the Dutch branch of that bank, represent similar self-confident egos who knew how to establish a strategic social power position, notably in France (d'Aubert, 1993). Psychologically they share the arrogance and inflated egos of business-politicians (Della Porta, 1996) such as Berlusconi and Tapie (Bouchet, 1992), the apple

of president Mitterand's eye. To this psychologically corrupt Pantheon one may add the previous secretary-general of NATO and his cronies, or the Parisian 'court' of the erstwhile mayor of Paris, if not this ex-mayor and the present President of France himself.

The keys to such strategic corruption are of a psychologically, sociologically and material nature. I consider a direct psychological understanding and a shared attitude towards values such as 'common good' or 'public interests' to be basic conditions. Corruptors and corruptees do not need winding or convincing explanations about the supposed uselessness or futility of such values. Who does not understand a snigger or a confidential look to be a risk to be avoided. Additionally there needs to be mutual or complimentary interests and a safe *social or cultural proximity*. If the parties are not equal in this respect and do not speak the same 'social dialect', misunderstandings may soon arise. Where smooth, slick talk is the common tongue, a deliverance of thick browns envelopes-with-contents is not the right move to begin with, betraying an overly vulgar attitude to be a 'friend of friends', even if such a monetary gesture is expected in the end. For such action a lower status underling or murky intermediary is to be used. Della Porta and Vannucci (1997) have elaborated on this social interaction between arrogant business politicians and private industry in Italy. Apart from these cultural backgrounds they represent something of value: they run a licit enterprise and have jobs to offer in their community, and public officials have to deal with them for licences, taxes and industrial planning and supervision. They can weave a subtle social network of highly placed law-abiding people who share various important interests and -most important- one highly developed sensitivity: the fear of loss of reputation should even one of them become tainted. If such a dreaded event should occur, they face the most unwelcome choice between distancing themselves from the deviating companion or finding a way out by covering up, realising that one 'tall tree' that is cut down may drag down others in its fall. This could be observed when the Dutch Slavenburg Bank, which was suspected of handling undeclared moneys, was raided by the fiscal and regular police during the 1980s. The minister of justice happened to be socially very close to the general manager of the bank. He was suspected of smothering the investigation by proposing a reduction in the CID-task force.[12] The major Dutch meat fraudster (Van Duyne, 1997) had even stronger clout. Not only did he succeed in appointing one of his cronies into the board of a supervisory agency, in addition no public prosecutor could approach him without risking his or her career. I have been informed that as soon as the first prosecutorial move was being made the secretary general of the ministry of agriculture was informed and through regular meetings with his colleagues it was suspected that pressure was applied on the head prosecutor who advised his prosecutor to be 'prudent', which is a serious warning to stop.

At such levels of strategic corruption there is a subtle, 'velvet-lined' peddling of influence. Whether there will be any discernable exchange of tangible goods,

12 The bank was bought by the ill-starred Banc Crédit Lyonnais, which fell victim to the criminal duo of Parretti and Fiorini.

rewards or the promise thereof is a matter of developing mutual interests. The interest of the corruptor is clear: to invest in protective social relations in the first place, becoming accepted under a 'social umbrella' which may provide a minimal shelter against exposure. Under this social umbrella the 'friends of friends' will develop the appropriate system of exchange of favours, favourable decisions against rewards according to the customs of their social circle. In countries which do not have adequate regulations on political party financing the rewards will consist of payments to the party election fund. In countries in which hierarchical authoritarian relations are strongly developed, venal cliques are likely to develop along closely guarded social authority lines: small circles of political power, locally connected with 'captains of industry' are characterised by a 'closed window' mentality, keeping intruders out. Money may be important, but more important is the perpetuation of the system of mutual favours and understanding in semi-closed circles (Becquart-Leclerq, 1990). Of course, as soon as elections come around in which voters may decide over (a part of) the power, funds from any social direction are welcome (if properly veiled), after which the social ranks will close again. This appears to be the social climate in France (Ruggiero, 1996), in which interested parties even went as far as to propose legislation in order to prevent corruption investigations being reported in the press as long as there is no trial. Such legislation would be the codification of the judicial/political cover-ups behind the closed windows.[13] This ability to penetrate the highest function of the state of law, the legislature, may be rated as the highest level of strategic corruption in a democratic society. In countries with a weak democratic system the aims of strategic corruption are the executive, as can be observed in eastern Europe during the post-Communist era (Holmes, 1997).

Prevention and the fight against corruption

During the last decade of this millennium Western governments have discovered the emotional and symbolic value of proclaiming a 'fight' or even a 'war' against some 'threatening' phenomenon: drugs, organised crime, money-laundering, and also the 'fight' against corruption. This presupposes a visible threatening phenomenon, depicted in alarmist headlines and broad television coverage. Looking back at the analysis in this article and the literature, the term 'fight' misses the essence of corruption. 'Corruption is very similar to a mushroom (or rather a toadstool): what one can observe is the head and the stem, often provided with a white collar. . . . the essence [is] the underlying mycetes of hyphal threads extending through numerous invisible branches in rotten and sick wood' (Van Duyne, 1996). Trying to fight the spread of mushrooms seems a bit futile if the rotten wood remains untouched. Being tough against such vile enemies is

13 In France the judiciary is less independent than in most European democratic countries: particularly investigative judges complain of frequently being put under high pressure to abandon 'sensitive' cases or they are assigned to other investigations (Ruggiero, 1996).

popular: in China during the mid-1980s, apprehended corruptors (who had also lost political support!) frequently saw their career end in execution. In Russia Andropov and Gorbachov also tried to clamp down on corruption (Levi, 1987), but all they hit were the mushrooms. Ten years later the hyphal threads are still growing in the rotten wood which are not targets for fights but for *cleaning* operations and overdue maintenance. By turning a blind eye to the growth of corruption in large parts of the world during the Cold War, Western US-dominated institutes, such as the World Bank and the International Monetary Fund, have furthered this development in virtually every client state (apart from destroying the local indigenous economies and the environment). Belatedly these institutions have begun to take a real interest in the contagious and disruptive impact of corruption in the Third World (Theobald, 1997). They realised that a broad repressive and preventive educational approach, such as the one experienced in Hongkong, have a better chance of success than the ritual 'war-against-language'.

The prevention and repression of corruption is a laudable social aim, which no one would dare to question. But to realise this lofty aim one has to face a basic human trait: the tendency to tinker with established decision rules, because life tends to move faster than these rules, while life has much more to offer than compliance with impersonal rules-on-the-books. It is a 'normal' tendency which is highly valued in a society in which flexibility is considered a virtue and rigidity a dead-alive business: the exceptions are allowed to prove the rule, until the rule becomes obsolete. But it is also most human to 'prove the rule' with self-serving exceptions, some of which happen to be 'bought' by a reward. This happens at every level of life. Let us return to the domestic situation I described in the section about the definition of this phenomenon: sonny bribing daddy to bend the rules, which suits both well, 'but only this once'. For this innocent family situation, which may reflect just a sensible 'give and take', the qualification 'corrupt' may have too much a hint of puritanical fundamentalism, although moralists may indignantly disagree with this immoral relativism.

As a matter of fact the placing of such a domestic situation between the extremes of 'give and take' and 'corrupt' provides in a nutshell the essence of the continuing debate between 'north and south', between Protestant northern and Catholic southern Dutchmen; between Belgians and Dutchmen; between North Europe and South Europe, or between the Western 'bureaucratic-rational', industrialised hemisphere and the Third World. To a certain extent both sides talk about the same underlying psychological traits, although with different emphasis. On the one hand it is a human tendency to eschew the uncertainty of arbitrariness, which is experienced as unfair and whimsical, and to strive for predictable 'rational' rule-directed behaviour. On the other hand there is the basic social requirement to smooth and grease (human) relations by friendly gestures and being grateful for such gestures in return, preferably when these are not merely symbolic and contain something tangible! To return to the opening 'theological' section of this article: this attitude is deeply rooted and finds its expression in most popular religious rituals. Are most temples not market places for Divine favours?

Keeping this in mind, preventing and combatting corruption entails a delicate interference with very basic tendencies, which should not be dismissed as something pathological. Designing technical measures to raise barriers against corrupt *acts* without doing something to develop a corresponding public *attitude* is like designing iron chastity belts while ignoring the sexual drive. Although I appreciate the latter drive more than a lax attitude towards corruption, in both issues one faces human basics, or truisms, which are stronger than moral crusades or 'cast iron' prevention techniques. In this last sections I will not elaborate on the various administrative techniques to prevent fraud or the legal possibilities and difficulties in repressing it, but will concentrate on these behavioural 'basics'.

Material and social basics

The prevention and control of corruption cannot be formulated in social-economic and culturally neutral terms. In many countries there are the brutal economic facts of income and subsistence. If a government pays executive civil servants $ 120 a month, while the subsistence level is $ 150 or $ 200, no package of ingenious prevention measures will prove effective, let alone some moral lectures about the evil of corruption, presidential ukases from Yeltsin or EU aid programmes which do not change this harsh reality. The policeman or customs officer has other worries, such as the electricity bill or the rent that has to be paid. In such situations it is not the existence of corruption that is amazing, but the finding that part of the civil service is in some way or other *not* (yet) corrupt.

This amazement will only increase when one observes two concomitant adverse social-economic factors. The first concerns the distribution of income in such countries, which appears to be very skewed, indeed. Skewed income distributions as such are not causally related to corruption, but the combination with a second factor, the illegal kleptomanic origins of the amassed wealth of the ruling elite, may function as a major amplifier. Every underpaid civil servant has a ready excuse at hand for his or her petty 'subsistence' corruption as an attempt to reduce the income inequality by selling their services or extorting payments by withholding them. In a jurisdiction that has a kleptocratic elite ruling over an impoverished public 'service' there is hardly any remedy other than an economic and social collapse of the state, or what might resemble a state. The economic (near) collapse of the Russian Federation, Congo or Indonesia may well be interpreted in these terms.[14] These are brutal economic and social basics which do not require any deep philosophical reflections, even though they should be included in any sober risk assessment (See Quah, 1994/5).

14 It should be added that also these societies know their uncorrupt 'white knights', such as the dismissed prime minister Kirijenko, who is alleged to have been pushed aside for being too threatening to the corrupt oligarchic clique.

Cleaning top down

In the previous sections I characterized corruption as a leadership disease. If that observation is correct it may provide an answer to the question 'where to start?' The attack on and the prevention of corruption must start by concentrating preventive and repressive efforts on the acts and attitudes of the highest levels of private and public leadership, as has successfully been done in Hong Kong and Singapore (Quah, 1994/95). The staircase has to be cleaned top down. The principles which have to be applied are again rather simple and basic. As a matter of fact they are basic management rules addressing not only corruption but any form of arbitrary and wasteful leadership. It goes without saying that the actual application will be shaped by the concrete circumstances of the organisation and its social-economic surroundings. The approach stands on two simple legs, which may be considered mere 'truisms' than 'principles', although the corruption issue is largely based on their systematic neglect:

- *The transparency principle* and
- *The first servant principle*.

Both principles can be supplemented by additional organisational measurements or rules, which are related to these principles.

a. ***The transparency principle***

The validity of this principle can be considered self-evident, since it is the basis of accountability: no accountability without transparency, whether this concerns the paper work or decision rules. To prevent shady deals and to further transparency (and to boost their public image) many multi-national corporations have devloped codes of conduct (Kaptein en Wempe, 1995). In countries which have a parliamentary democracy, transparency is supposed to be guaranteed by the political control exercised by Parliament. At first sight there are no problems here if all such provisions are present. However, the implementation and tightening of this principle is accompanied by much uneasy evasion and circumvention, which increases with every step upward in the hierarchy.. As soon as it is to be applied *above* the level of the executive management, whether this concerns the board of directors, the board of directors-general of a ministry or the senior party member, the doors will be closed and the curtains drawn. There are many good reasons for doing so, which have nothing to do with venality. But despite this well-meant secretiveness, at a certain point in the decision procedures transparency has to prevail and the decisions have to be accounted for; the city councillors, the back benchers in Parliament or the shareholders have questions which have to be answered. On this level of decision-making the seeming 'truism' of transparency becomes an achievement that has been hard fought-for and which has to be protected with the utmost vigilance against erosion. Doors which have remained closed 'for the good of the organisation' or for the 'general benefit' too often and too long, foster a common secretive attitude among the decision-makers. Meanwhile, uneasy feelings arise among the outsiders that 'the high-ups are just cooking up something', 'are merely playing their little power games' and paying only lip service to the transparency principle. Given the talent of the

high-and-mighty in veiling their indoor reality with high-sounding rhetoric, such feelings of distrust are easily reinforced. Although the light has to shine from above, oftentimes it is rather a thick fog which comes down the stairs.

If such observations are not considered mere cynicism, the *preventive* application of the transparency principle will soon run against tenacious obstacles, which are clothed in 'objective arguments'. Whatever the sincerity and reasonableness of such arguments, they are the reverse side of the coin to providing the breeding ground for the hidden seeds of leadership corruption: the erosion of accountability, the 'ownership feeling' of the office-holder ('no poking around in *my* kitchen!'), the building of courts of like-minded officials, and Caligula appointments of unctuous yes-men within the (semi) closed circle of office holders. Depending on the shared (hidden) interests even the democratic watchdog, the Parliament, may falter. This is particularly the case when corrupt or questionable acts of the government may endanger the position of the ruling party. In the United Kingdom, the Conservative Party accepted and condoned a good deal of sleaze, except for the sexual escapades of some of Major's ministers (which would not stir a soul in a less prudish society). The Belgian parliament functioned for decades as an elected carpet under which much corrupt mischief has been swept. Only recently, under the pressure of the Agusta affair and the public loathing caused by the Dutroux case, have politicians become nervous. Many Belgians are of the (justified) opinion that the impact of these scandals has not gone further than this transit state of nervousness. If top-down transparency is a truism, its preventive potential is much neglected.

This preventive potential can only be enhanced when members of an organisation agree on what constitutes undesirable and dishonest behaviour and forms of conduct which may lead to venality, and when they support rigorous compliance. This will create a climate in which people dare to come forward to report such 'undesirable' behaviour (Gorta and Forell, 1995). This is recommended for the lower forms of corruption, but reporting 'undesirable' behaviour on the part of the management requires the desperation (or the self-destructive drive) of a whistleblower. Moreover, much 'undesirable' behaviour concerns the prerogative of the higher decision-makers, such as appointments and promotions, the risky areas of Caligula appointments, court building and clientilism. Is the management not the most qualified level to judge 'outstanding talents'? (I may refer to the section about the decay in recruitment standards.)

It is not only the preventive use of the transparency principle that faces tenacious resistance, but also its *repressive* applications may soon run into difficulties. This is not a surprising finding, although the degree of tenacity may vary according to the ramifications of the interested social network. When highly placed persons are themselves directly involved, the resistance hardly needs further elaboration. The 'clean hands' operation in Italy is a model of such resistance towards penal surgery involving the higher political echelons. A more subtle resistance is experienced when there are no direct reprehensible links to higher placed people, but when nevertheless the corrupt acts took place in a social environment of condonation, in an environment marked by a collective venal *attitude*. As soon as an investigation starts, nervousness spreads through such a social network. The 'bagman' is caught, but will he implicate those who are or

should be morally responsible? Will the social fabric protect those corruptors who invested strategically in human connections at the 'command level'? If the repressive approach remains restricted to what can be proven under the penal code without investigators peeping behind the scenes, the hidden actors pulling the strings will welcome a quick and clean penal law surgery:'hang the bagman high', dismiss a few executive managers and the 'rotten apples' are out of the barrel. Justice is done, the public is satisfied! However, the repressive application of transparency may be more fruitful if it goes beyond this narrow penal law approach, even if the penal code cannot be applied to those 'respectable' functionaries, who are 'only morally' responsible. Here the repressive cleaning top-down is a matter of public and political accountability aimed at a transparent light from the top window. In this respect the social effects of the scandal may prove just as effective (Kjellberg, 1994/5). Since scandals can only be brought to the attention of the public through the media, nothing may blunt this repressive effect better than the accumulation of the media outlets in the hands of the corrupt business-politicians. The case of Berlusconi may be a proper warning. The accumulation of the media in other countries, such as in the United Kingdom, can only be observed with great concern.

b. The first servant principle

The leader, whether in politics or in a private corporation, is 'the first servant' of his or her organisation. This principle sounds 'natural', even though historically it is not a very old one. It is embodied in Frederic the Great's adage that he, the King, is 'the first servant of the state', by which he meant that the rule of law applied to him as well. This contrasted strongly with the absolutist adage:'*L'état c'est moi'*. This principle may also be called the rule of *non self-exception*: nobody is so highly placed that the rules of his or her own house, be it the state or an organisation, do not apply to him or her.

Although today this principle may be considered self-evident, compliance with it is as problematic as was the case with the transparency principle. Even if no manager would deny that someone may be so important that he or she is above compliance or considered beyond the rules, to act accordingly is another matter. Rules, especially decision rules, embody all sorts of restrictions on acting as one would like to, which can be awkward. As set out above, the tendency to bend the rules with the excuse of the proverbial exceptions-proving-the-rule, is natural enough. In addition, it is difficult to argue against 'flexibility' in favour of rigid compliance. As long as there is a clear and objective justification for 'the exceptions proving the rule' one is still at the non-personal transparent or accountable side of this flexible transition zone. However, the more the exceptions become personal, even if no material interests are at stake, the more the manager may develop a 'beyond the rule' attitude for which there is no accountability. The first destructive impact is the bad example. This is too obvious for elaboration:'Just look at him!'. The second impact concerns the reduced freedom of the manager himself or herself to interfere with rule deviations among the staff, which derive just from his or her own example. Even if not expressed verbally, the smart 'beyond the rule' manager knows intuitively at what point interference in the behaviour of the staff may lead to self-exposure. The same

tendency applies to members of a traditional ruling elite, who consider themselves 'special', a euphemism for indulging in collective 'selective' non-compliance with which they think they can get away, because they have always wielded power. Are they in a position to enforce transparency?

This neglect of the 'first servant' principle (or its compliment, the non-self exception rule) can only be sustained when the players comply at any rate with one collective rule: the (silent) rule of *non-intervention*, which is the best guarantee of keeping transparency out. This rule has a wider range than corrupt situations only, while it has a universal psychological and social acceptance. The common upholding of this rule can even be the best 'reward' or a pressure in a corrupt exchange:'So far, I have not interfered with your 'interesting' deals and affairs, and I expect you to do the same!' (Otherwise . . . .) This tacit, subtle reward may be valued higher than gold, although no law will label this as corruption. There is no 'real act', nothing changes hands, but there is a mutually sustained precarious silent balance based on the mutual recognition of attitudes. Corruption is very much a state of mind indeed.

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Combatting Corruption

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1 Summary and purpose of the commentary

The philosophy of Prof. van Duyne's paper is that corruption is "a state of mind" and that, although corruption is immoral, it is human conduct that people undertake sometimes deliberately, but also gradually. In democratic systems public officials, who operate on behalf of the community, should act with a view to pursuing the public interest. Each of them, however, has private interests and goals that do not always coincide with those professed in public, and might therefore be induced to exercise their discretionary power in their own interest. Van Duyne provides a straightforward and yet general definition of corruption, according to which corruption is "an improbity or decay in the decision-making process in which a decision-maker (in a private corporation or in a public service) consents to deviate or demands deviation from the criterion which should rule his or her decision-making, in exchange for a reward, or for the the promise or expectation of a reward, while these motives influencing his or her decision-making cannot be part of the justification of the decision". He therefore states that the most important aspects influencing the levels and manifestations of corruption are the accountability of decision makers and the erosion of this accountability.

Taking into consideration van Duyne's paper, and with the parallel aim of providing some information on the situation in Italy and other European countries, this commentary is divided into two parts.

The first paragraphs contain a commentary on van Duyne's theoretical analysis of corruption. On the basis of the elements of corruption defined by van Duyne, the opportunities and risks connected with corruption will then be identified in a theory of corruption as rational choice, in order to delineate more appropriate policies to combat it. The situation of corruption in Italy is also briefly described.

In the second part, the action against corruption is analysed and the counter-strategies introduced by some European countries, and by Italy in particular, are described.

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2 Corruption as a "state of mind"

In his paper van Duyne develops a behavioural theory of corruption in which he starts by highlighting five necessary components of the concept from the decision side. The first of these is a *decision maker* with *discretionary power* to deviate from the rules in the decision making process, and who is *accountable* for the propriety of the decisions made. Two further components are involved: the *exchange relation* between the actors of corruption and the *hidden nature* of this relation. This behavioural definition of corruption as being a state of mind focuses on the individual decision maker, and in van Duyne's opinion is therefore very wide and can be applied in every context and legal system. He uses a social-psychological approach, and clearly states that, psychologically, corruption is not an abnormal state of mind, but on the contrary rather human. He then classifies corruption into nine categories, in all of which social-psychological factors leading to corruption cases are identified. This behavioural approach, however, seems to leave little if any space for human rational thought and the possibility that people make a rational analysis of the advantages that can be reached through corruption, and of the costs involved.

In van Duyne's analysis the natural development of simple one-to-one corruption is towards the spreading of such illicit conduct, all the more if the corrupt scheme becomes more complicated and requires the involvement of other actors. Widening this behavioural perspective, therefore, corruption gradually spreads, leading to a corrupt market and a weakening of public morality.

In such a situation, corruption will increase and spread in every sector due to the combined action of a decrease in the legitimacy of democratic institutions, a decrease in the accountability of decision makers with discretionary power, and a decrease in transparency in general. A lengthy and important section of van Duyne's paper, in fact, examines the development of corrupt attitudes in a working environment. In the scheme of corruption the role played by the leader is fundamental, since van Duyne argues that corruption frequently develops in organisations as a "top-down disease". In the cases of both a leader with a great deal of decision-making power who is also prone to corruption, and an honest but sloppy manager unaware of what is happening among his or her subordinates, corruption develops because of *defective leadership*, where standards of proper conduct have been eroded. Van Duyne states that corruption is a "process [which] is quite human and the transition from non-corrupt but questionable conduct to the first stages of corruption may, even to the participants themselves, unfold as an unnoticed growth process". Again in the example here provided it is clear that fundamental importance is given to psychological factors influencing corrupt behaviour, while the positively and rationally calculated choice to engage in corruption is not considered as a contributing factor.

2.1 The paradoxical story of the successful leader

The paradox thus delineated is that corruption may develop alongside successful management. At first it may even be unseen, and then later denied by the success

of the leader. Taken in a more general sense, in van Duyne's opinion this process also accounts for the development of corruption into systemic proportions, as in the case of Italy.

The first phase of corruption by a successful leader consists of extravagance. The example provided is that of a leader who does not justify his or her excessive expenses: although there is no indication of corrupt behaviour, this is the first stage in the development of a leadership style which deviates from the proper management of public resources.

The next phase is that of the erosion of accountability. The paradox here is that the more successful the leader is, the less he or she receives negative feedback on his or her actions. "The increase in trust is inversely related to the principle of accountability, but also to the mental openness to critical evaluation of the deeds of the leader." This will create a climate in which implausible expenses will be justified by "plausible" explanations. Employees who do not agree with this conduct will frequently be replaced by more obedient ones willing to accept the erosion of the leader's accountability and the opacity of decision making processes.

Van Duyne then identifies the "ownership phase", where the leader of the organisation starts behaving as if he or she were its actual owner. Extravagance now gives way to the leader's unrestrained use of corporate assets for his or her own private and organisational purposes. The leader now needs a court of yes-men who share his or her opinions and do not complain about the non-transparent decisions taken. This also gives rise to a change in recruitment procedures. New employees are now selected because of their appreciation of the leader and not because of their skills. These are what van Duyne aptly calls "Caligula appointments".

This behaviour quickly leads from favouritism to the phase of clientelism, where the personnel appointed will tend to follow the example of the leader and to appoint, in their turn, their favourite yes-men. The organisation has now surpassed the threshold of corruption, and proper decision making standards have been eroded.

> *In this example it is again very clear that only socio-psychological factors are directing the action of the corrupt leader and his or her court of yes-men. The attempt on the leader's part to "justify" unjustifiable actions and decisions does not seem to use logical, rational reasoning. The development of favouritism and clientelism is characterised by a series of "rules" which do not seem to follow objective, rational requirements. Even the recruitment procedure, which is based on an oath of obedience to the leader rather than on the actual skills of the prospective member, again does not involve the use of rationality.*

In van Duyne's opinion, the manifestations of this leadership disease differ depending on the interaction with the environment, which determines the rules of external accountability. This accountability may be imposed by the law and the enforcement policies, as well as by normal business practice and the public morality. There is, in fact, a second phase of corruption in which the phenomenon moves from occurring solely within the enterprise to corruption with the outside world. The first person at risk of being bribed is the accountant of the enterprise,

because the external rules of accountability imply that the financial situation must show no sign of mismanagement. Then it might be necessary to bribe a fellow entrepreneur into complicity. At some stage of this process, interaction with the authorities might begin, according to the different entrepreneurial interests. The degree of intensity of this interaction gives rise to three different levels of corruption, which van Duyne identifies as:

– the executive level, where corruption concerns the daily practice of entrepreneurs;
– the law enforcement level, when entrepreneurs are willing to bribe the law enforcement authorities to prevent or postpone investigations;
– the strategic level, where preventing the authorities from carrying out their duties requires access to the strategic command level. In this case there may not be a discernible exchange of tangible goods, but rather a development of mutual interests.

The examples of different categories of corruption made here highlight that, although van Duyne defines corruption as human behaviour driven by psychological factors, other external conditions are necessary in order for corruption to develop and spread. First, the power to make decisions, either lawful or unlawful, is necessary, because a person who does not have power will neither corrupt nor be corrupted. Second, the existence and effectiveness of external accountability rules will determine the different levels of corruption and variations in its diffusion.

Therefore, in order to explain variations in the diffusion of corruption and in order to curb it, hypotheses must be formulated on the factors influencing the phenomenon and on the role played by these components. Only then will it be possible to elaborate proposals for policies to combat corruption.

One main question arises from the explanation of van Duyne's theory on corruption, and is particularly relevant in the phase of development of corruption into systemic proportions, where "*corruption spreads to a corrupt market and a loosening of business morality*". Since the analysis made by van Duyne emphasises the psychological factors influencing the action of an individual and doesn't directly include rationally taken decisions to engage in corruption, the question remains regarding the role which can be played by an economic approach towards corruption.

3 Corruption as a rational choice

Starting from van Duyne's analysis, and using three of the components he has identified, it is in fact possible to develop a framework that considers corruption as a phenomenon operating according to the rules of the market place.[16] The

16 E.U. Savona, "Beyond Criminal Law in Devising Anticorruption Policies. Lessons from the Italian Experience", in *European Journal on Criminal Policy and Research*, vol. 3, n. 2, Kugler Publications, Amsterdam/New York, 1995.

assumption here is that corruption is an illicit good, bought and sold according to market conditions, and that the actors in this market, the seller and the buyer of corruption, are rational human beings who engage in an illicit transaction in order to maximise opportunities while at the same time seeking to minimise the costs of being arrested and convicted, and of losing their good reputation – a valuable commodity, especially for politicians. In terms of counter-policies, the implication of this analysis is that, in order to curb corruption, it is necessary to affect the market by reducing the opportunities and incentives to commit such offences, and by increasing the risks at the same time.

If we accept that corruption is a rational choice[17], the main question to be answered is: why do individuals, whom we assume are rational human beings, decide to behave in a corrupt manner? And a second consequential question: what is the effect of this decision on institutional development? In other words, how does corruption, after infiltrating a system, become systemic?

A summary of the variables taken into consideration by the various theories on corruption shows that a combination of factors tends to increase opportunities for corruption. These factors are the number of decision-makers, the amount of their discretionary power, their amount of responsibility for the decisions made and enforcement of formal procedures for the control of this power. In fact, when there is only one decision-maker, "monopolistic corruption" increases, while the higher the number of decision-makers ("competitive corruption"), the fewer opportunities there are for corruption. Moreover, when discretionary power increases, so also do opportunities for corruption[18], because the public official can allocate the rights at his or her disposal so that some people have more advantages than others.

Finally, the existence of formal procedures for the control of this power bring about an increase in the "value" of corruption, thus increasing the cost for the buyer while at the same time increasing the advantages for the seller. Therefore, besides the strict economic advantage of a monetary bribe, the benefits of engaging in corruption comprise every other kind of advantage connected with a secret exchange of favours.

A consequence of what has just been said is that, as discretionary power increases, so too do opportunities for legal corruption, while the existence of precise formal procedures for the control and regulation of discretionary power have the effect of increasing the corruption value, in the sense that they increase the cost for the buyer and augment the opportunities for corruption available to the seller.

On the other hand, since corruption is a criminal offence, the actors in this market have to take a number of risks connected with the commission of a

17 R.O. Tilman, "Emergency of Black Market Bureaucracy: Administrative Corruption in the New States", in *Public Administration Review*, n. 28, 1968. See also Van J. Klaveren, "The Concept of Corruption", in A.J. Heidenheimer (ed.), *Political Corruption, Readings in ComparativeAnalysis*, New Brunswick, Transaction, 1970; B.L. Benson and J. Baden, "The Political Economy of Governmental Corruption: The Logic of Underground Government", in *Journal of Legal Studies*, vol. XIV, June 1985.

18 B.L. Benson, "A Note on Corruption of Public Officials: The Black Market for Property Rights", in *Journal of Libertarian Studies*, n. 5, 1981.

corruption offence into account. The costs of corruption can be analysed by making use of Becker's model as a theoretical framework for an economic analysis of this crime.[19] According to Becker, "a person commits an offence if the expected utility is higher than the one he could receive by using his time and other resources for other activities".[20]

Criminal law can play an important role in influencing human behaviour: it imposes risks and therefore additional costs for criminal activities and provides the offender an economic disincentive to commit the crime.[21]

The costs calculated by offenders before choosing to commit a corruption offence influence the level of corruption in a country, and can be of two different kinds: objective and subjective. On the one side, there are what can be called institutional, objective costs. Among the costs involved in this rational choice are the risk of law enforcement (that is, the risk of being identified, prosecuted and punished) and information costs arising from the loss of reputation in the community caused by a criminal charge for corruption.

On the other side, there are also subjective costs, more difficult to observe and measure since they reflect internal rather than institutional judgements, but which nevertheless can be equally influential. There are in fact the "moral" costs linked with an individual aversion to doing something illegal. From this perspective, the willingness to commit a corruption offence depends on whether the culture or the subculture in which the subject operates possesses moral rules which sanction political or bureaucratic illegality. In fact, there seems to be an attitude of general acceptance towards illicit conduct intended to ensure an enterprise's success. Like other white-collar crimes, corruption is a criminal offence closely connected with licit activities that have a positive social value. The manager who corrupts therefore behaves in a twofold manner: although he or she abides by the general rules of a system, he or she at the same time may violate rules which interfere with the goals of his or her enterprise.[22]

The interaction between opportunities and costs will determine different amounts of corruption. Van Duyne gives an example in which the role played by an ineffective piece of legislation regulating one of the variables, namely accountability, combined with a low set of moral rules, can significantly favour the spreading of corruption.

The diffusion of this behaviour and its manifestations depends primarily on the extent to which the rules of *external accountability* are imposed by law or law enforcement, as well as by public morality. In countries where opportunities for corruption are high and are combined with low accountability and moral rules, the trend will be towards the growth of corruption to systemic proportions. This is, for example, the case of Italy, where this development results from

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19 G. Becker, "Crime and Punishment. An Economic Approach", in *Journal of Political Economy*, n. 76, 1968, pp. 169-217.

20 G. Becker, *op. cit*., p. 176.

21 W.H Hirsh, *Law and Economics. An Introductory Analysis*, New York Academic Press Inc, 1979, p. 200.

22 Della Porta, Vannucci, Corruzione politica e amminstrazione pubblica. Risorse, meccanismi, attori, Il Mulino, Bologna, 1994, p. 327.

mechanisms whereby illicit conduct has become the rule and where corruption is so routine and institutionalised that organisations reward those who act illicitly and penalise those who comply with the rules. [23]

4 Applying the paradox of the successful leader to the Italian case

Corruption in Italy seems to display the following features: it results from highly rational choices made by political, economic and administrative actors; and it ends in, but also flows from, continuous and stable relations among public and private subjects. Traditional survey methods designed to penetrate such corruption have fallen short of their goal, largely because of the high levels of sophistication achieved in the processes of corruption and the evident mutual interest of actors in hiding a favourable but illicit exchange. It causes devastating damage which affects both the economic system and democratic institutions. Finally, it is circular in nature because it tends to duplicate itself and spread, thereby becoming ”systemic”.[24]

In short, corruption in Italy has been the product of an old individualistic and opportunistic culture combined with weak ethical and juridical rules. When it becomes environmental corruption[25], as described by the ex-judge of ”Mani Pulite”, Antonio Di Pietro, corruption may render the rules of the market devoid of content. This is an evolved form of corruption in which a bribe is not paid in order to win a particular contract, but in order to enter the small group of businessmen with access to a certain market. The payment of bribes becomes a practice which continues even when the official changes. In this way corruption infiltrates the market machinery and eliminates the rules of competition that should favour the strongest.

Cases of corruption are certainly much more numerous than those which have actually been discovered. Investigations and trials have highlighted the existence of a system in which the necessity to pay bribes – in order to obtain subsidies or to conclude agreements – has become the generally accepted rule. It is therefore possible to argue that the cases detected are not exceptions, but rather a small proportion of a much more widespread pathology. On the other hand, recently discovered examples of corruption demonstrate that scandals and trials, far from eliminating corruption, in many cases only make paying bribes riskier (and thus more expensive). Thus corruption grows more sophisticated and the fight against it is consequently becoming more difficult.

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23 Caiden G.E., Caiden N.J, “Administrative corruption“, in *Public Administration Review*, 1977, p. 306, as cited in Della Porta, Vannucci, *op. cit*, p. 463.

24 G. Forti, “Unicità o ripetibilità della corruzione sistemica? Il ruolo della sanzione penale in una prevenzione “sostenibile“ dei crimini politico-amministrativi“, in *Rivista Trimestrale di diritto penale dell’economia*, n. 4, 1997, pp. 1075 ss.

25 Environmental corruption is a situation in which the subject giving the bribe does not even wait to be asked for it, because he or she knows that in that specific “environment“ it is customary to pay bribes, and he or she therefore promises to pay it.

5 Action against corruption

Given the picture outlined above in which corrupt behaviour is defined as a leadership disease, the problem is to devise measures that can succeed in preventing corruption.

The economic analysis of corruption developed in section three above can provide guidelines for policy makers. In other words, an effective fight against corruption must be directed at creating a market with a low level of corruption. According to the economic analysis, the fewer the decision makers, the higher their discretionary power, and as the level of responsibility of decision makers decreases, the opportunities for corruption increase. In a low-corruption market, there are likely to be more sources of regulation, i.e., more institutions which offer contracts, and more competition among the firms participating in the bidding procedure. Those responsible for making decisions should be constrained by a system where the decision-making process is rationalised (discretionary power) and reported in written form (responsibility) and consequently accessible to everyone.

Although penal measures have a deterrent effect, since they increase the cost of corruption, it is evident that their essential function is to control crime by punishing offences already committed. However, corruption cannot be combated only by penal means. Penal sanctions should be adopted with caution, since they may also have undesired effects: for example, they may increase the *price* of corruption, that is the bribe.

Starting from the fact that corruption is a leadership disease, efforts to fight and prevent it must seek to change behaviour and attitudes at the highest levels of private and public leadership. Such action, according to van Duyne, should follow two basic principles: namely, the transparency principle and the first servant principle.

The *transparency principle* is the basis of accountability, and to ensure its application, for example codes of conduct have been elaborated. Van Duyne, however, highlights that the preventive application of this principle might be rather difficult, and, especially when applied above the executive level, only formally applied. This would again erode the accountability mentioned above. Its repressive application may also prove to be difficult: if closely linked to what can be proven under the penal code, and if there is no in-depth investigation, rapid penal action will be welcome: a few executives will be dismissed and public opinion satisfied, but they will soon be replaced by others who behave similarly.

The second principle mentioned by van Duyne is the *first servant principle*. This holds that the leader should be the first servant of the organisation, and that no one is so important that rules do not apply to him or her. Compliance with this principle seems to be as difficult as in the case just mentioned. Using the excuse that the exception proves the rule is a human trait which nonetheless creates the tendency to bend the rules in one's own interest.

5.1 What instruments should be developed in order to fight corruption?

As a criminal offence, corruption is covered by the penal codes of many countries and is severely punished. Penal sanctions, however, have proven to be inadequate: they are both ineffective and inefficient. It is therefore necessary to elaborate different policies which aim to reduce opportunities for corruption. The following sections provide an overview of the strategies recently introduced by some European countries to control and prevent corruption. They show the practical application of the two principles analysed by van Duyne.

5.1.1 A comparative analysis

In the last few years the fight against corruption has been the topic of studies, proposals, reforms and conventions in various countries and at the international level. The level of corruption, though, differs significantly from country to country: whereas in some (such as France and Italy) it is systemic, in others (like Sweden, Finland and Denmark) it is casual.[26]

Many countries, such as Austria[27], Germany, Finland, the Netherlands, Greece, Portugal and Norway are trying to reform the organisation and structure of the public administration, the aim being to reduce the opportunities for corruption.[28] Many have recently elaborated and introduced new codes of conduct for public employees and officials. Some countries, notably Germany, Finland, the Netherlands, Denmark, Belgium and Portugal, have introduced an obligation for public employees to make financial declarations of their assets in order to improve transparency in the public sector.[29] Another common ground for action in many countries is the creation of *ad hoc* anti-corruption authorities.

Over the last ten years **France** has enacted three important items of legislation that pay particular attention to the financing of politic parties. In 1988 a law was passed which requires members of the Government and of Parliament, presidents of regional assemblies and mayors to provide information on their initial and final assets. The same law for the first time disciplines the financing of political parties and of elections. In 1993 a study commission, tasked with proposing modifications to the legislation in force, recommended the adoption of codes of conduct, increased transparency in the public administration as well as in private corporations, the tightening of controls over corporations in order to prevent slush funds and tax evasion, and the modification of some penal provisions. In 1993 a *Service Central de Prévention de la Corruption*[30] *was* also established

26 E.U. Savona, L. Mezzanotte, *La corruzione in Europa*, Carocci Editore, Roma, 1998, pp. 61-63.
27 "Austria's administrative reform programme", in *Focus*, Public Management Gazette, Puma, n. 9, June 1998.
28 OCSE, "Ethics in the Public Service: Current Issues and Practice", in *Occasional Papers*, n. 14, 1998, Puma, pp. 19-26 and 99.
29 OCSE, *op. cit.*, p. 57.
30 Law n. 93-122, 29 January 1993, *Journal Officiel de la République Française*, 30 January 1993, p. 1587.

with the tasks of providing documentation and information for judicial authorities investigating corruption cases, and of giving advice to the public administration.

As far as the **United Kingdom** is concerned, important recommendations for combating corruption are set out in the report by the Nolan Commission which was set up in 1995. The report stresses the importance of codes of conduct, of internal and external checks on the public administration by independent bodies, and of the training of public employees. Greater transparency is required in the lobbying activities of members of Parliament and in the authorisation of consultancies.

The causes of corruption in **Spain** have been identified as the ineffectiveness of the rules on the financing of politics, the great presence of the state in society and the economy, and the weakness of the structures of the state. The debate, however, has centred mainly on repressive measures, such as a tightening of sanctions, revising the penal procedure or creating a special jurisdiction for economic crimes with advantages for those who collaborate. In 1995 the Anti-Corruption Prosecuting Service was set up with special powers to investigate crimes against the public administration. Consisting of investigating magistrates, this service also has a special police unit and experts in tax and administrative law.

5.1.2 The Italian experience

The Italian experience since 1992 has shown that penal action may be unable to affect the origins and causes of systemic corruption rooted in popular attitudes and behaviour.[31] Besides the magnitude of the problem, Italy differs from other countries in that corruption has infiltrated every level of public decision-making. Corruption has been discovered both in large-scale decisions involving extensive financial resources and in local ones of ordinary administrative procedure.

For this reason, attention should focus not on the tightening of penal sanctions, but on legislative measures intended to ensure transparency in sectors where corruption may more easily develop. The problem is one of prevention and administrative controls, of the deregulation or re-regulation as the case may be of markets more susceptible to corruption. Little has been done to introduce measures to reduce discretionary power, to limit monopolistic decision-making by individual public administrators and to enhance accountability at the same time.[32] A correlated problem is that of creating incentives for more moral

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31 E.U. Savona, "Beyond criminal law in devising anticorruption policies. Lessons from the Italian experience", in *European Journal on Criminal Policy and Research*, vol. 3, n. 2, 1995.

32 The following extract is taken from an essay on the conference on corruption held at Dithchley Park in 1998 (Oxfordshire, England) and related to some of the causes of corruption: "…a number of factors favourable to such conduct were noticed, such as … significant degrees of discretion granted to public servants accompanied by low levels of accountability, high levels of government regulation which increased opportunities for corrupt behaviour, low levels of competency among officials which encouraged the use of intermediaries, centralised economic policies such as monopolies, preferred subsidies and closed markets and, finally, a general lack of transparency in government policy-making and process implementation." (Maurice Copithorne, *Corruption: Progress in Counter-strategies*, Ditchley Conference Report No. D98/02, The Ditchley Foundation, Oxfordshire, England, 1998, as cited in A. Di Nicola, "Anti-corruption measures in the Italian experience. Towards the reduction of opportunities for corruption", paper prepared for *The XII International Congress on Criminology*, International Society of Criminology, Seoul, Korea, 24-29 August 1998).

behaviour by public administrators, working on levels of discretionary powers together with responsibility.

Italy has recently enacted a number of laws covering the public administration. In 1990, two laws were enacted, respectively on local authorities[33] and on administrative proceedings[34], with a view to improving the efficiency of the administration and providing citizens with greater opportunities to control the decisions made by the public administration.

More recently, in 1997 the Italian Parliament enacted three important pieces of legislation concerning institutional and administrative reform in order to change the rationale of the public administration. The laws decentralise local autonomies, reform public-sector employment, simplify administrative procedures, change control systems, and reform the state budget.

Two of these laws act in the direction highlighted by van Duyne by enhancing accountability and increasing transparency. *Law n. 59 of 1997* empowers the government to issue, by legislative decree, a general code of conduct for the public administration and to adopt special codes for the various sectors of the administration. The government is also empowered to create institutional bodies with control and counselling functions in relation to these codes. Moreover, *law n. 94 of 1997* sets out a new structure for the state budget. Each individual item of state expenditure is now linked with what has been termed a 'function-goal', by which is meant that the objectives of every item of expenditure must be clearly specified. This linking of every expense-creating public sector policy to a well-defined goal makes it possible to measure output by the public administration in terms of the quantity and quality of the services supplied to citizens. The law also establishes 'centres of administrative accountability' responsible for the management of each single item of expenditure and headed by senior public officers accountable for their performance.

These legislative changes, however, have not had the desired result of radically modifying the structure and attitudes of the public administration. Analysis of the causes of corruption as well as proposals for action has been conducted by two different initiatives, respectively, by the Italian Parliament and the Government.

On 27 September 1996 a Study Committee on the prevention of corruption was established with the task of proposing legislative measures to prevent corruption. The means to be adopted for this purpose were identified in accordance with the constitutional principles of the impartiality of the public administration and of the loyalty and responsibility of employees.

Among the measures considered more appropriate in the short term are codes of conduct and financial declarations for public officials. In the medium term, the more appropriate measures seem to be the reduction of state intervention in the economy, the separation of the selection and career of public employees from politics, and modification of the stipulation of contracts in the public sector. Finally, in the long term, the effective means are those aimed at preventing

33 Law n. 142, 8 June 1990.
34 Law n. 241, 7 August 1990.

corruption: the re-organisation and simplification of legislation, the simplification of administrative proceedings, and a system of controls based on results rather than on processes.

On 26 September 1996 a Special Commission for the examination of bills on the prevention and repression of corruption was set up by the Chamber of Deputies and tasked with analysing twenty bills on the repression and prevention of corruption. Working with a deadline of 31 October 1996, the Commission identified four main issues: the control of legality and transparency in public administration; transparency in politics and its disciplining together with economic activity; the awarding of contracts by the public administration; and the relation between penal and administrative proceedings by public employees.

On 31 March 1998 the Commission presented eight bills to Parliament. Four of them are of particular relevance, since they seek to enhance transparency and accountability.

The first deals with lobbying activities. It defines what is to be considered lobbying activity and regulates it for the first time, listing in detail all actions which are unlawful and the obligations which must be fulfilled. The second bill deals with controls on contracting activity by administrations: it provides for a new system of external controls on the awarding of contracts in order to ascertain conformity with the general objectives of the administration, legitimacy, efficiency and profitability.

A further proposal is to establish an authority ensuring legality and transparency in the public administration. Among the tasks of this authority would be the gathering of information and data in order to supervise public offices. It would also monitor the fulfilment of obligations and investigate the financial situation of public employees, informing the judiciary or the competent administrative bodies of any irregularity.

Finally, a fourth bill proposes changes to the penal code. In an endeavour to devise remedies to facilitate investigations and to sever the relationship between the actors of corruption, rather than tighten sanctions, the bill proposes a variety of sanctions, which are reduced in the case of collaboration and aggravated in that of obstruction of the action of magistrates.

Apart from these initiatives by Parliament, a Ministerial Decree of 7 November 1996 set up a study commission to curb corruption and improve action by the public administration through measures to improve the quality of administration and to prevent corrupt practices. The Commission was of the opinion that the malfunctions which permit the development of corruption can be eliminated by re-organising the public administration, and that the best instrument to prevent corruption is an efficient administration, where transparency and efficiency are ensured, and the responsibility of public officials is better defined. It is therefore necessary to eliminate the gap between the law ”in the book” and the law ”in action”. The Commission has made several suggestions: increasing the role of technical bodies both in national and local administrations; increasing the decision-making powers of public managers, reducing the political pressure on them; fostering the territorial mobility of public employees; and promoting the adoption and implementation of codes of conduct, ensuring that effective disciplinary sanctions are applied to those who do not comply.

6 Conclusions

Some brief conclusions can be drawn from this analysis and might be useful for further discussion. The analysis of corruption, particularly in Italy, has made it clear that criminal law remains an essential component in the fight against corruption. In fact, "criminal law can play an important role by influencing human behaviour, imposing additional costs on the criminal activities and providing the single person with an economic incentive not to commit an offence…".[35] However, penal sanctions can play their most effective role only if aided by a number of other measures, thus constituting a comprehensive, far-reaching and long term anti-corruption strategy.

First, incentives should be provided for the "producers of morality": schools, families, cultural, religious and political associations. There are various means to do this, and they might involve appropriate legislative reforms, the redirecting of public expenses, and additional public investments. Second, as regards the disincentives for the "destroyers of morality", whether these are organised crime, managers of corporations creating slush funds, international corruptors, all the possible strategies should be used. For example, a more intelligent use of penal and administrative law can make great inroads in anti-corruption efforts, as can a more efficient deployment of the law enforcement and judicial authorities responsible for preventing and controlling corruption. Greater emphasis should be given to self-regulation by means of codes of conduct providing for a variety of administrative sanctions, to the expulsion from the corporation or the public administration office.[36]

Finally, since the focal point of corruption still remains the public administration, it is important that, in the long term, legislative reforms such as those envisaged in Italy are implemented, in order to de-regulate and re-regulate a sector which is often characterised by great confusion and which thus provides enormous opportunities for the illicit exchange of favours.

35 W.H Hirsh, *op. cit.*, p. 200.

36 For a more extensive analysis see S. Chiri, "Suggerimenti per controllare la corruzione e minimizzare i danni", in L. Barca, S. Trento (eds), *L'economia della corruzione*, Laterza, Bari, 1994, p. 151 ss.

Combatting corruption

Commentary by Dr Miklos Levay [37]

1 General remarks

In his excellent paper Professor van Duyne represents corruption as a constant concomitant of social life. Although the author evidently considers corruption a social phenomenon he concentrates on its human dimensions due perhaps to its permanent presence felt through all the various periods of the history of mankind. This ”social environmental pollution”, as a Hungarian sociologist (Hankiss, E.,) calls corruption, is studied by van Duyne basically as an individual phenomenon.

We can say that the author’s analysis of corruption, which has become general by now, has a behaviourist approach. In my opinion this view is reflected in the definition of corruption appearing on page 3 of the paper, the ‘hidden’ explanation of the author for this phenomenon and his viewpoint on the means and methods of the reaction to corruption. The author speaks about acts and attitudes when he examines corruption and comes to a conclusion which is in line with the above mentioned view, i.e.: ”Corruption is very much of a state of mind indeed.”

I think that with this approach van Duyne wants to emphasise the universality of corruption and the individual responsibility in the responses to and fight against this phenomenon.

The advantage of this view is that it is able to present the general characteristics of corruption independently of historical periods and social systems. It has further positive features, i.e. this aspect does not give way to a moral relativist judgement on corruption, which would be that ”the system is corrupt and the individual only conforms to it.”

However, I feel that this approach has certain shortcomings. One of them is that the historical interpretation of corruption, which concentrates on its universal character and has a behaviourist approach, does not give enough scope for sufficient differentiation with regard to the phenomenon.

Thus for instance the paper presents a well-grounded and acceptable classification of the forms and levels of corruption. Nevertheless it falls short of discussing questions related to the difference between the legal and illegal forms of the phenomenon. This is, however, an unavoidable question from the aspect of criminal policy since

a) ”corruption” and ”corruption-related crimes” are not identical terms, and

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b) defining the borderline between legal and illegal phenomena can help in the demarcation of the criminal justice competence in the field of reaction to corruption.

The paper is partly lacking in the systematic account of the major socio-economic factors that give rise to the current phenomena of corruption. In my view, it would have been worthwhile to emphasise that in addition to the common general features of the corruption present in every society, corruption also has different traits in the various socio-political-systems, traits which are characteristic of the given system only. Corruption does not show the same incidence in every society.

The paper naturally exposes the characteristics of a certain system, i.e. those of the corruption present in the well-developed societies of Western Europe. It is not sure, however, that these represent fully all the characteristics of corruption. This is why, as a supplement to van Duyne's paper, I will discuss the characteristics of corruption present in the states undergoing transformation in the Central-Eastern European region and especially in Hungary.

2 Corruption in Central-Eastern Europe with special regard to Hungary

A. The "socialist/communist" era

The common distinguishing characteristic of the states of Central-Eastern Europe (of the Czech Republic, Hungary, Poland, Slovakia and Slovenia) is that they are undergoing transformation. After the collapse of the so-called socialist system during the late 1980s, the state began to be transformed into a society based on parliamentary democracy, market economy and respect for human rights. Prior to discussing issues related to corruption in the period of transformation I would like to discuss briefly the characteristics of the previous regime that are relevant to our topic. Two particular features of corruption also justify a brief account of the characteristics of its socialist version. One of these is that corruption has system-specific features (Kende, P., p. 91). The other feature, as is emphasised in van Duyne's paper, is that in the background of corruption we can find behaviour that deviates from the rules, and an attitude which accepts illegal, immoral access to preferences, advantages and possessions.

This type of consideration makes it possible to identify the differences and system-specific features and to determine what kind of attitude to corruption the new democracies in the region inherited from the former regime.

The distinguishing feature of the socialist politico-economic system was the concentration of power as well as of goods and services. The concentration of power was based on the single party system, the control over parliamentary and local elections, and the lack of an independent judiciary and of the freedom of the press. In respect of the socialist era we cannot speak about truly representative

democracy or about the transparency of political power and practice either at the local or the national level. We can rather speak about a particular political clientism the sole basis for which was loyalty to the Party. In view of these peculiarities we can state that the former socialist system, as was the case with every totalitarian and dictatorial system, is a type of political corruption in itself. As for the concentration of goods and services, this was based on the dominance of state property, on the integration of the state authority and the management of state ownership and the planned economy. Among its consequences was the economy of shortage i.e. the legally unfulfilled demand for goods and services. The corruption induced by the shortage economy, in my opinion, is perhaps a peculiar socialist version of market corruption.[38]

Essentially this means that corruption takes place in the interest of the provision of supply and not in the interest of the demand, and every member of the society of all rank and kind takes part in it.

Furthermore there were other factors enhancing the corruption, i.e. the transformation of services that could be provided privately into a public service and keeping the wages of those who carried out this service at an artificially low level. This was justified by the fact that these people (e.g.: taxi-drivers, hairdressers, barbers, doctors) did not live on their wages or salaries but on the tip they were given.

As a consequence of this, ”the tip-related occupations created a system of re-division of tips and thus with the assistance of the state several substructures of corruption were born” (Kránitz, M. (1996) pp. 181-182). (With regard to this it could be mentioned in passing that one of the most nauseating legacies of socialism encountered in everyday life is the corruption existing in health care. In Hungary people still feel that they can get proper treatment only if they slip that certain brown envelope into their consultant’s pocket. After the treatment the prescribed procedure is to pass another envelope with a ‘gratuity’ – this is what the tip given to doctors is called officially – to the consultant with the discretion.)

Naturally the phenomena outlined above were not present to the same extent during the entire period of socialism or in every country. The lack of an independent judiciary for instance continued into the early 1960s, and this represented a corruption factor that provided an opportunity for fabricated lawsuits. The concentration of power and goods was much lower in Hungary and Poland during the second half of the 1980s than was the case e.g. in Czechoslovakia. There are two other factors which resulted in the difference in the extent of corruption in the various member-countries of the former ‘Communist block’. One of them is the traditions that emerged in any given country. The other factor is the attitude and activity of the number one leader of the country with regard to ”parochial” corruption – under socialist conditions this concept includes the

38 Lucchini, R., makes a distinction between “parochial corruption” and “market corruption”. According to the author, the former (a sort of “proximity corruption”) is based on the strong identification of the individual with the group (for example the family, clan or ethnic group). The latter is more impersonal and evolves in the free market, where everybody potentially takes part in this underhand form of competition.” Quoted by Delmas-Marty, M., Manacoda, S., (1997) p.20.

phenomena of corruption within the so-called socialist connections or system of protection – and ”market” corruption.

During the period in question, also the responses to corruption had their system-specific characteristics. Reference should be made first to approaches to corruption-related questions with an ideological character and the purpose of the propaganda. Announcements and declarations about the ”purity of public life” and the assertion of a ruthless response to corruption served as proof of superiority of socialism over capitalism rather than a reflection of reality. The campaigns that were called for invariably had only a modest and temporary effect on the spheres of public and business life. However, these campaigns hardly affected, if at all, the existence and spread of the various forms of parochial corruption. The contemporary leaders of politics may not have regretted this at all. The following remark, which characterizes Czechoslovakia prior to the transition, may well describe every ”socialist” country: ”corruption, and corrupted behaviour… was also a method of making life bearable in this upside down world.” (Varga, Gy., (1998) p. 230)

One of the ways of fighting against corruption was the expansion of the range of criminal law. Thus for instance in Hungary from the early 1960s more and more sorts of corrupted behaviour became criminalized and the circle of those officials who bore criminal responsibility for their actions was enlarged. As a consequence of this the 1978 Criminal Code in force at present lists the crimes against the purity of public life (i.e. bribery, trafficking in influence, etc.) under separate sections, in addition to the ”traditional” crimes of corruption related to justice. Bureaucratic and economic bribery are both punishable. The circle of passive corruptees includes managers and those with discretionary power of decision-making in addition to public officials as well as employees who commit the crime of corruption with the characteristics of bribery as defined by law. Despite the above-mentioned widening of criminal responsibility, the proportion of reported ”crimes against the purity of public life” was insignificant in Hungary. During the 1970s these crimes made up 1% of the total number of reported crimes, and later the proportion was even less.

Summing up the phenomena of corruption during the socialist era we can say that the totalitarian political system and the economy of shortage acted as factors enhancing corruption. In the field of discretionary decisions we qualify as system-specific the fact that the decision-makers mostly deviated from the prescribed criteria with respect to the political interests of the Party; therefore their rewards also had a political character (promotion, etc.)

Also another characteristic feature should be mentioned: the transnational forms of corruption were not yet present in the countries of the region, which was due to the closed character of the Communist block. The attitude towards corruption was actually that of acceptance. In the political and economic sectors the ”socialist connections” ensured success, and parochial corruption provided the existence or welfare in everyday life. One characteristic of the attitude related to parochial corruption was that it was not considered immoral by the majority as a result of the lack of legitimacy of the political system. The new democracies of Central and Eastern Europe therefore inherited the ”acts” and ”attitudes” noted above, as far as corruption is concerned.

B. The transition period

The contents of the ”legacy” changed considerably in the countries of the region during the transition period during the late 1980s and the early 1990s. The contents of the changes were fundamentally determined by two factors. The first is the direction of the transition, which was the establishment of a society based on market economy, the freedom of enterprise, parliamentary democracy and respect for human rights. The second is that the most important characteristic of the 1990s, the transition itself with the establishment of the above-mentioned institutions, has recently been concluded in the respective countries. As a consequence of these factors the phenomena of corruption have also changed. In line with the direction and essentials of the transition the forms and categories of corruption existing in the Western countries have appeared, in the forms described by van Duyne. The corruption of the region, at the same time, has a particular character as a result of the transition or of the recently completed state of this transition. These peculiar characteristics are vividly described by György Varga, the Hungarian scholar, in his paper that is quoted above:

> ”… the new anti-corruption restrictions of the evolving democracies and market economies have not been established as yet. I am not primarily thinking of the legal ones but of those informally enforced by society, the market and the competitive environment of politics. This state, somewhat similar to the ”Wild West” and the phase of ”early capitalism”, is the state of decentralization of the so far concentrated power and concentrated disposition of goods… This is a different world, therefore, (and will remain different for a long time), different from the well-established democracies and capitalist countries. Corruption, however, exists in well-established democratic systems as well… This corruption is exercised by the well-established participants of well-established capitalism in order to maintain their current posts and enrich their wealth … while of course they acquire unfair advantages over others…” (Varga, Gy., (1998) p. 233)

The author goes on as follows: ”I call these well-established (but not entirely safe) forms of corruption applied under the conditions of well-established democracy and capitalism ”operational” corruption, something that is required for the operation of the system similar to a (theoretically redundant) component. In our region the period of transition and privatization is primarily characterized by a peculiar ”position-gaining corruption”, while the operational corruption has also appeared as a concomitant to the market economy and the evolving democratic institutions, to some extent as a heritage of ‘socialist courage’.” (Varga, Gy., op. cit. p.233)

The passage quoted above properly emphasises the major characteristics of the phenomena of corruption during the transition period, which is corrupt behaviour in the interest of gaining a position. The distinctive channel for gaining a position is *privatization*. The unavoidable process of the transformation of the state property into private properties is at the same time *the major process inciting* corruption in the transition. The fact that it has turned out this way can be traced back to several factors. One of them, which should be stressed, is that the

privatization followed the transformation of a system and not the simple change of the government. The new owners of the political power put their own people in political as well as economic positions related to the privatization in order to counterbalance the ”connection capital” of the nomenclature of the previous regime. As a consequence of this the political and economic power became entangled or interpenetrated to an incredible extent. The reasons for and consequences of this phenomenon in Hungary are appropriately reflected in the following remarks that concern the period of the first democratic government (1990-1994):

> ”people who were not used to power and who were basically poor received, and put their own companions into, positions which partly involved an encounter with corruption and through this the possibility of becoming rich. This had a mentally detrimental effect on them. This was because they simply were not prepared for exercising power, for the possibility of becoming rich, or for the refusal of the unfair means of accumulating wealth.” (The barrister Péter Bárándy’s statement quoted in Szöke, Zs., 1998, p. 3)

We must add that the interpretation of the political and economic power continued also after the next elections, from 1994 to 1998, which entailed the continuity of corruption (although this continuation took place with different participants, with different motives and with different traditions of exercising power). The fact that in Hungary, and in the other new democratic states as well, politics and economy became interpenetrated so much can be traced back to the statutes that were lax in ”regulating” the possible positions that could be taken up by politicians and public officials in companies, or to the lack of statutes that clearly prohibited such roles. The Hungarian law on conflict of interest demonstrates vividly the legislation which leaves a ”back door” open or creates an opportunity for corruption. In 1992, the Hungarian Parliament passed Act No. XXII on the legal status of public officials. Although one of the purposes of the law on economic conflict of interest is ”to enhance and improve the purity of democratic public life” and to support ”public officials in carrying out their duties impartially free of any influence”, it did not categorically pre-empt taking up positions in companies. In 1991, one leading governmental politician explained the causes of this in the following way in the debate on the Bill that led to this: ”…the government must face the fact that it cannot pay enough to its loyal experts, i.e. to provide the access of wealth justifiably expected of the state. This is why the top public officials generally cannot be prohibited from taking part in certain economic and company activities.” (Iván Szabó, quoted in: Szöke, Zs., ibid, p. 3)

The ensurance of ”back doors” was explained by many with the fact that following the democratic changes a great number of highly qualified experts left the public administration, and they to be replaced by people loyal to the new political power. Simultaneously the ”newly arrived” public officials had to be given the chance of making incomes higher than the average.

The fact that the issue is more complex than this is proved by the 1997 amendment to the Act. It proved to be impossible even in 1997, with a different government and on the basis of its proposal and with an established body of

public officials, to clearly regulate conflict of interest among public officials. Following the amendment, taking up a position in a supervisory board or board of directors is still not incompatible with the legal status of public officials. In accordance with the law any public official can enter into a contractual relationship on condition that he or she receives permission from those exercising the authority of the employer for taking up a position which is prohibited as incompatible. I think that the development of the Hungarian legislation on ”conflict of interest” well demonstrates how legislation can generate corruption, or to use van Duyne’s category, how it exemplifies strategic corruption.

Privatization did not become a generating factor for corruption simply because it was carried out within the transition, but because it took place in societies and economies lacking capital. As a consequence of this, on the one hand multinational companies took part in the process with better chances, on the other hand the role of ”connection capital” was increased from the point of view of the acquisition of privatised assets and wealth. The consequences of this for example in Hungarian privatization is demonstrated by the following:

> ”…during the period between 1990 and the first quarter of 1994 some 300 billion HUF worth of company assets were sold and paid for with cash, restitution vouchers or credit out of the original total book value of 2000 billion HUF. 60% of this was bought with foreign currency, mainly by professional multinational investors. The proportion of the Hungarian investors was divided in the following way: 15% paid with cash, 10% of the sold assets was bought with restitution vouchers below nominal value and 15% was bought on credit. According to experts, during the period between 1990 and 1994 the devaluation of the assets was 200 billion HUF as a result of these transactions.” (Szöke, Zs. op. cit., p. 3)

This happened despite the fact that a state organization with a board of directors of members delegated by the parliamentary parties had been set up to supervise the privatization. In addition to this the distinguished public officials were appointed to the board of directors and the supervisory board of companies to be privatized, whose task was to assist and enhance the best possible privatization serving the interest of the given company as well as of the country. In the light of the above statistics we can justifiably suppose that in Hungary as well as in the other countries with similar conditions in Central and Eastern Europe, privatization has not been free of corruption.

The lack of financial resources and capital generates corruption in other fields, too, and not only in the privatization. Thus for instance the financing of the parties still has not been solved in the new democracies. (However, this does not seem perfect in the ”old” ones, either.) This leads to the well-grounded suspicion that the biggest corruption scandal so far to have become known in Hungary (the ”Tocsik-case”) was but an action for ”filling the party’s till”.

All this discussed so far may prove that the system-specific feature of corruption in the states of transition is linked to the acquisition of positions. ”The corrupt behaviour in the acquisition of positions is a means which will mainly decide who will get into the key positions of the economic and political power in our developing capitalist societies and democracies, and it will therefore

decide, among others, who will have the roles with benefits from the future ”operational” corruption to the extent as the morals and rigour of society will allow. (Varga, Gy., op. cit. p. 233) What preventive measures did the new democracies fail to take in order to exclude the possibility of the acquisition of positions being attached to corruption both in reality and in public opinion? If we look at Hungary we can say that despite the numerous anti-corruption statutes and governmental decrees and measures one basic requirement was missed, i.e. to ensure the transparency or the easily comprehensible mechanism of the privatization process. The events and turns in Hungary seem to justify van Duyne's emphasis that anti-corruption measures must be based on the principle of transparency. As long as the transparency of the processes determining the life of a society or community, or the public life in a country (e.g. the privatization in our region) is not ensured, we must expect corruption to spread, and we must also expect the fact that we may hear rumours about certain cases, but full disclosure will scarcely ever happen.

The enforcement of the principle of transparency is of course not the responsibility solely of the government. The mass media have a significant role in this as well. A survey conducted in 1997 among journalists in Hungary shows that two-thirds of them maintain ”that there are still subjects which are taboos, that cannot be reported honestly, and corruption and the interpretation of politics and the economy were put at the top of the list.” (Vásárhelyi, M., p. 139) This fact indicates also that in the field of anti-corruption measures the ensurance of the freedom of the press and the independence of the media is a prerequisite in the countries of the region.

It is not only the economic leaders and politicians of the region who could have made more effort to curb corruption. ”Position-gaining corruption” was sometimes part of the strategy of market and asset-acquisition of the multinational companies that have become so influential in business life. It was not by chance that the Hungarian Catholic Episcopacy stated the following in their circular ”For a Fairer and More Brotherly World!”:

> ”The multinational companies will fulfil their real role only if they bring the order of well-developed countries with them thus enhancing the morality of the domestic economic culture.” (The circular of the Hungarian Catholic Episcopacy to All Benevolent People In Hungarian Society. Budapest, 1997, p. 36)

We can claim that these companies could be expected to behave as a kind of ”first servant” in the manner suggested by van Duyne.

3 Closing remark

Having discussed the system-specific features of corruption in the countries of Central and Eastern Europe we must agree with van Duyne's conclusion that ”corruption is very much a state of mind indeed.” The remarks discussed in my commentary will perhaps verify that the contents of this state of mind depend greatly on the social conditions.

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Combatting Corruption – Honest Graft?

Commentary by Ahti Laitinen

1.

First, I want to say that Professor van Duyne's paper is an excellent analysis of corruption. The definition of corruption is in general a good one, and the classification of the different forms of corruption is reasonable.

One seeming and obvious feature is that the approach of the writer is mostly quite an individualistic one. This is in itself neither a bad nor a good thing, but it must be taken into account when we consider the conclusions drawn.

We tend customarily to think of crime as an abnormality. The enlightened even speak of "deviance". Van Duyne, on the contrary, sets corruption in everyday life and business as arising almost naturally (see, e.g., Noonan 1984). In his text he refers to it as "a sneaky but psychologically normal growth."

If corruption is not subsumed into deviance, it might still be considered as a deviation. These deviations occur so frequently as not to be considered "exceptionable behaviour". Van Duyne has an example from family life. A child trades off washing the family crockery for a chance to stay up late to see *"Star Wars"* – with the additional condition that mother is not to know. This is some kind of clandestine oral contract and because it is clandestine it is not told to the world – as presented by mother.

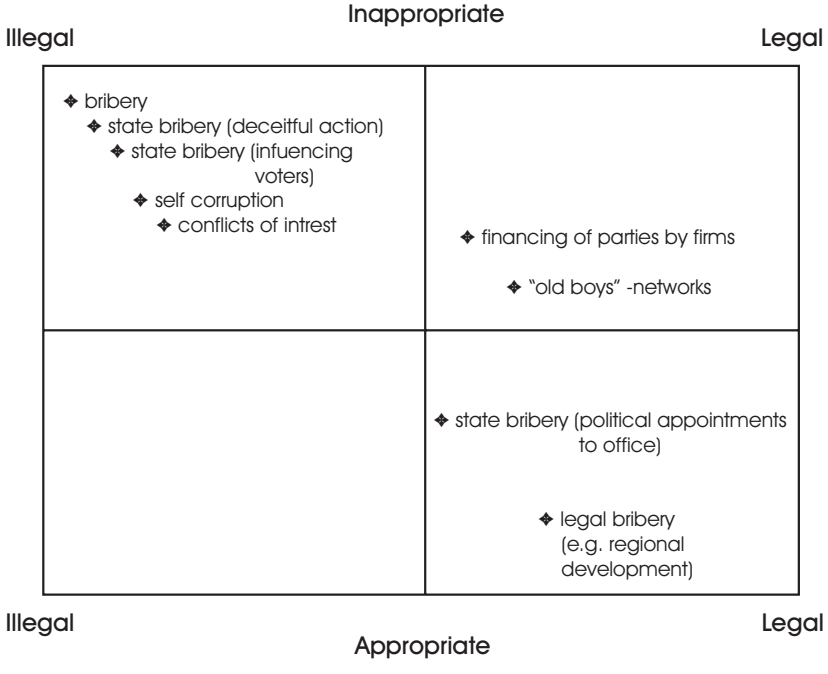
Following *Deflem* (p. 4), the author sees a certain social interaction penetrating and defeating a system. Hence the naturalness of it all. I should prefer to see not merely in this situation something "human", but in fact a hidden contract. Certainly corruption thus penetrates ordinary life and as such is expressed in our ordinary jargon – "you owe me one", characteristically an expression engendered in the United States, a country founded on contract and notorious for its adherence to the clandestine. Van Duyne uses the term "flexibility" to express this life-giving corruption as opposed to rigid cold systems.

I agree with van Duyne when he emphasizes that it is not necessary for money to be passed as a *conditio sine qua non* for th eestablishment of corruption. The term used in English common law is "favours received".

This all-too-human *quid pro quo* style of life becomes dangerous when it "informs" the organizational level of society, what van Duyne calls "the organizational culture of the department". Here its most obvious impact is upon the career structure, upsetting, although van Duyne does not quite put it like this, *la carrière ouverte aux talents*. The latter aspect van Duyne does not, perhaps, sufficiently take into account. In the end, corruption is inefficient. In fact, in the beginning, "right from the start" corruption is inefficient.

Some alternatives or different approaches can, however, be offered for the problems of definition, and for some substantial characteristics of corruption. Following Paavo Isaksson's (1997) definition, corruption can be seen from a wider perspective. Isaksson, a Finnish researcher, considers corruption on a dimension of *inappropriate – appropriate* influence, and of *illegal – legal* action. In this way he defines different types of corruption, including also some legal forms of action. I am not at all arguing that van Duyne dismisses the question of *moral – immoral* and *legal – illegal*, but these do not come out very clearly from his paper.

On this basis we can ask, what are the connections between amoral, but legal, and illegal acts? Some of the actions described in the following figure are regulated by law, some are regulated by "a national character", and the regulation of some actions depends largely on the situation. In my opinion, it is useful to notice that only a part of corruption falls under the laws, and Isaksson's (1997, 152) analyses gives a clear picture of this.



Briefly described, bribery is an illegal and inappropriate action between individuals and individuals, corporations and individuals and finally corporations and corporations. According to Finnish legislation, bribery is defined as an inappropriate influencing of a state official by an individual or corporation. The relationships between corporations are more complicated, but also legally regulated. However, bribery as a form of corruption is quite clear. The other forms of corruption are, in practice, often mixed together. Conceptually, bribery is

usually understood as an action, where the objects are in the public sector. A corresponding phenomenon in the private sector is usually called ”inappropriate behaviour” or something else, but not bribery. Of course, the last mentioned action can be called ”corruption”. (See, e.g., Friedrichs 1995).

I will clarify a little bit the concept of *self-corruption*. In this form of corruption a civil servant or a politician operates at the same time as ”a player” in different roles. He or she can exert influence, for example, through a contract in a way that gives advantage to his or her firm. Another example is a doctor working in the public health care area, who at the same time requests that a patient use a private health care firm owned by him or her. At least in Finland we have some clear examples of these types of corruption. In one case, a high official in the health care administration was at the same time the owner of a private firm producing machines or devices for medical investigation. He forced some municipalities to order just these products, although the decision was against the wishes of the local government officers. The products were not as reliable as the products of the competitors, and they were more expensive. Because the civil servant in question was involved in other corrupt actions, he was punished by the court.

The concept of self-corruption itself is not a legal concept in Finnish legislation. The concept of self-corruption nevertheless related closely to the form of corruption known in everyday language as the operation of the ”old-boy network”.

If we extend the concept of self-corruption to include these other intimately-connected persons, we are, actually, speaking about this network. A case has been coming to head in Finland recently about the considerable reductions allowed in the natter of civil damages already ruled upon by the court. The case is that of a Mr. Sundqvist, a former bank director, party leader, and government minister. The decision to allow these astonishing reductions from what the court had originally proposed was apparently taken by the junior minister of finance, Ms. Arja Alho. These reductions were not in line with corresponding cases. Thus, suspicions have arisen that the reductions are due to the ”network” since the minister and ex-minister belong to the same party.

Isaksson’s analyses show how difficult it is draw a line between permissible and prohibited actions. Many of the corrupt actions are not prohibited legally, but they are clearly immoral. Some years ago I made a survey of the attitudes of high state officials in the face of different offers. I asked, among other things, whether or not they had received some offers, and whether they saw these as corruption or bribery. Most of the interviewed had got offers. Some were very valuable. Their impressions about the real nature of the offers varied very much. Some officials were ready to accept ”a small present” (for example, a bottle of cognac), a few were more strict. Once it was said in Finland that a state official could accept ”a cold sandwich and a warm beer, but not a warm sandwich and a cold beer”. It depends quite a lot on a person’s ethics, how the line between permissible and forbidden has to be drawn. That is why ethical codes for different groups of professions have been introduced.

The financing of political parties by firms is a very problematic phenomenon as a form of corruption. Contributing to party coffers, and especially the election

campaigns of political candidates, is not prohibited. On the other hand, the financing is not very open or transparent in many countries, including Finland. Sometimes there have been suspicions that this kind of financing means tipping the balance for the contributor in a situation of conflict of interest.

3.

In fact, van Duyne deals with this kind of problem in his paper, but perhaps from a somewhat different perspective. In the author's section entitled ”public sector/political corruption”, the question of political influence in the gaining of positions in the civil service or local government is looked at. Van Duyne argues that these appointments in France, Belgium and Italy are not based on ”administrative skills” but are rewards for political friends. However, in many countries it turns out that the recipients of these posts are lawyers by training, a form of training that – curiously – is nevertheless supposed to bring with it administrative expertise. It is sometimes difficult to know which is the key factor; the basic training in law – a system requirement with a ring of objectivity – or the fact that the appointed is a ”political friend”. Of course, if being a lawyer is the starting requirement which cannot be got over, then it could also be argued that there are lawyers and lawyers and some of those who are not ”political friends” may be more effective in the position. Hence the point about corruption: that it is inefficient, frustrating in this case *la carrière ouverte aux talents*. These problems were very much discussed in Finland, too, especially during the 1980s.

Van Duyne is right to raise the question of the relation between the political and public administrative sector. In Finland, ambassadorial and even consular posts are sometimes given as a political reward or favour. This does not improve the mentality of career diplomats. Most notorious of all is the system pertaining in the United States where contributions to party political funds may, if large enough, result in an ambassadorship for the donor. Do the Americans regard this as a piece of political corruption or not? If they do not, is the legitimation in their minds about this form of behaviour sufficient to offset any imputation of corruption arising from the comments of an outsider to the system? In short, is there any deviation from the criterion in this case since – question – has a criterion been set? The point is the same as the one made later by van Duyne about the difference between the south and north in Europe, between, put crudely, Catholic and Protestant. *Clientelismo* itself may be the criterion in Italy and Greece. On what grounds does van Duyne dare to challenge this? Above, one answer has been given, namely efficiency. But there are other answers. One of them concerns international relations. I will highlight this by using an example given by Docent George Maude.

Docent Maude refers to contributions to US campaign funding in party politics. If there is no criterion or only a wishy-washy one, what distinguishes *in this age of globalization* Wilbur J. Hodge, Sr., (the name is fictitious) when he ”buys” his ambassadorship to the Republic of Begorra (the name is fictitious) from the Begorran People's Party (the only party in Begorra that is allowed) when it contributes to Bill Clinton's campaign fund?

This example, Docent Maude continues, takes us easily into a mingled world of inter-state relations and private interests. Since Berlusconi is mentioned at least twice in van Duyne's paper, let us throw in the media into this world of public and private interest. Some years ago it would have been possible to have relegated Berlusconi to the level of an Italian finangling. But this is no longer the case. Clean Mr. Blair is also in the picture. It goes like this. In the last general election in Britain, the Sun newspaper backed Blair and Blair won (there were other factors in his success). Nevertheless, the Sun newspaper is owned by a chap called Murdoch. He is not British, but an Australian bearing a US passport. Recently, Mr. Blair interceded with the Italian prime minister Romano Prodi to get Murdoch a slot on Italian TV. At least the *European* has touched this story (issue of 30.3.1998 – 5.4.1998). Blair's intercession can be portrayed in the nicest of current terms: as an attempt to challenge the corrupt monopolist Silvio Berlusconi and as a piece of internationalism – letting foreign competition challenge a hitherto nationally-closed sector. But why did not Murdoch apply directly to the Italians for a slot? It looks as if Blair "owed him one". And, in any case, is it a function of a British prime minister to argue for the private interests of an American citizen – or indeed to argue for the private interests of any country's citizen? (The European).

Who in these international issues is the decision-maker in terms of van Duyne's definition of corruption:

> "a decision-maker consents or demands to deviate from the criterion which should rule his or her decision-making in exchange for a reward ..."

If Prodi gives Murdoch a slot, what does he get in return? If nothing, is there still corruption? If he refuses to do anything, is there still corruption? If he only tells Blair that Murdoch may apply for a slot, is there still corruption? In all these situations it would be possible to argue that there is corruption – not necessarily of Prodi, but always of Blair. Blair could hardly be called here a decision-maker; rather he appears in the role of "hidden persuader" or even bagman. Between Murdoch and Blair and possibly for Prodi – if only a better place in the "culture of the department", that is, the cosy department of the EU prime ministers.

Precisely because in the current world of international relations states are often important but yet secondary actors, the whole question of defining the criterion also becomes difficult. But essentially the issue is enormously complicated by the fact that there are several links in the chain, no single decision-maker, and an intense mingling of interests.

4.

There are a couple of issues which are not dealt with in van Duyne's paper. These are corruption between different branches of public organizations and the social preconditions of corruption.

Van Duyne does not touch very much, if at all, on corruption – more precisely bribery – between different organizational units. In Finland, for example, we have cases where municipal officers have given bribes to state authorities in order

to get advantages for their own municipality. In one case, an official of one ministry was furnished with a boat and an engine for it, while the local government officers who gave the bribe wanted nothing for themselves but only something extra for their local government area.

One thing that van Duyne does not deal with very much are the preconditions for corruption. I want to say something about these, and I use the concept *corruptive interface*. By this, I refer to an increased and increasing interaction between the political-administrative machinery of society, and business life. The wider the corruptive interface is, the greater are the (potential) possibilities for corruption. The reasons for the widening of the corruptive interface lie in the extension of the role of the so-called organizational level of society. For example, the state is involved more than previously in private business life. The range of matters the public sector is responsible for is wider than before. That gives an idea about the matters I am referring to. (Backman 1972, Laitinen 1989).

5.

In my opinion the solutions recommended by the author are in themselves good, namely transparency and the first servant principle. I have myself also recommended these types of principles. We can, however, ask whether these principles are enough. A certain ethic of professionalism is required along with a definite career, both for the guild of lawyers and the civil servants.

There is a dangerous trend in the world today of people swapping jobs – civil service, then private industry – and taking that valuable quality of *information* with them. If you examine the case of B. Cornfeld (”Do you sincerely want to be rich?”), you will see that members of the Securities Commission changed sides to go to work for private firms. Since the support for regulatory agencies appears to be growing in the Western Europe, the switch in staff from such agencies to private firms (instead of their remaining in the agencies as dedicated and career-oriented watchdogs) can be a great source of corruption.

Globalization has extended the field of activity for ”special interests”. There are no corresponding institutions on a global level to match them. What should also be questioned thoroughly is the extent to which our competitive economy is wasteful, the inherent corruption forming a part of that waste. That is to say, to set the problem of corruption in a context that could be changed by a different type of economics.

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Women in the Criminal Justice System

by Katarina Tomasevski

Summary

The purpose of this text is to contribute to discussions about women and criminal justice during the preparations for the Tenth United Nations Congress on Prevention of Crime and Treatment of Offenders. Its starting point is the likely influence of the contemporary international political priorities – violence against women and gender mainstreaming – on policy-making. This slant reverses the request contained in the invitation by the organizers to consider the impact of research findings on policy, and begins instead by inquiring into the possible impact that recent changes in international policy will have on the system of criminal justice and reflects upon the role of research in this process.

Too little research has been generated thus far on the feasible options for changing criminal justice systems in line with the previous postulate of 'fair and equal treatment' for women. The specific meaning of gender or mainstreaming in the area of criminal justice has yet to be defined. The text therefore begins with an outline of the main features of current international priorities, highlighting the requirements of gender mainstreaming and combatting violence against women. Both of these create substantial challenges for policy making and its application in criminal justice. Gender mainstreaming does not have research-based proposals to build upon. Combatting violence against women, on the other hand, has too many such proposals, but these have been generated outside criminal justice systems and may not be easy to apply.

Both the vocabulary of gender mainstreaming and the underlying concepts are new to most criminal justice policy-makers and professionals. The demand for rapid adjustment might lead to a repetition of the practice adopted by institutions in a similar situation, which consists of replacing 'women' by 'gender' in the pertinent policy documents and employing a gender advisor in the name of mainstreaming. The focus of the text is on the United Nations because preparations for the Congress are due to reflect the Organization's priorities, and on the Council of Europe as the most relevant European regional organization. The latter shows how little change can be detected in the Council of Europe's activities concerning the prevention of torture or the development of criminal justice statistics, and highlights the principal concerns of this text. The formulation of a policy requires defining the ends (what is to be achieved, and preferably why) and specifying the means (defining who should proceed, and how, in order to attain the specified ends) In this area, three distinct policy-making structures – women, human rights, and criminal justice – are involved. The application of concepts and approaches generated within various bodies dealing with women's issues to the area of human rights has generated a great deal of controversy, and

it is thus safe to predict difficulties when the two – separately or jointly – are applied in the field of criminal justice.

Part one describes and discusses the pillars of the international policy of the 1990s.. The reorientation from sex to gender has created an enormous intellectual challenge, especially in the area of criminal justice where even sex-based differences were traditionally marginalized. A demand for gender mainstreaming risks a repetition of this marginalization if linguistic adaptations (gender instead of women) are substituted for required changes. How criminal justice systems will come to grips with the other prominent policy issue – violence against women – is an inevitable and urgent question for both international and domestic policy makers. The marginalization of women within the official criminal justice structures has been amply compensated by a great deal of feminist research and writing outside these structures. Unfortunately, most of it is of Anglo-Saxon origin and thus not readily 'exportable' to other legal and political systems. Moreover, the slant towards an image of women as victims has created an imbalance because too little research is carried out on women as victimizers, be they terrorists or traffickers in female prostitutes. Consequently, research-based proposals for different treatment of women offenders as well as for an enhanced role for women professionals throughout the criminal justice system have yet to be developed.

The issue of victims has entered criminal justice law and policy recently while the practice lags behind. The speed with which violence against women acquired prominence during the early 1990s has caught many international and domestic actors unprepared. Nevertheless, many actors initiated specific programmes aimed at eliminating violence against women, but in the absence of in-depth studies of the problem. Because the system of criminal justice is bound to operate within the margins of the international and domestic legal framework, a legal basis for adjustment to changing political priorities is crucial for its operation. Differences between domestic legal responses to violence against women, or definitions of rape, illustrate how little has been accomplished thus far in developing a common legal basis. Europe is unique in that it is the sole region with a dual law-making structure (the Council of Europe and the European Union), in addition to the global normative and policy framework of the United Nations.

Overcoming institutionalized neglect of women within criminal justice – as victims, offenders or professionals – is seen as *the* priority to which a great deal of thought ought to be devoted. Other than is the case with other categories for which detailed regulations and guidance have been developed, little has been done *about* or *for* women thus far. This is illustrated in the text by highlighting the uncertainty regarding the very approach – should the guiding principle be defined as equal or preferential treatment? The formula used by the United Nations during the 1980s – fair and equal treatment – opened possibilities for exploring both options. The specification of 'what', the definition of the ends, is deemed crucial before the 'how' is discussed, especially with a view to the profoundly changed international political priorities which require rapid development of criminal justice policies.

Introduction

A great deal has been accomplished during the past decades to make women politically visible. The United Nations takes much credit for the process the Organization started in the 1970s, with widely publicised global conferences, each of which generated a diagnosis of globally relevant problems and long-term programmes of action to address them. This process has encompassed criminal justice, although fairly little as well as rather late. One reason was that the issue of the advancement of women was defined primarily as one of development. Another reason was that criminal justice was orientated towards offenders, amongst whom women constituted a minuscule minority. With the refocus of criminal justice policies towards victims during the 1980s, an entry point was provided during the 1990s with the global mobilization around violence against women.

The main feature of international policies to make women's problems and perspectives visible has been a trial-and-error strategy; it was and remains a learning process. International prohibitions of discrimination initially concentrated on sex while gender emerged much later and created a great deal of controversy.[39] The initial focus on explicitly discriminatory legislation that denied rights and freedoms to the female half of humanity was subsequently supplemented by the identification and removal of obstacles to women's equal enjoyment of all human rights. The search for causes of discrimination against women led to the pursuit of parallel – structural and individual – redress for the past discrimination and safeguards to prevent its perpetuation. These developments originated from women's rather than human rights bodies, and none from international bodies dealing with crime prevention and control. It was not until the 1990s that a comprehensive international policy became possible; before this women as the subjects of equal rights and women as the victims of their denial were at the margins of the international agenda.

Multiple challenges are inherent in that change – the terms and underlying concepts generated within distinct international structures do not merge easily, let alone strategies and methods for putting them into practice. Terms such as 'gender', 'mainstreaming' or 'empowerment' are unlikely to be familiar to most criminal justice professionals. The learning process that began fifty years ago thus promises to continue into the next century, although the enhanced international priority for women is likely to nudge criminal justice systems into hasty

39 The term 'gender' is accompanied by a footnote in the final document of the 1995 Beijing Conference, which clarifies that the term should be understood in the sense in which it was previously used by the United Nations, namely within women-in-development policies. (United Nations - Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, U.N. Doc. A/CONF.177/20 of 17 October 1995, para. 3) The background to this was a protracted political disagreement amongst the negotiating governments about the exact meaning of that term besides its original purport of classifying the concepts behind words such as masculine or feminine. An agreement was ultimately reached to endorse gender as previously used by the United Nations, namely to denote women's and men's roles in development, but to preclude the introduction of definitions developed outside the United Nations that could associate with that term issues related to sexuality and lifestyles.

adjustment. This entails a risk of token gestures (the simplest being the replacement of 'women' by 'gender' in policy documents and the addition of a woman to policy-making bodies in the name of 'mainstreaming'), which obviously does not generate the required change.

The change which is required is substantial. The postulate that all people have equal rights necessitates redressing unequal power. Violence against women provided *the* manifestation of unequal power and therefore obtained international prominence. Within the field of human rights, the background was the father's (but not mother's) ownership of his daughter or the husband's ownership of his wife that provided for legally sanctioned abuse. Moreover, human rights guarantees from their very inception included the protection of the family against arbitrary interference by the state and thus the individual girl's or woman's right to protection against violence within the family necessitated a great deal of change within international human rights law itself.

Human rights law was originally designed to safeguard individuals against abuses of power by the state. The application of human rights within criminal justice concentrated on the treatment of offenders so as to protect them from abuses of the state's coercive power. The vertical orientation of human rights safeguards was subsequently extended horizontally to prevent individuals abusing their power over other individuals. The granting and enforcement of equal rights for all required that the powers that parents have over their dependent children as well as the marital powers that husbands have over their wives were recognized and challenged. This process evolved from challenging and changing discriminatory law, to questioning and altering discriminatory effects of gender-neutral laws, and to the adoption of gender-corrective laws and policies.

A changed approach within criminal justice is vividly illustrated by comparing the discussions at the Seventh UN Congress in 1985 with the preparations for the Tenth UN Congress in 2000. Under the title *The fair treatment of women by the criminal justice system* the UN included in the 1985 documentation sections on female criminality and delinquency, discussions about differential treatment of female offenders, and a brief mention of women as practitioners in criminal justice systems. [40] Women as victims were not mentioned at the time. The 1997 discussion guide for the Tenth UN Congress[41] advocates that the focus of preparations be on violence against women. It calls for 'reformative action to remove gender bias within criminal justice' and a new model for mainstreaming gender within criminal justice, assuming that a focus on combatting violence against women could lead in that direction. The inclusion of this new terminology – gender and mainstreaming – is unlikely to lead to immediate and substantive

40 United Nations - The fair treatment of women by the criminal justice system. Report of the Secretary-General, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/17 of 1 July 1985.

41 Commission on Crime Prevention and Criminal Justice - Preparations for the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Discussion guide on workshops, ancillary meetings, symposia and exhibits, Vienna, 21-30 April 1998.

remoulding of criminal justice systems, from which the issue of gender has traditionally been absent.

For a long time, criminal justice systems have been criticised for being gender-discriminatory. Initially, sex had been deemed irrelevant, and offenders or prisoners were treated uniformly. The initial critiques led to making the sex of prisoners visible and led to separate prisons for women. The approach alternated between equal treatment and preferential treatment for women, but that dilemma was routinely avoided because women constitute a minute proportion of prisoners or offenders.

Endorsements of preferential treatment for women emerged through some policies on the elimination of violence against women. Advocacy of a typical criminal justice response (arrest, trial and imprisonment of the male abuser) entails a risk of doing more harm than good. Criminal justice systems have yet to adapt to dealing with victims in addition to offenders. There are many arguments that have been put forward against a criminal justice response to wife-beating or verbal abuse. They are reinforced by the truism that problems which society cannot solve are channelled to the criminal justice system. One could anticipate a future focus on violence against children in international policy for the 2000s, for example, where such a typical criminal justice approach would advocate arrest, trial and imprisonment of adult abusers (mothers and fathers in probably equal numbers) and would re-victimize children, with whom criminal justice systems would be incapable of dealing.

The initial definition of human rights as safeguards against the abuse of power by the state resulted in the marginalization of abuses of power in the private sphere, within marriage, the family or the household, or else in the labour market and the workplace. The shift from sex to gender discrimination revealed multiple layers of discrimination which impede gender equality and revealed the scope for abuse inherent in lesser rights for women.

Our global discriminatory heritage was identified as the culprit for the states' previous acquiescence in violence against women. The marginalization of economic and social rights for women could not be blamed solely on the discriminatory heritage, however, because it was exacerbated by the redefined role of the state in the economy and the corollary absence of safeguards against abuse of economic power. Combatting discrimination is a permanent process, where the interplay between discriminatory heritage and newly created discrimination requires constant monitoring and corrective interventions.

The International policy framework of the 1990s

The early 1990s marked a substantive change in international policy-making. The iron curtain dividing Europe had been dismantled, the United Nations liberated from the cold-war constraints, and a brief spell of enthusiasm prodded 'the international community' (as we tend to call it today) into forging global policies through a series of global conferences. Many of these dealt extensively with women, whether the general theme was environment, children, human

rights, population policies or housing. The 1995 Beijing Conference – the biggest meeting in the history of the United Nations – provided the opportunity for encapsulating a new approach. Against the accomplishments of previous decades, and having overcome disagreements about the very term 'gender' as noted above, the international community defined this new approach as gender mainstreaming.[42]

This new terminology reflects a changed approach. The Commission on the Status of Women called for mainstreaming a gender perspective into all policies and programmes throughout the UN system, for advocacy of gender equality and for the enjoyment by women of all human rights.[43] The *System-wide medium-term plan for the advancement of women 1996-2001* commits the United Nations to 'highlight gender-based differences in women's enjoyment of their human rights' and to promoting 'a rights-based approach to the advancement of women' with the specific mention of violence.[44]

Gender mainstreaming is defined differently: the UNDP (United Nations Development Programme) has defined it as a 'process to pursue gender equality goals',[45] while the Economic and Social Council defined it as a process of assessing the implications for women and men of any planned policy, programme or action, in any area, at any level.[46] The Council of Europe defined gender mainstreaming as 'the (re)organization, improvement, development and evaluation of policy processes so that a gender equality perspective is incorporated in all policies at all levels and at all stages by the actors normally involved in policy-making.'[47]

Mainstreaming conceptually broadens the inquiry into the status of women within the household, family, community, economy, society and state, and encompasses the full range of women's human rights. It also rejects the previous treatment of women as a group or a separate category and advocates instead a focus on relations between women and men, from intra-family or intra-household decision-making upwards to the level of the state and the international community. This analytical focus follows the human rights rationale by making safeguards against abuse of power the key issue and spans all pertinent decision-making structures, private and public, local and international.

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42 It is important to add that the much-quoted final document of the Beijing Conference alongside the agreement expressed in the Declaration and Platform for Action includes reservations by sixty-five participating states.

43 Commission on the Status of Women - Agreed conclusions on the critical areas of concern, Draft resolution II forwarded to the Economic and Social Council, para. 3, Report on the forty-first session (10-21 March 1997), U.N. Doc. E/1997/27 & E/CN.6/1997/9, p. 3.

44 United Nations - Proposed system-wide medium-term plan for the advancement of women. Report of the Administrative Committee on Coordination, U.N. Doc. E/1996/16 of 16 April 1996, para. 184.

45 UNDP - Senior Management Consultation on Gender Mainstreaming, New York, 5-7 February 1997, Final report prepared for the Gender in Development Programme by Waafas Ofosu-Amaah, p. 9, mimeographed.

46 United Nations - Draft agreed conclusions of the Economic and Social Council, U.N. Doc. E/1997/L.30 of 14 July 1997, para. 4.

47 Council of Europe -Gender mainstreaming. Conceptual framework, methodology and presentation of good practices, Final Report of Activities of the Group of Specialists on Mainstreaming, Doc. EG-S-MC (98) 2, Strasbourg, 6 April 1998, p. 13.

Anglo-Saxon[48] terms – such as gender or mainstreaming – are difficult to translate into most languages, and are also foreign to many professions, including criminal justice. The meaning of mainstreaming, , however, is intuitively clear to most people – it requires that each policy or strategy be developed with its impact on women in mind and evaluated by the criterion of that impact. A cursory response by criminal justice professionals may be that most strategies or policies are irrelevant for women because women tend to be absent from crime and thus also from criminal justice. The application of mainstreaming necessitates providing evidence that this is so. The search for such evidence would require that a gender perspective be defined, likely to create a considerable conceptual challenge.

The conceptual shift from sex to gender

The shift from sex to gender aimed to focus attention on the historically constructed inferior role for women in public and private life, in politics, in the family, in the community, in society. The reproductive role of women was reflected, in the worst-case scenario, in treating women as instruments for child-bearing and child-rearing. Terminological changes, for example from ”maternity leave” to ”parental leave”, accompanied the discovery of the difference between sex and gender. The introduction of terms such as *workers with family responsibilities* by the ILO (International Labour Organization) or *parental leave* in European Community law were signposts on the road to differentiating between sex and gender. A similar conceptual change is likely to affect the criminal justice system. Much as segregating prisoners by sex is a routine operation within criminal justice, the identification of gender roles has yet to be institutionalized: for most adult female prisoners, it is not their sex but their responsibility for dependent children that is the reason for differentiated treatment amongst female inmates. The treatment of female juvenile delinquents needs to move further than just separating them from males, but it cannot follow a focus on pregnancy and motherhood, and should thus develop girl-specific policies and measures because there is no guidance as yet.

Terminological changes and legal reforms – international or domestic – cannot accomplish much unless they are accompanied by liberating women from traditional family functions, especially from caring for dependant family members. Comprehensive social rights and the corresponding obligations of the state relocated the burden of family obligations from women to the state. The corollary

48 In her commentary, Frances Heidensohn points out that the term “Anglo-Saxon” as used by international lawyers is not self-explanatory. With regard to terminology, it refers to the common practice of drafting international legal or policy documents in English. Translating a term such as ‘gender’ into French, for example, depletes this term of the specific meaning it is attributed in English, while the translation of a term such as ‘mainstreaming’ is routinely avoided, and the term is used in the original English. With regard to legal systems, the term “Anglo-Saxon” refers to the common-law heritage, distinguishing United Kingdom and Ireland (and to some extent Cyprus, due to British rule in 1879-1960) from continental Europe.

was the disappearance of *marriage* as the basis for family formation. Elimination of discrimination against unmarried mothers and against children born out of wedlock contributed to – and reflected – changes in lifestyles. The statistical and legal definition of the family as the basic societal unit became obsolete in some European countries. The *family* was remoulded into single-parent or single-person households. The single parent is still regularly the mother, however, while pro-natalist policies stimulate childbearing in many Western European countries. Problems associated with single motherhood are transplanted into the system of criminal justice, even if seldom discussed as such. A good illustration was provided by Hélène Mathieu. Through the words of one of her interviewees, she found that a mother – different from a father – does not have a right to commit a crime. [49]

The 'discovery' of gender

Current efforts to forge a gender-integrated policy framework coincide with rapid changes within the United Nations and in its environment. The choice of gender to guide conceptualization necessitates an analysis of relations between the two sexes as the background to designing policies. Previous women-specific policies originated in a narrow definition of the means for the advancement of women and contained activities designed to meet *some* of the identified needs of women, more often than not needs that had not been identified by the women themselves. These were routinely biased towards the reproductive role of women. The system of criminal justice is a good illustration because the only women-specific legal norms (whether concerning death penalty or imprisonment) dealt with pregnancy and motherhood.[50]

The shift from 'women' to 'gender' was partially a consequence of the realization that approaches, policies and projects that deal only with women failed to address the causes of the problems that were to be solved. Perhaps the clearest expression of that conceptual shift took place in the realm of population policy. The ICPD (International Conference on Population and Development) devoted a section to male responsibility. Similar shifts took place within international development agencies with the discovery of power structure within the family and/or household. The household used to be their smallest analytical unit, and the previous assumption was that the household was a homogenous unit. Regretfully, the human rights approach – an affirmation of the rights of an individual woman within the family and/or household – did not inform international policies until recently. The importance of intra-household inequalities was reinforced in efforts to determine causes of violence against women.

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49 'Une mère n'a pas le droit d'être délinquante. Un père si.' Mathieu, H. - *Prisons de fammes*, Marabout, Alleur, 1987, p. 90

50 Alfredsson, G. & Tomaševski, K. - *A Thematic Guide to Documents on the Human Rights of Women*, Martinus Nijhoff Publishers, 1995, pp. 348-350.

Before the human rights strategy[51] urged scrutiny of the status of each person within the family, relations within the family had been beyond governmental powers. Family autonomy was strengthened by the prohibition of arbitrary interference by the state. Marriage routinely entailed lesser rights for married – as compared with unmarried – women. The minimum age for marriage remains lower for women than for men. Law routinely recognized the marital power of the husband over his wife; a wife's power over her husband did not exist in any language, let alone in law. The husband's marital power was reinforced by the notion of the head of the family, placing the wife in a dependent relationship towards her husband, father, or even her own son. Demands upon the state to interfere and equalize the status of women and girls with that of men and boys overruled family autonomy, domestically and internationally. International litigation often preceded domestic changes and validated the reliance of human rights upon the rule of law rather than democracy. Where legal reform did not – perhaps could not – take place through domestic political processes, it was mandated by decisions of international human rights bodies. Human rights law as a corrective to political processes proved necessary and effective. Criminal suspects, detainees and prisoners also benefited from legal safeguards because they could not have secured their human rights protection through the political process.

Translating the current emphasis on gender-integration into policies, programmes and projects will be a long-term process. Previous changes provide valuable guidance. Changes that took place during the past decades are easy to detect through screening the contents of relevant inter-governmental resolutions and implementing policies of agencies, funds and programmes. Cross-temporal comparisons reflect changing terms and underlying concepts, changed approaches, and further modifications based on evaluations. One noticeable feature is the evolution of specialized units (previously with 'women' and today with 'gender' in their name), sometimes also accompanied by changing personnel practices within the respective agencies. The development of guidelines was a frequent response to the perceived need for gender integration, and many guidelines have been elaborated and adopted. The effects of such guidelines on the programmes and projects of the agencies has not yet been assessed, one important reason being that most have been in place too short a time, and another that many are discretionary.

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51 Only a brief summary is provided here. A detailed analysis of the evolution of international human rights law with regard to equal rights for women can be found in Tomaševski, K. - *Women & Human Rights*, Zed Books, London, 1993; Tomaševski, K. - Rights of women: from prohibition to elimination of discrimination, *International Social Science Journal*, vol. L, 1998, No. 4, pp. 545-558; Tomaševski, K. Effective implementation of women's rights, *In Our hands. The Effectiveness of Human Rights protection 50 years after the Universal Declaration*, Council of Europe Publishing, Strasbourg, 1998, pp. 110-124.

The terminological maze surrounding *gender*

Current efforts within the United Nations to forge a common platform around mainstreaming entails a risk that the specific contents of gender equality – which should be the ultimate objective – may become blurred. The current terminology used within the United Nations varies a great deal. The term *gender* is sometimes used interchangeably with *women*, and previously women-specific programmes were rapidly re-named as gender-specific programmes.

Empowerment has entered the UN language as well (it was launched by the ICPD) and remains vaguely defined. The instinctive reaction to the term *empowerment* endows it with the aim of increasing the power of women to make their own decisions and carry them out, and thus the term fits well with the increasing interest for unequal power with the household, family, community, economy, society, state, and the international community.

The process of policy-making within the United Nations transposed the terminology developed by bodies dealing with women's issues to human rights bodies. It was neither smooth nor coherent, and can thus provide lessons for its further 'transplantation' to criminal justice bodies.

Critiques of UN policies from a gender perspective proliferated and were followed by demands for mainstreaming. It was not only the criminal justice programme, but also the human rights programme that was found at fault. A UNICEF/UNIFEM (United Nations Children's Fund/United Nations Development Fund for Women) leaflet on *CEDAW [Committee on the Elimination of Discrimination against Women] and Women's Human Rights* states that 'guarantees of equality in the core human rights instruments are inadequate and, to some extent, irrelevant, because these rights have been defined in relation to the lives of men and to those few women who live their lives as publicly as men.'[52] This example indicates that a shared gender/human rights perspective does not exist as yet, much as it would be helpful for the development of criminal justice policy.

The attention to women's human rights had surged during preparations for the 1993 Vienna Conference on Human Rights and was followed by calls for mainstreaming. The process of mainstreaming has barely begun in the absence of a policy. Post-1993 resolutions of the Commission on Human Rights are illustrative of continuing confusion. They can be divided into women-specific, those calling for an integrated approach (with or without using the term 'gender'), and those that do not mention women. The subject-matter of these resolutions does not appear to be the principal criterion whereby specific resolutions mention women, or gender, or neither.

The women-specific resolutions include those on violence against women, violence against women migrant workers, female genital mutilation, or trafficking in women and girls. The resolution on violence against women utilizes the term 'gender' and condemns all gender-based violence, while its sister resolution

52 *Convention on the Elimination of All Forms of Discrimination against Women* Information Pack, CEDAW and Women's Human Rights leaflet, UNICEF and UNIFEM, undated.

on violence against women migrant workers does not mention the term 'gender' nor does it assert that such violence is gender-based.[53] Other resolutions articulate the need for gender specificity, such as those on thematic procedures, which posit that violations specifically targeting women or primarily directed against them should be identified, while resolutions on freedom of opinion and expression object to the persistent under-reporting of incidents of gender discrimination. A series of resolution adopted in 1997 does not mention the human rights of women at all (such as those dealing with foreign debt and economic adjustment, migrants', minority and indigenous rights, or independence of the judiciary). Even resolutions on topics for which gender discrimination has generated international jurisprudence, such as access to and loss of citizenship crucial for the status of migrant women,[54] fail to mention women or their rights. Terminological variety in other resolutions testifies to the persistence of divergent approaches. The resolution relating to HIV/AIDS identifies women as a vulnerable group, alongside children.[55] Similarly to the uneven terminology in UN gender policies, results of the work of the Commission on Human Rights reveal a terminological confusion.

Adaptations of criminal justice systems to the priority assigned to eliminating violence against women are likely to raise a great deal of controversy. The General Assembly called for a comprehensive review of the entire criminal justice, from guiding principles to specific practices, in order to determine whether there is any negative impact on women so that it can be eliminated. It thus called for the removal of a gender bias, emphasizing that its simultaneous calls for the elimination of violence against women does not aim at preferential treatment of women but at elimination of discrimination in women's access to justice. Significantly, the Assembly insisted that gender balance should be achieved in decision-making related to the elimination of violence against women,[56] and should thus not be left to women alone.

Such adaptations are not facilitated by the lack of unity within the United Nations, and thus also in the resulting policies, with regard to the ultimate objective to be attained. There is indeed a diversity of objectives embodied in gender perspectives – equity, equality, balance or parity. Radhika Coomaraswamy, the UN Special Rapporteur on Violence against Women, warned against that terminological variety, where equity was seen as a flexible replacement for equality, allowing governments and inter-governmental organizations

53 Commission on Human Rights - The elimination of violence against women, and Violence against women migrant workers, resolutions 1998/52 and 1998/17 of 17 April 1998.

54 Resolution 1997/36 on human rights and arbitrary deprivation of nationality of 11 April 1997 does not mention the relevant provisions of the Convention on the Elimination of All Forms of Discrimination against Women, and lists racial, national, ethnic and religious grounds in arbitrary deprivation of nationality, omitting sex.

55 Resolution 1997/33 on the protection of human rights in the context of the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) of 11 April 1997, Annex, Guideline 8.

56 General Assembly - Crime prevention and criminal justice measures to eliminate violence against women, resolution 52/86 of 2 February 1998, paras. 1 and 4; Model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice, paras. 3 and 5.

to depart from the principle of formal equality and thus to restrict women's rights.[57] Gender equity might legitimize perpetuation of discrimination. Where girls and women have lesser inheritance or property rights than boys and men in accordance with religious or customary norms, a conflict with the aim of elimination of gender discrimination is apparent. Gender equality is an objective shared between some gender perspectives and the human rights approach, but its definition often varies. The term gender 'parity' illustrates one instance where human rights law cannot go as far as gender perspectives. For example, the CEDAW Committee (Committee on the Elimination of Discrimination against Women) objected for example to Denmark's failure to reach gender parity in women's political representation,[58] while the European Court of Justice found Germany's attempt to reach gender parity in public employment to constitute a breach of the European Community law. The Court found that 'national rules which guarantee women absolute and unconditional priority for appointment or promotion go beyond promoting equal opportunities.' The Court based its conclusion on the substitution of the original aim – equality of opportunity – by parity, namely the achievement of equal representation of both sexes.[59]

The focus on violence against women

The strategy for eliminating violence against women is exemplified by the Declaration on the Elimination of Violence against Women, which was negotiated within the Commission on the Status of Women and adopted by the General Assembly. This document is used as the starting point for the development of both human rights and criminal justice approaches. As a consequence, three different sets of concepts, terms, substantive and procedural rules of conducts have been merged.

Concerted international action to expose and oppose violence against women was possible only after equality for women had been accepted as the yardstick for scrutinizing the phenomenon of violence. Because abuse of power is a structural problem, structural remedies are necessary. The purpose of human rights safeguards is to prevent abuse of power, to alter those structural variables that make women vulnerable to abuse. This approach is not followed in many policies on eliminating violence against women which define the problem as abuse of one sex by another; the problem is thus defined as abusive and/or violent men. Defining what the problem is – violence against women or gender-based violence – is routinely avoided by using these two terms interchangeably. As noted above, the United Nations Commission on Human Rights has started

57 Coomaraswamy, R. - Reinventing international law: Women's rights as human rights in the international community, The Edward A. Smith Visiting Lecturer, Human Rights Program, Harvard Law School, Cambridge, 1997, p. 22.

58 Committee on the Elimination of Discrimination against Women - Denmark. Concluding comments of the Committee, Report of the Committee on the Elimination of Discrimination against Women (Sixteenth session), U.N. Doc. A/52/38 (Part I) of 24 June 1997, para. 261.

59 Tomaševski, K. - Effective implementation of women's rights, In our hands: The effectiveness of human rights protection 50 years after the Universal Declaration, Strasbourg, 2-4 September 1998, Doc. 50DUDH (98) 6.

making small steps towards distinguishing gender-based violence from non-gender-based, such as violence against women migrant workers.[60]

If a structural approach is followed, the key question is: can the causation of gender-based violence be identified and the vicious circle broken? It is possible to articulate a human rights approach, as is done below, and to highlight the limitations inherent in the violence-against-women alternative.

Violence against women became a central topic on the rights agenda of the United Nations during the early 1990s,[61] but it does not encompass all pertinent human rights problems of women. Indeed, the absence of full recognition of equal rights of women and their protection in the *public* sphere (such as political participation and representation) severely constrains opportunities for improving women's legal rights in the private sphere and thus women's options for leaving an abusive marriage and/or family and living on her own. The system of criminal justice can, at best, provide temporary safety. Permanent solutions pertain to the sectors of employment, housing, child-care entitlements for single mothers, or equal property rights for women.

Background to international policy development

The merging of two agendas – the women's agenda and the human rights agenda – led to the prioritizing of violence against women on both. The cursory description of the underlying political process below aims to highlight the impact of such a merger because of its obvious importance for the development of criminal justice policies.

The agenda for the World Conference on Human Rights, adopted with General Assembly resolution 47/122 on 2 December 1992, included 'the consideration of contemporary trends in and new challenges to the full realization of all human rights of women and men.' The CEDAW Committee (Committee on the Elimination of Violence against Women) requested an emphasis on 'women's equality as a significant human rights issue.'[62] Proposals regarding the human rights of women from the Nordic Seminar (Lund, January 1993) exemplify the approach

60 In his commentary, Juan Medina identifies a series of important questions to guide research in this area, such as the intersection between general violence and violence against women or the comparative relevance of factors other than gender, the latter being closely linked with the changing European demographic landscape.

61 In 1975, the International Women's Year Conference formulated the problem as 'conflicts among members of the family'. The subsequent 1980 Conference changed the terminology to 'battered women and violence in the family' while the 1985 Nairobi Conference mentioned for the first time 'gender-specific violence.' A parallel process took place within the criminal justice programme. The Fifth Congress mentioned that 'sexual assault' was a hidden crime, but increased female criminality dominated the attention at the time. As a follow-up to the First United Nations Survey on the Situation of Women and the Administration of Criminal Justice Systems (1970-1982), attention to victimization of women emerged, especially in the form of 'sex-related violence'. The Seventh Congress adopted a resolution on 'domestic violence' and the topic was thereafter placed on the agenda of the General Assembly. The Commission on the Status of Women placed 'violence against women' on its agenda in 1987 and started working on an international instrument on the issue in 1991. Thereafter, the term 'violence against women' spread to other parts of the United Nations.

62 Contribution of the Committee on the Elimination of Discrimination against Women to the World Conference on Human Rights 1993, U.N. Doc. A/CONF.157/PC/23 of 17 March 1992, p. 6.

which is often called 'mainstreaming', namely specific gender issues are raised with respect to every agenda item rather than confining them to a single item. These proposals indicate the range of important issues which have to be addressed, from guarantees for equal political representation of women, to the attention to human rights of women in the administration of justice, and to the need to abolish gender-specific criminal offences.[63] The Human Rights Advocates stressed the need to ensure 'that consideration of women's rights should be integrated into the overall discussions of the Conference. Women's issues should not be relegated to a separate agenda item.'[64] That explicit recognition of the need to address *all* human rights of women created many verbal and political conflicts, and ultimately led to reservations to the final document adopted by the Beijing Conference by more than one-third of participating governmental delegations. The implications, essentially the lack of global consensus on both the 'what' and the 'how,' are seldom discussed.

Various options regarding the appointment of a special rapporteur – as *the* focal point for women's human rights – were discussed during the preparations for the World Conference on Human Rights. The 1993 session of the Commission on Human Rights debated this briefly. Some governments argued in favour of a broad human rights mandate for a special rapporteur, but ultimately a restrictive view prevailed. In the final text of resolution 1993/46 the Commission postponed deciding on the appointment of a special rapporteur on violence against women (rather than human rights of women) to 1994 to take into account the results of the World Conference on Human Rights.

The proposal for appointing a special rapporteur on violence against women came to the Commission on Human Rights from the Commission on the Status of Women.[65] As the Commission on the Status of Women elaborated the Draft Declaration on Violence against Women, it would have been the obvious place for continuing work in this area. However, two reasons may have prompted its proposal to the Commission on Human Rights: firstly, the momentum for increased attention to the human rights of women created during the preparations for the World Conference provided an opportunity for suggesting that violence against women be subsumed under the human rights agenda, and, secondly, the human rights bodies are the only part of the UN system which reaches beyond information originating in governments and could therefore reach beyond the limitations within which the Commission on the Status of Women operates.

NGOs (non-governmental organizations), such as the Women's NGO Caucus or WILDAF (Women in Law and Development in Africa), proposed that the rapporteur's mandate includes systematic gender discrimination.[66] The underlying objective was to discontinue the previous practice of confining women's

63 Report of the Ninth Nordic Seminar on Human Rights held by the Nordic Institutes of Human Rights at Lund, 18-20 January 1993, U.N. Doc. A/CONF.157/PC/78 of 16 April 1993.

64 U.N. Doc. A-CONF.157/PC/6/Add.2 of 22 August 1991.

65 World Conference on Human Rights, resolution 5 of the Commission on the Status of Women of 22 March 1993.

66 Contribution by the Women'c Caucus of NGO Co-ordination Group, U.N. Doc. A/CONF.157/PC/63/Add.25 of 27 April 1993, p. 3; Contribution from WILDAF, U.N. Doc. A/CONF.157/PC/42/Add.4 of 20 April 1993, p. 8.

human rights to one issue only. This is evidenced in the multitude, range and quality of proposals aimed at addressing *all* pertinent issues. If one recalls that traditional practices, particularly genital mutilation, was the single gender-specific agenda item for the United Nations human rights bodies, the danger of perpetuating a restrictive view of women's human rights concerns is obvious. Another analogy is useful: both traditional practices and violence against women belong to the private sphere, which is notoriously difficult to change through public action. This does not mean that governments are free to disregard their obligations regarding private life. Nonetheless, the focus of human rights on the *public* sphere should not be lessened when it comes to women. In the situation where many basic rights are not formally recognized for women in many countries and thus the public authorities are failing in their fundamental obligation to recognize the equal rights of women, an exclusive focus on violence against women is not justified: it is but one out of many symptoms of the vulnerability of women to abuse. Dealing with symptoms rather than addressing causes, as we know all too well, is not a good recipe for improvement. The acknowledgement that violence against women is a consequence rather than cause was stressed by the United Nations in 1989:

Violence against women in the family and elsewhere is the product of women's inferiority, and the eradication of violence will only occur if steps are taken to guarantee women equality in all spheres of life.[67]

Research into the chain of causation routinely individualizes the problem by focussing on the couple or family affected by violence. The contribution of structural factors such as male unemployment, housing shortage, or absence of child-care benefits, is certainly considerable as all the existing research on violence shows. Concerning violence against women, this contribution remains unknown. Cross-national and cross-temporal research could reveal correspondence between the pattern of women's equal-rights guarantees and the pattern of violence against women. A merging of research into women's rights and research into violence against women is perhaps the most fruitful path for the near future.

Definition of violence

The Declaration on the Elimination of Violence against Women, as adopted by the Commission on the Status of Women, proposed and the General Assembly affirmed that 'violence against women both violates and impairs or nullifies the enjoyment by women of human rights.' For the authors of the Declaration, violence against women means 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.' This definition raises more questions than it answers, starting from the fundamental one: How would one

67 United Nations - *Violence against Women in the Family*, New York, 1989, p. 105.

determine whether an act of violence is gender-based? Unless some guidance is provided, every violent act or threat against a woman could be deemed 'gender-based'.

A subsequent illustration of difficulties in delineating what violence against women was and what was not gender-based was provided by the Commission on Human Rights. In 1998, it adopted three resolutions relating to violence against women. The first one dealt with violence against women in the sense attributed it in the declaration and thus used gender-based violence. As already mentioned, the second one dealt with violence against women migrant workers and did not use the term 'gender-based,' nor did the third resolution, which addressed trafficking in women and girls.[68] While the Commission's rationale was much more likely to have derived from the political negotiations amongst governmental delegations, the varying terminology in documents that are supposed to provide guidance for criminal justice systems indicated the need for the development of research-based terminology.

The utilization of the terms ''violence against women' and 'gender-based' violence as if the two were synonyms[69] does not solve the problem but merely avoids it, and creates problems for criminal justice agencies. Would every act or threat against a women be considered 'gender-based' unless the (male) perpetrator proves the contrary? How would this definition apply to violence against women committed by women (for example, female genital mutilation carried out by adult women against young girls, or mothers' abuse of their children)? The adoption of such a broad and vague definition necessitates further elaboration regarding the definition of criminal offence, presumption of innocence and burden of proof. Otherwise, it cannot be applied within the system of criminal justice.

Moreover, the Declaration broadened the definition further in providing examples of what violence against women encompasses. Thus it included 'psychological violence' in the family, within the general community, and perpetrated or condoned by the state. In early discussions of a possible draft declaration on violence against women 'a number of experts found the proposed definition to be too wide-ranging' and 'questioned the wisdom of attempting to define violence beyond its physical manifestations.' [70] However, these objections were not heeded.

In defining violence against women, the Declaration did not differentiate between the public and the private sphere. While this was hailed by advocates of the eradication of violence against women, it created problems for human rights

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68 Commission on Human Rights - The elimination of violence against women, resolution 1998/52, Violence against women migrant workers, resolution 1998/17, and traffic in women and girls, resolution 1998/30, adopted on 9 and 17 April 1998.

69 A conceptual confusion is illustrated in proposed model legislation for domestic violence, where a suggestion that 'domestic violence is gender-specific violence directed against women' is followed by a plea to distinguish between intra-family violence and domestic violence. Commission on Human Rights - Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. A framework for model legislation on domestic violence, U.N. Doc. E/CN.4/1996/53/Add.2 of 2 February 1996, paras. 2 (b) and 6.

70 United Nations - Violence against women in all its forms. Report of the Secretary-General, U.N. Doc. E/CN.6/1992/4 of 6 December 1991, para. 30.

human rights advocates because the obligations of the state are substantively different. While the government is obliged to ensure that public officials do not commit prohibited acts, it cannot undertake such an obligation for all individuals because of the simple impossibility of implementing such an obligation; private behaviour continues to be individual responsibility and the state breaches a human rights obligation only if it fails to secure equal protection for all.

Proposed strategies for eliminating violence against women go far beyond the human rights obligations of governments. The International Convention on the Elimination of All Forms of Discrimination against Women requires states to 'take all appropriate measures to modify the social and cultural patterns of conduct of men and women' and thus addresses some causes of violence against women, but does not mention it. The text of the Convention conforms to other human rights obligations relating to the private sphere in that the obligation is confined to undertaking measures, governments cannot be obliged to achieve results (namely, achieve change in the conduct of men and women or eliminate violence against women). The limitations of human rights approaches in moulding private behaviour are well-known, as the example of child abuse illustrates. Similarly to child abuse, the logic of preventing wife abuse through specifying governmental obligations is not likely to justify high expectations.

In the Declaration on Violence against Women, governments are required to 'exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.' This merged two different areas, public and private. In suggesting that states should punish violence against women according to their national law, the Declaration fell short of advocating an improvement of the existing situation: one of the main reasons for addressing this problem internationally is the inadequacy of national laws.

Some proposals relating to violence against women focus on the public sphere, most often on the role of the judiciary, and indicate areas where international action is necessary. Specifically, the relative neglect of equal treatment of women in the administration of justice has often been emphasized. Thus the Calgary Group Workshop on Global Strategies for Achieving Fairness in the Courts: Domestic Violence emphasized the importance of an impartial judiciary, and added:

> In the past we have given close attention to discrimination in the administration of justice by reason of race. Now is the time to give such attention to discrimination against women.' [71]

The mandate of the Special Rapporteur on violence against women includes causes, not only manifestations, but a single person can hardly be expected to offset the absence of an institutionalized United Nations response. The Commission on Human Rights emphasized in the very first paragraph of its resolution on violence against women that eradication of discrimination constituted an

71 Analytical compilation of the recommendations of other meetings related to the preparatory process of the World Conference, U.N. Doc. A/CONF.157/PC/42 of 27 August 1992, para. 35.

integral part of efforts aimed at eliminating violence against women,[72] but has not followed that up. Efforts to address consequences rather than tackling causes, much as with any other issue, are not likely to result in sustainable improvement. Projects aiming at assisting battered wives easily do more harm than good by disregarding the crucial importance of the wives' financial dependence upon their husbands. The recognition or absence of the wife's legal rights concerning housing, family property, or child custody and maintenance, should – but often does not – inform such projects. Projects designed to assist battered wives often include penalization of abusive husbands, routinely seeking their imprisonment, which then leaves the battered wife homeless and penniless.

International programmes and projects dealing with violence against women have been put in place by numerous UN bodies and agencies. While no overview exists as yet, one finds such projects supported by UNIFEM (United Nations Development Fund for Women) and the World Bank, as well as UNDP (United Nations Development Programme) or UNESCO (United Nations Educational, Scientific and Cultural Organization), and many have been initiated within the crime prevention and criminal justice programme, to mention but a few.

The global mobilization around violence against women as *the* symptom of unequal power between men and women has certainly provided an incentive for the rapid mushrooming of these projects. The number and variety of UN-supported projects raises proverbial concerns about duplication and repetition, as well as a profound concern about the impact of projects addressing, at the micro-level, symptoms of a structural problem. Because violence against women was 'recognized as a human rights issue and an obstacle to development', any agency, programme and fund that deals with development has obtained a mandate to carry out activities related to violence against women. Although the plea was made to accord priority to causes, the operational activities indicate that the operational focus remains on alleviating consequences rather than addressing causes.[73]

Although criminal justice systems have taken on crime prevention as part of their mandate, they are notoriously constrained in that task. Acting in the name of the state, policemen and policewomen cannot simply broaden their policing powers to the surveillance of intra-marital or intra-family relations and justify this by their commitment to preventing violence against women. Even if they obtained legitimacy for their intrusiveness (which would necessitate dispensing with the protection of individual privacy), it is questionable how much they would be able to achieve because the chain of causation requires simultaneous action by a large number of actors, most of who are outside the criminal justice system. It is sufficient to illustrate this chain of causation by one example, which is taken from the aftermath of the tragedy in Bosnia and alludes to the multifaceted causation of intra-martial and intra-family violence:

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72 Commission on Human Rights - Resolution 1997/44 on the elimination of violence against women of 11 April 1997, preamble.

73 United Nations - Proposed system-wide medium-term plan for the advancement of women, 1996-2001. Report of the Administrative Committee on Coordination, U.N. Doc. E/1996/16 of 16 April 1996, paras. 97 and 104-106.

The reintroduction of thousands of demobilized soldiers into an economy unable to generate jobs has been identified as one of the main causes of high rates of domestic violence throughout Bosnia.[74]

What should be the guiding principle for criminal justice policy: Equal treatment or preferential treatment?

The question of what the goals of criminal justice should be in this sector has thus far been avoided at the international level, probably because of the novelty of the issues of both gender mainstreaming and elimination of violence against women. The necessity to define what it is that criminal justice systems should be committed to achieve revives the unfinished debate about the fate of women within criminal justice, a debate which predates gender mainstreaming and violence against women.

That international debate was opened with the first time that the issue of women was placed on the UN crime prevention and control agenda, as it was then that the objective was defined as the *fair and equal treatment* for women. The implicit requirement of both gender mainstreaming and the elimination of violence against women is preferential treatment for women. The former aims at the attainment of gender equality (or balance or equity), the latter mandates criminal justice systems to prioritize female victims of violence.

Different approaches that have been followed outside the area of criminal justice are illustrative of the experiences thus far. These can be summed up as follows:

1) preferential treatment has proved necessary to redress the imbalance between men and women in policy- and decision-making bodies, and
2) without mandated preferential treatment, redressing this imbalance proved impossible.

The role of law in changing gender roles differs a great deal. Law can be an obstacle to change when it legalizes lesser rights for women, explicitly or implicitly. The former is evidenced in openly discriminatory legislation (such as the transmission of citizenship from husband to wife and their children) and the latter in apparently neutral legislation (such as laws regulating part-time work). Law can be an engine for change when it enhances gender equality.

Domestic laws differentiate between the two sexes for example by imposing compulsory military service upon men or prescribing a younger age for marriage for women. The former has created a great deal of controversy because it was deemed to constitute discrimination against either sex. The latter was challenged

74 Galbraith, K. - In the wake of war, a fight for survival, *Transitions*, vol. 5, No. 1, January 1998 p. 69.

by the Committee on the Rights of the Child as a form of discrimination against girls. Although a lower minimum age for girls is part of our global heritage, the Committee insists that the minimum age for marriage should be equal for both sexes.[75] Most countries in the world should accordingly change their legislation, but few have done so. Much as with other human rights issues, the process of change begins with the articulation of the human rights approach to prompt reconsideration of discriminatory attitudes into which we have all been socialized.

A great deal of research is necessary to reveal the impact of our discriminatory heritage on both men and women. An illustrative example is prostitution and proposals for what to do about it. An indicative conflict of approaches emerged within the Council of Europe. The Group of Specialists on violence against women placed the burden squarely on men ('prostitution is about men's sexuality'),[76] with which the expert appointed to look into trafficking in women disagreed, arguing that prostitution was women's responsibility as well because they contribute to its perpetuation.[77]

Gender-neutral legislation apparently does not differentiate between women and men but can be discriminatory when failing to address the obstacles faced by women. Governmental human rights obligations therefore encompass identification and elimination of such obstacles. By definition, this process cannot be either fast or easy. Corrective legislation is often necessary to give women preferential treatment in order to redress the consequences of our universal discriminatory heritage.

Gender-neutral laws, such as regulations pertaining to part-time work, were challenged by the European Court of Justice, and in part this has led to change.[78] Because the majority of part-time workers were – and are – women, non-existent or diminished labour rights affect women disproportionately and were thus outlawed as a form of gender discrimination. The difference between sex- and gender-based discrimination was confirmed by data on the implementation of equal-pay guarantees. Differences between the earnings of single women approached those of men, but the earnings of married women lagged behind. Single women's earnings in the western part of Germany were higher than men's (103%) but for married women they were only 57% of men's. Similarly, in Norway and Sweden, single women earned 94% of men's salary but married women only

75 The Committee raises the unequal minimum age for marriage with respect to every state in which it exists, countering the routine argument about the girl's earlier attainment of physical maturity by pointing out that human rights requirements demanded halting the denial of childhood to girls through early marriage as well as the elimination of stereotyped images of the role of spouses that older-husband/younger-wife embodies. Report of the Committee on the Rights of the Child, U.N. Doc. A/51/41 (1996), para. 1112.

76 Council of Europe - Group of Specialists for Combatting Violence against Women. Final Report of Activities, Doc. EG-S-VL (97) 1, Strasbourg, 25 June 1997, para. 33.

77 Council of Europe - Plan of action against traffic in women and forced prostitution by Michèle Hirsch, Doc. EG (96) 2, Strasbourg, 9 April 1996, p. 5.

78 Tomaševski, K. - European approaches to enhancing reproductive freedom, *The American University Law Review*, vol. 44, No. 4, April 1995, pp. 1037-1051.

72%.[79] An important reason for the persistent gap in earnings is the (married) women's need to reconcile out-of-house work with family responsibilities. Because of necessity rather than choice, many women still opt for part-time work. It is possible that the right to rest and leisure, thus far marginalized in international human rights law, represents a key to understanding gender differences. The women's proverbial double burden of in- and out-of-house work indeed impedes not only rest and leisure, but often also women's political, social or cultural activism. Time-constraints are added to all well-known obstacles to women's equal political representation. Indeed, women's political rights may be nominally equal to men's but women's political representation remains minuscule. Europe remains heterogeneous and this is reflected in the regional bodies. Within the Parliamentary Assembly of the Council of Europe, nine parliamentary delegations had no women delegates as late as 1995.[80] A survey of members states showed that in 1998 women were represented in every parliament but their representation ranged from a low of 2% in Turkey to a high of 40% in Sweden. Moreover, retrospective analysis revealed that women's increased political representation was not self-sustaining – in early 1990s it decreased in six members of the Council of Europe (the former Yugoslav Republic of Macedonia, Italy, Latvia, Liechtenstein, Slovak Republic, and Slovenia).[81] These developments demonstrate that a Council of Europe strategy to sustain the increased political representation of women has yet to be developed. The many recommendations routinely directed at members states obviously failed to mould the states' practice or policy thus far.

Comparisons between the political representation of men and women are carried out in the light of their legally affirmed nominally equal rights. Distinguishing between women with and without family obligations, single and married women, able-bodied and disabled women, deepens the knowledge about differences in the enjoyment of rights among women. This moves the inquiry from differences between men and women (highlighted in the prohibition of discrimination on the ground of sex) to differences amongst women as well as amongst men. Nevertheless, the nominally equal rights have so far not been fully attained, as access to citizenship demonstrates. This still follows the head-of-family approach, bestows rights upon husbands and denies them to wives. Women migrants in most countries derive their right to residence and/or citizenship from that of their husband. The pre-1973 pattern of labour migration to Western Europe had been driven by the demand for 'foreign labour' (defined at the time in terms of male manual workers), and most women migrated subsequently on the basis of family reunification. Admitted as dependant family members, the position of wives cumulates legal with economic dependence upon their husbands. After immigration had become legally impossible, a vast and

79 Blau, F. and Kahn, L.N. - The gender earnings gap: Learning from international comparisons, *American Economic Review*, vol. 82, 1992, No. 2, pp. 533-538.

80 Parliamentary Assembly - *The Gender Perspective*, Council of Europe Publishing, Strasbourg, 1995, p. 13.

81 Council of Europe - Women in politics in the Council of Europe member states, Strasbourg, March 1998, Doc. EG (97) 6 rev.

diverse – if clandestine – market was created. A new crime of alien smuggling was created and offences of trafficking in human beings were re-defined. This is a sad reminder that slavery has not been eliminated but merely modernized.

The vulnerability of the victims of smuggling and/or trafficking is compounded by their lack of legal rights in the countries in which they find themselves. By no coincidence, women tend to be victimized more than men, but women's fate is routinely cloaked behind the sexless category of 'migrants' or 'illegal aliens'. Women have been explicitly mentioned many times, and there has been growing publicity for trafficking in women, especially for prostitution. A great deal of media attention has been devoted to the issue, and this has been followed by a large number of resolutions and plans of action. And yet, the existing law embodied in the Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others lies dormant, with less than half of countries in the world (72) having ratified it, excluding Denmark, Germany, Netherlands, or Sweden.[82] It is paradoxical that only a few European countries – Germany, Malta, the Netherlands and Slovenia – have included trafficking in people as a criminal offence into their legislation.

There is a correlation between the representation of women in policy and decision-making bodies and the outcome of the work of such bodies. In countries which have achieved high women's political representation, laws and practices are protective of the equal rights of women. The reverse is true as well. Nevertheless, it is axiomatic that migrants – not being politically represented in the country of their temporary residence – proverbially lack legal protection. That a proportion of them are women, many of them victims of trafficking, does not make a great deal of difference because they are not defined by sex or gender.

Application to criminal justice

The rapid development of international policies for the elimination of violence against women has prompted different criminal justice responses. At the international level, a great deal of guidance has been generated and an endless stream of projects designed and implemented, as has been the case with any other issue that is singled out as a political priority. Similar changes have taken place at the domestic level, although the development has been uneven. Anglo-Saxon countries (the United States, Canada, Australia, the United Kingdom) led the way in prioritizing violence against women: most research has been generated in these countries, and the largest numbers of organizations specifically dealing with violence against women have been established there. This momentum enhanced the visibility of violence against women. Continental European countries have been slower. One reason for this has been the difference in the orientation of

82 Commission on Human Rights - Status of the Conventions. Note by the Secretary-General, U.N. Doc. E/CN.4/Sub.2/AC.2/1998/3 of 7 May 1998.

opinion leaders amongst women's organizations, another the different process of law and policy making.

Guidance on how the criminal justice system should respond to violence against women is largely contained in non-legal instruments, which provide options for it to act but not the requirement to do so. Legal guidance has been slow in emerging, as comparisons of developments in Europe show below.

Women as victims

A profound change was introduced into criminal justice systems during the 1980s with the recognition of the rights of the victim. This process led to assertions that the rights of the victim ought to be at least equal to the rights of the offender,[83] reminding criminal justice professionals that the focus on the rights of the suspects, offenders and inmates is intended to prevent the professionals from abusing their power. Until recently, criminal justice professions had virtually no exposure to the rights of victims, because victims were absent from the original model of criminal justice, which pitted the state against the offender. The initial human rights guarantees had been developed so as to protect the (presumed) offender against abuse of power by the state. With the entry of the victim as an actor, the affirmation of victim's rights was often perceived as seeking to repeal the rights conferred on the (presumed) offender.[84] This slant has affected the advocacy for rights of women victims, where many proposals have been generated to diminish free trial guarantees for suspected rapists so as to affirm the rights of presumed victims of rape. Debates about a proper balance are often carried out in the form of a zero-sum-game, where affirmation of the suspect's or offender's rights is seen as a loss of rights for the victim. A way out of that deadlock can be found in the original (vertical) design of human rights protections, which does not pit the suspect/offender against the victim but affirms for both parties specific rights against the state.

The statistical profile of women within criminal justice is slanted towards their role of victims rather than offenders, and conventional wisdom holds that there is a disproportion between a great deal of victimization of women and a minuscule women's pattern of offending. Many theories on the causation of crime which emphasize economic, social, or political disadvantage are belied by the statistical profile of women as offenders. The question why women are not committing crimes emerged, and supplementary theories have been developed to attribute women's paucity of offending to internalized constraints upon their behaviour.

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83 Canadian Panel on Violence against Women - *Changing the Landscape: Ending Violence, Achieving Equality*, Ottawa, 1993.

84 Fletcher, G. P. - *With Justice for Some: Victims' Rights in Criminal Trials*, Addison-Wesley, Reading, Massachusetts, 1995.

It is still customary to use the syntagm 'innocent women and children' to reinforce this image. The current popularity of studying victimization of women has generated a great deal of generalizations. Assertions that a large proportion of women are victims of violence increase the pressure upon the criminal justice system to react to women's victimization.

The Anglo-Saxon dominance in studying violence against women and generating policies towards its elimination was not based upon a particularly high political representation of women. It is possible to speculate that the priority for violence against women did not originate in the Nordic countries because the approach focussed on attaining equality in the public sphere and on equal rights guarantees in the private sphere. Conversely, the Anglo-Saxon focus on the private sphere extrapolates a fragmentary governmental commitment to equal rights for women as well as the absence of the welfare-state model with its corollary individual entitlements.[85] The role of the state is defined differently: in continental Europe, where the state has a much larger role than in Anglo-Saxon countries, based on its powers of intervention into the free market, and on progressive taxation so as to enable the state to fund welfare-services. The minimalist-state concept, developed the furthest in the USA, defined human rights protection in terms of the prohibition of state intervention. Because of the process of 'free marketization' in Anglo-Saxon countries in the 1980s, the role of the state and its consequent human rights obligations was further constrained. A part of the battle to make violence against women a human rights issue was thus fought over a broadening of the role of the state, about shifting the focus from restraint to intervention. The fact that violence against women (rather than social rights, for example) was chosen as the battleground has much to do with the orientation of powerful feminist constituencies in Anglo-Saxon countries.

Changes of law and policy in Anglo-Saxon countries ruptured the previous high degree of protection for privacy (much higher than in continental Europe) by criminalizing many forms of violence against women, increasing the powers of the police to intervene, or instituting a mandatory arrest policy with regard to male abusers.[86] Assessments of the effectiveness of these changes vary a great deal. As violence against women obtained a great deal of visibility, it was 'recognized' more than beforehand and thus it seemed to increase rather than decrease. The symbolic importance of defining violence against women as a crime that triggers off the response by the criminal justice system was undoubtedly a huge step forward. The unanswered question is: where to?

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85 The extreme model is the USA, where the definition of human rights includes only protections against abuse of power by the state and excludes any entitlements, such as the right to health or education. Human Rights Committee - Initial report of the United States of America, U.N. Doc. CCPR/C/81/Add.4 of 24 August 1994, para. 1.

86 United Nations - Domestic violence. Report of the Secretary-General, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/17 of 20 July 1990, paras. 35 and 43.

The Anglo-Saxon approach to violence against women has been exported to other regions, such as Eastern Europe. The Minnesota Advocates for Human Rights carried out studies in Albania and Bulgaria, introduced with the assertion that 'an estimated 40-80% of women in the world are beaten by their husbands or intimate partners;' the lack of specific data for the countries under study was explained by women's reluctance to report abuse.[87] A great deal of literature has been generated on violence against women and it is uniformly critical of the inability (often unwillingness as well) of the criminal justice system to cope. It is routinely suggested that specialized institutions and services be established within the criminal justice system. Specialized institutions and services raise a question that already generated controversies because it is in conflict with the objective of mainstreaming.

The key question is: how far should the criminal justice system be reorientated from public to private (women's) security? Views as to what the appropriate response should be vary. One extreme demands resort to the full range of coercive powers against abusive men (arrest, detention, prosecution, conviction and imprisonment), another proposes an increase of supportive services rather than coercive powers of the state. If the decreased vulnerability of women to violence means their safety and independence, criminal justice approaches can – at best – cope only with the former. The latter entails the full range of civil, cultural, economic, social, and political rights to enable women to be independent, to which criminal justice approaches can scarcely contribute at all.

Within Europe criminal-justice approaches vary. Specialized police units, composed of policewomen, have been established in Germany, while in France there are no specialized units but training is provided to all police officers. Ireland merged both approaches, providing training to all police and establishing specialized units for domestic violence and sexual assault. These models are too new to have generated evaluations, but in countries that have started earlier, some experiences are being gathered. Olga Zoomer found for the Netherlands that the police could protect potential victims by removing an immediate and direct risk of violence, while concluding that women victims did not seem to desire that abusers be arrested, tried and imprisoned. [88] This reinforces the plea in most international recommendations that a multi-pronged approach be developed.

Whether the system of criminal justice should encompass all manifestations of what is commonly called 'domestic violence' remains an open question. The terms itself is differently defined. While it was originally conceived as an umbrella-term for intra-family violence, with the surge of attention for violence against women it became confined to the victimization of women. The definition was broadened from physical to sexual abuse and then to verbal abuse. Cam-

87 The 'private affair' of domestic violence, *Human Rights and Civil Society Newsletter*, vol. 2, 1996, No. 4, pp. 4-5.

88 Zoomer, O.J. - Policing women beating in the Netherlands, in: Hanmer, J., Radford, J. and Stanko, E.A. (eds.) - *Women, Policing and Male Violence*, Routledge, London and New York, 1989, pp. 152-53.

paigns under the slogan of 'zero tolerance' mobilized the public to denounce any abuse and to demand public intervention. In this atmosphere, criminal justice policy-makers have a difficult task of arguing that criminal-justice intervention should not be undertaken in cases of, for example, verbal abuse.

Proposals that options other than criminal justice intervention be developed are emerging and are being experimented with. A survey of 146 NGOs (non-governmental organizations) working on violence against women revealed that most recommended that separate family courts be created,[89] and this path reinforced the broadening of civil rather than criminal suits. The UN Special Rapporteur on violence against women emphasized that a conventional criminal justice approach does not and cannot adequately respond to the problem because its mandate relates only to violence, while relations 'between persons who are emotionally and financially involved with each other'[90] falls outside its mandate.

Implications of criminalizing violence against women

As long as the thrust of human rights was to protect individuals against abuses of power by the state, gender-based violence was beyond the reach of human rights law, domestic or international. Precedent-setting cases in international human rights jurisprudence affirmed during the 1980s that states were obliged to prevent human rights violations as well as to protect individuals against abuses by other individuals. A state can therefore violate women's rights when it fails to enact and enforce legislation guaranteeing women equal protection against violence. Such protection is often lacking because of the obstacle of marital power, the remnant of a husband's ownership of his wife. In a precedent setting case concerning a husband's immunity against prosecution for the rape of his wife, the European Court of Human Rights ruled that 'the essentially debasing character of rape' was compatible neither with a civilised concept of marriage nor with the fundamental objectives of the European Convention.[91]

The diminishing differences between unmarried and married women in their protection against violence necessitated the elimination of the husband's ownership of 'his' wife in order to move towards what the Court called 'a civilised concept of marriage.' Elimination of *all* forms of discrimination is a prerequisite for combatting violence against women. However, the European Convention provides a basis for eliminating some – but not all – forms of discrimination, by exempting the social and economic rights of women (and men for that matter) from the realm of justiciability. Vast areas of discrimination are thus precluded

89 Women, Law and Development International - *State Responses to Domestic Violence. Current Status and Needed Improvements*, Washington, D.C., 1996, p. 97.

90 Commission on Human Rights - Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, U.N. Doc. E/CN.4/1995/ 42 of 22 November 1994, para. 125.

91 European Court of Human Rights - *C.R. v. the United Kingdom*, Judgment of 22 November 1995, para. 42.

from an assessment of their compatibility with the fundamental objectives of the Convention. The protection of a wife against abuse by her husband is typically impeded by the fact that all family property is owned by the husband while the wife – and not he – is responsible for their children. Social and economic rights are absent from the European Convention on Human Rights. As a corollary, comprehensive equal rights guarantees that would give women realistic possibilities of rupturing an abusive relationship remain beyond the realm of the possible.

Partial elimination of unequal rights as well as a tendency to address consequences rather than tackling causes are not likely to result in sustainable improvement. Projects assisting battered wives do not reach beyond the alleviation of consequences when they disregard the crucial importance of the legal and financial dependence of wives upon their husbands. The legal rights of wives concerning housing, family property, child custody and maintenance, should – but often do not – inform projects intended to combat violence against women. When wives are non-citizens, their paucity of legal rights extends to residence and citizenship; escape from an abusive relationship routinely entails return to the country of origin. The conflict between a desire to facilitate the wives' acquisition of legal rights and a wish to decrease the number of resident non-citizens regularly produces self-contradictory legal responses. The nature and scope of governmental human rights obligations is therefore subjected to a constant re-examination.

The global mobilization around violence against women as *the* symptom of unequal power between men and women has intensified. The European Parliament called for 1999 to be designated the European year against violence against women.[92] From the human rights perspective, this focus on physical abuse as the most visible consequence of the absence of human rights protection should lead to a search for enhanced protection rather than solely dealing with consequences.

Because the state has a monopoly over detention and imprisonment, and potential victims are in the custody of the state, its human rights obligations are far-reaching and demand the eradication of torture. No government could eradicate violence in the family and society but is obliged to undertake all necessary measures to prevent and suppress such violence, and hence its human rights obligations are substantively different. The previous attitude was that a state violated human rights only when its agents had committed abuses. Precedent-setting cases in the international human rights jurisprudence affirmed during the 1980s the states' obligations to prevent human rights violations, as well as to protect individuals against abuses by other individuals. States can therefore violate women's human rights when they fail to enact and enforce legislation guaranteeing women equal rights.

92 *Official Journal of the European Communities* C 304, 6 October 1997, Bulletin 9-1997, point 1.1.10.

Some agencies have merged their activities tackling violence against women with their human rights work. The UNFPA (United Nations Population Fund) broadened its terms of reference to include advocacy for enacting and enforcing legislation against female genital mutilation,[93] while UNIFEM (United Nations Development Fund for Women) subsumed projects dealing with violence against women under its women's human rights programme. This testifies to possibilities for technical co-operation, but the necessary support is often not forthcoming from the former Centre for Human Rights or the DAW (Division for the Advancement of Women). [94] Perhaps the continued fragmentation of topics (such as the dissociation between harmful traditional practices and violence against women) impedes mobilization of international actors around a unified platform.

The variety of domestic legal responses

The level of public awareness and concern about violence against women has been heightened by reports of dramatic data whereby every fourth or third woman in the world is abused by her husband. The difficulties in finding the sources for such data, as well as differences in the definition of abuse for those that included them make such assertions interesting for media reporting, but their value as a basis for policy development is doubtful. It is possible that abuse is prevalent in many marriages and families, but it is also possible that women who are self-defined victims in surveys of violence against women are also victimizers. The absence of parallel surveys of women's abuse of their children or husbands prevents a comprehensive portrayal of the pattern of victimization. It also provides the background for unidimensional strategies, notably blaming men, and seeking the typical criminal justice response of relocating such men from the marriage and/or family into prison. The full range of causes which generate violence in the marriage and family thus remains unknown, and violence may be neither controlled nor prevented. The variety and complexity of factors that contribute to violence lie beyond the criminal justice system. Concluding its review of violence at work, the International Labour Office suggested that the priority be on a micro- rather than a macro-level strategy:

In terms of long-term strategies to tackle the general problem of violence in any society the most significant positive outcomes are likely to be achieved

93 UNFPA - *Guidelines for UNFPA Support for Gender, Population and Development Activities*, UNFPA/PA/80/16 Rev. 2 of 17 October 1995, p. 6.

94 The Special Rapporteur on traditional practices affecting the health of women and children included in her final report a series of negative references to United Nations bodies, such as the Division for the Advancement of Women, as well as the Economic and Social Commission for Asia and the Pacific and the Economic Commission for Africa, for having failed to undertake implementation of the Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children. Final report of the Special Rapporteur on traditional practices affecting the health of women and children, Mrs. Halima Embarek Warzazi, U.N. Doc. E/CN.4/Sub.2/1996/6 of 14 June 1996, paras. 113 and 150-151.

through a concentration on child development programmes linked to the family. It is within the family that aggressive behaviours are first learned.[95]

Different areas of law have been used to combat sexual harassment at work, ranging from health and safety law to criminal law. Criminal law did not prove particularly effective because of the presumption of innocence for the suspected offender and the corresponding burden of proof on the victim.[96] Indeed, criminal justice approaches create difficulties for victims through such rigid procedural rules. This was one of the reasons why many countries have not relied only, or even mainly on criminal law and its enforcement and indeed have combined legal with extra-legal approaches.

Table 1. Legal responses to violence against women.

Not recognized in domestic law: Albania, Bulgaria, Czech Republic, Denmark, Finland, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Malta, Moldova, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Switzerland, Turkey, United Kingdom
Special legislation: Cyprus (1994) – Violence in the Family (Prevention and Protection of Victim) Act Ireland (1996) – Domestic Violence Act
Combination of legal and extra-legal approaches: France (1986-) – preventative programmes, inter-ministerial committee Netherlands (1983-) – governmental policy, constitutional amendment, Norway (1983-) – programmes of action, legislative changes Sweden (1982-) – changes in prosecution and sentencing policy, plan of action

Source: Radford, J. – Violence against women: Comparative legal study of the situation in Council of Europe Member States, Strasbourg, 19 August 1998, Doc. EG (98) 1 prov; Documentation of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) Committee.

An overview of different legal approaches to violence against women is presented in Table 1, which highlights the range of options pursued within Europe. Only two countries – Cyprus and Ireland – have adopted specific legislation on intra-family and/or domestic violence. Ireland follows the common law heritage and thus belongs in this author's Anglo-Saxon category, while Cyprus exhibits a mixture of continental, civil law, features and the pre-1960 heritage of British rule. A large number of countries have not yet adopted any legislation, but the practice of countries that combined legal reform with non-legal approaches is illustrative of the trend in continental Europe.

95 Chappell, D. and Di Martino, V. - *Violence at Work*, International Labour Office, Geneva, 1998, p. 145.

96 Aeberhard-Hodges, J. - Sexual harassment in employment: Recent judicial and arbitral trends, *International Labour Review*, vol. 135, 1996, No. 5, p. 526.

Difficult definition: Public/private distinction, physical/sexual violence

The dominance of violence against women on the agenda of both women's and human rights structures has generated considerable progress in nudging governments towards improvement of the protection of women from violence, but has also created much confusion. One aspect has been the blurring of the distinction between governmental obligations concerning public and private sphere. Another aspect is the on-going process of translating the incrimination of violence against women into specific offences. The importance of attaining a clear-cut definition for the system of criminal justice, which has to interpret, apply and enforce it, cannot be over-emphasized.

Differences between the public and private sphere are a key component of human rights law because its primary purpose is to safeguard individuals against abuse of power by the state. One consequence of that difference, the insufficient protection of women against victimization in the private sphere, encountered a great deal of critique with respect to the previous neglect of violence against women. That neglect was then replaced by an over-emphasis of violence against women, which threatens to subsume the entire women's human rights agenda.

An assertion that violence against women is a violation of human rights has been a frequently used slogan and has contributed much more heat than light to the on-going debates about governmental human rights obligations. Misconceptions about what human rights are – and are not – proliferated with regard to the difference between torture of persons in the custody of the state and physical abuse of wives by their husbands. The UN Expert Group on the development of guidelines for gender integration into human rights programme, criticised 'the interpretation of the right to freedom from torture [because it] has failed to encompass violence in the family.'[97] That 'failure' is a reflection of differentiated governmental human rights obligations.

Governments have the obligation to eliminate torture because they have the monopoly over legally detaining and imprisoning people and are responsible for people in their custody. Rape in custody was subsumed under torture by the European Court of Human Rights.[98] Governmental obligations concerning violence in the family and society are obligations of conduct, rather than result as is the case with obligations relating to torture. The necessary measures to prevent, suppress and penalize violence include safeguards against abuse of power. In the case of *X and Y v. The Netherlands*, the European Court of Human Rights clarified the distinction between different types of governmental human rights obligations. The Court refused to subsume, under the prohibition of torture, safeguards against sexual abuse of a girl in a private home for mentally handicapped children. Rather, it subsumed protection of the physical and moral integrity of the individ-

97 Expert group meeting on the development of guidelines for the integration of gender perspectives into human rights activities and programmes. Note by the Secretariat, U.N. Doc. E/CN.4/1996/105 of 20 November 1995, para. 20.

98 European Court of Human Rights - *Case of Aydin v. Turkey*, judgment of 25 September 1997, para. 83.

ual under the states' obligation to protect private life, which encompasses 'the sphere of the relations of individuals between themselves'. The Court found the Netherlands in breach of Article 8 of the European Convention because the legal gap existing at the time had not criminalized such sexual abuse, and endorsed the view of the Commission that the government could not be held responsible under Article 3.[99]

The European Court of Human Rights had no difficulty in subsuming custodial rape under the definition of torture:

> Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim.[100]

Specific incrimination of custodial rape has been included in the criminal law of Germany (defined as sexual assault against a prisoner, a person in care of an authority or in a public institution), Norway (defined as rape by abuse of position, committed by a police or prison officer, or against an inmate of any other institution) and Slovenia (defined as aggravated rape, including against offenders serving sentence in prison).[101] Virtually nothing is known about enforcement of these laws. Custodial rape still remains on the margins of human rights work, vividly illustrating the necessity of mainstreaming. This entails a great deal of change in research priorities for human rights work as well as for research. Suffice it to recall how uninformative information on custodial rape is when the only source of information are governments. A topic entitled *physical violence against detained women that is specific to their sex* was placed on the United Nations agenda in the 1980s (it was a misnomer because the intention was to address rape, whose victims are also detained men) and generated a typical exercise in 'fact-finding': governments were supposed to report whether this was a problem and they reported that it was not, enabling the United Nations to conclude that only two cases of rape against detained women had been reported.[102]

Most countries lack a legal definition of violence against women or gender-based violence. The same goes for a distinction between physical and sexual violence, with the effect of undermining 'the seriousness of sexual violence that fails to be manifested by physical violence.'[103]

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99 European Court of Human Rights - Case of X and Y v. The Netherlands, Judgment of 26 March 1985, Series A, vol. 81, para. 23, and Annexed Opinion of the European Commission of Human Rights of 5 July 1983, para.

100 European Court of Human Rights - *Case of Aydin v. Turkey*, judgment of 25 September 1997, para. 83.

101 Radford, J. - Violence against women: Comparative legal study of the situation in Council of Europe Member States, Strasbourg, 19 August 1998, Doc. EG (98) 1 prov.

102 Commission on the Status of Women - Physical violence against detained women that is specific to their sex. Report of the Secretary-General, U.N. Doc. E/CN.6/1988/9 of 26 November 1987, para. 61.

103 Commission on Human Rights - Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, U.N. Doc. E/CN.4/1997/47 of 12 February 1997, para. 38.

An illustration of the variety of domestic legal approaches to the one offence that has been part of criminal codes for a very long time – rape – is provided in Table 2. The range of options applied within Europe demonstrates how heterogeneous law is. The classification of rape as a crime against morality is still upheld in some countries; some countries recognize marital rape while others do not; the victim can only be a woman in some countries; the legal distinction between rape and sexual intercourse is consent in some countries, while it continues to be physical violence in others.

Table 2. Definitions of rape in domestic criminal law.

Classification – crime against public morals (Italy, Malta, Netherlands, Norway, Turkey) – crime against sexual liberty (Greece, Spain, Slovenia)	Victim – only woman (Albania, Bulgaria, Finland, France, Germany, Greece, Hungary, Ireland, Romania) – woman or man (Latvia, Malta, Poland, Russia, Slovenia, Spain, United Kingdom)
Marital rape – criminalization (Cyprus, Czech Republic, Finland, France, Netherlands, Poland, Slovenia, Sweden, Switzerland) – rape defined as extramarital intercourse (Germany, Hungary)	Definition – force/violence/threat/intimidation (Cyprus, Finland, Germany, Iceland, Latvia, Malta, Norway, Poland, Portugal, Romania, Slovenia, Spain, Turkey) – absence of consent (France, Ireland, United Kingdom)

Source: Radford, J. – Violence against women: Comparative legal study of the situation in Council of Europe Member States, Strasbourg, 19 August 1998, Doc. EG (98) 1 prov.

Legislative changes have taken place in Anglo-Saxon countries, especially the elimination of the term 'rape' and its replacement by a gradation of offences within the new category of criminal sexual conduct (as in Michigan) or sexual assault (as in Canada).[104] These have been widely publicised and analysed. Nevertheless, the definition of rape is not the only factor which facilitates its prosecution, as is well known, and a great deal of criticism has been voiced against many governments for failing to prosecute rape effectively. Such generalizations leave many questions to be investigated. For example, statistics from the Russian Federation show that rape constituted 14.1% of recorded crime in 1991 and fell to 8.7% in 1995.[105] No change of legislation took place during that period, and it is unrealistic to assume that the amount of committed rape decreased. The question points to the need to scrutinize possible explanations – both within and outside criminal justice – to find out the reasons for that change.

104 Bessmer, S. - *The Laws of Rape*, Praeger Publishers, New York, 1984.

105 Inter-State Statistical Committee for the Commonwealth of Independent States - *Crime and Delinquency 1991-1995*, Ministry of Internal Affairs, Moscow, 1996.

And yet, the usual response of human rights organizations is to lament the absence of reliable statistics and go no further.[106]

Women as offenders

Little attention to women as offenders is routinely justified by the conventional view that their absolute and relative numbers are small. The pattern of offending among women is often summed up as non-violent petty property crimes. When the first global survey was carried out, it noted the emergence of all-girl gangs or women's involvement in drug trafficking, but the general description was as follows:

> Family-related offences, such as infanticide, child abuse, murder of spouses, adultery or abortion, those that relate to the role of consumer housewife such as shop-lifting and other petty theft, passing bad cheques and welfare fraud, as well as prostitution and other moral offences were cited as conventional female crimes in many countries and constituted the majority of female crimes around the world.[107]

The study of the causes of crime generates an endless stream of factors that are singled out as explaining and predicting offending (or non-offending). Adherents of the much-quoted assertion by Freud that anatomy is destiny attributed principal importance to biological differences between the two sexes. These views belonged to pre-gender times, when theorizing focussed on sex at birth rather than socialization into gender roles. Criminogenic factors specific to women, such as PMT (pre-menstrual tension) thus entered the research on causation of crime. Proponents of the environment in the search for *the* cause of crime emphasized differences between masculine and feminine upbringing (the slogan was 'nurture, not nature') and differentiated between sex- and gender-based differences. Theorizing about the genetic predisposition of men to aggression is unlikely ever to end because its interplay with socialization makes causation of aggression and/or violence difficult, if not impossible, to prove.

Different trajectories of research concentrated on inquiries into reasons for women offending so little (in comparison with men). There was a trend during the early 1970s in England to perceive women's offending as an extension of their sex roles. Shoplifting received a great deal of attention as a 'typically women's crime' that illustrated the shift of their role from shoppers to shoplifters.[108] Another trajectory explored the fate of this minority of women within the

106 Human Rights Watch - Russia. Too little, too late: Response to violence against women, Human Rights Watch Report, vol. 9, No. 13 (D), December 1997, p. 11.

107 United Nations - The fair treatment of women by the criminal justice system. Report of the Secretary-General, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/17 of 1 July 1995, para. 29.

108 Leonard, E.B. - *Women, Crime and Society. A Critique of Theoretical Criminology*, Longman, New York and London, 1982, p. 11.

system of criminal justice (some studies finding that women were treated more – others less – leniently than men).[109]

A move beyond over-aggregated categories of 'women' and 'pattern of offending' necessitates studying the interaction of gender and race, ethnicity, provenance, religion, age, family status, marital status, family responsibilities, employment/unemployment status, or generally class (poverty/wealth). The existing research has shown that overlapping categorizations provide valuable insights, and the addition of minority/indigenous/foreign status to the simple differentiation between men and women leads to different statistical profiles of women as offenders. Secondary analyses of the existing research into minority/indigenous/foreign patterns of offending (and responses of the criminal justice system) is likely to yield interesting findings. Within research into juvenile delinquency, one might also find further refinements of the routine distinction between boys and girls.

Once research moved beyond sex towards gender, differences in socialization led to analyses of the interplay between race and sex, ethnicity and sex, or minority status and sex. William Wilbanks found race to be a better predictor of women killing or being killed than sex.[110] Societal norms impose different behaviour upon girls and women, while systems of criminal justice respond to offences committed by women who are assigned also a minority status by prioritizing their race or ethnicity rather than their sex. In prison statistics, 'foreigners' still represent a non-differentiated category and women who are foreign are not identified by their sex. Moreover, rules for housing detained or imprisoned foreigners sometimes depart from the otherwise accepted segregation by sex.

Research in the USA found that sex and race seem mutually contradictory in the study of offending by black women,[111] and the pattern of offending among young black women was similar to that of young white men.[112] The theory notwithstanding, in practice discrimination multiplies and it is difficult to disentangle different grounds. Nancy Stoller Shaw argued that imprisoned women in England can be victimized by quintuple discrimination (sex, race, poverty, imprisonment and mental ill-health[113] to which one could easily add foreignness and age.

Under the category of 'illegal aliens' one can find both men and women, housed together, in specialized detention centres for foreigners awaiting expul-

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109 Parisi, N. - Are females treated differently? in: Hahn Rafter, N. and Stanko, E.A. (eds.) - *Judge, Lawyer, Victim, Thief: Women, Gender Roles and Criminal Justice*, Northeastern University Press, 1982, p. 215.

110 Wilbanks, W. - Murdered women and women who murder, in: Hahn Rafter, N. and Stanko, E.A. (eds.) - *Judge, Lawyer, Victim, Thief: Women, Gender Roles and Criminal Justice*, Northeastern University Press, 1982, p. 174.

111 Lewis, D. - Black women offenders and criminal justice: Some theoretical considerations, in: Warren, M. (ed.) - *Comparing Female and Male Offenders*, Sage, Beverly Hills, 1981, p. 94.

112 Laub, J. and McDermott, M. - An analysis of serious crime by young black women, *Criminology*, vol. 23, 1985, p. 81

113 Stoller Shaw, N. - Female patients and the medical profession in jails and prisons, in: Hahn Rafter, N. and Stanko, E.A. (eds.) - *Judge, Lawyer, Victim, Thief: Women, Gender Roles and Criminal Justice*, Northeastern University Press, 1982, p. 261 et seq.

sion or deportation, or in prison. The CPT (Committee for Prevention of Torture) has argued that 'women and men should not be obliged to share dormitories and separate accommodation had to be provided for women unless they have expressed a wish to be placed with persons with whom they share an emotional or cultural affinity.'[114]

The numbers of foreign women in prison have been increasing faster than the numbers of foreign men, although the absolute number of women remains much smaller. In France, for example, the percentage of imprisoned foreign women was close to that of men (30.7 for men and 27.1 for women) although the absolute number of women (569) remained much lower than that of men (14,149).[115] In Canada, indigenous men represented 12% of federal inmates and indigenous women 15%,[116] which led to the claim of double discrimination against indigenous women.[117] This path of moving beyond recording only sex is yet to be translated into official statistical categories used in most penitentiary systems.

The pattern of officially recorded women's offences is influenced by differences in the criminal codes. Sex-specific offences can be defined so that only men can commit them (rape, wife-beating), while offences such as abortion and infanticide can only be committed by women. Offences such as prostitution can be committed by men but are routinely recorded only for women. In countries where abortion is criminalized, women's rate of offending might be higher if the criminalization of abortion is enforced. France retained in 1992 the categorization of self-induced abortion as a criminal offence punishable by two months of imprisonment.[118] Similarly, for infanticide women will constitute the bulk of offenders. If prostitution is criminalized, women are also likely to be the sole offenders because the 'discovery' of male prostitutes is recent in most countries. The current concern about trafficking in women has exposed how often women find themselves in the double role of offenders and victims.

The gap between officially recorded and committed crime is notorious, and raises interesting questions about women's offending. Because women's offending tends to be slanted towards the private rather than the public sphere, arguments are routinely launched that men-women differentials may be smaller than is generally assumed. The entry of women into terrorism in Europe generated a great deal of literature, as well as prompting an agonising dilemma about equal or differentiated treatment between male and female terrorists. The in-

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114 Council of Europe - Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 14 November 1994, Doc. CPT/Inf (96) 5, Strasbourg, 1 February 1996, para. 64.

115 Tournier, P. - Les étrangers en prison. Donées statistiques: Situation au 1er janvier 1992 et évolution sur la période 1968-1992, Centre de recherche sociologiques sur le droit et les institutions pénales (CESDIP), Paris, mars 1992, pp. 21-24.

116 LaPraire, C.P. - Some issues in aboriginal justice research: The case of aboriginal women in Canada, *Women & Criminal Justice*, vol. 1, No. 1, 1989, pp. 81-91.

117 Cohen, S. - Human rights and criminal justice in the 1990s, in: Cholewinski, R.I. (ed.) - *Human Rights in Canada: Into the 1990s and Beyond*, Human Rights Research and Education Centre, Ottawa, 1990. pp. 79-82.

118 Council of Europe - *The Gender Perspective*, Council of Europe Publishing, Strasbourg, 1995, p. 32.

volvement of foreign women in drug trafficking had probably been launched to take advantage of the prejudice of 'innocent women'. These fragmentary excursions into women's 'untypical' involvement in crime have not yet led to systematic research into the over-all pattern of women's offending. This could lead to a dismantling of the unidimensional definition of women by their sex to search for differences in the pattern of offending between women in western and eastern, northern and southern Europe, and within these broad categories a search for further differences by age, provenance, ethnicity, religion, marital and family status, responsibility for dependent children or its absence, economic self-sustenance or dependence.

The marginalization of women in penitentiary policies and statistics is well-known although this knowledge has not yet led to any change. There is a paucity of international guidelines or recommendations for anything other than motherhood. In 1985, the first UN survey revealed that the bulk of differential treatment consisted of health care and child-care services.[119] This generalization no longer holds true, but a great deal of difference must exist between penitentiary systems which apply individualized treatment and those that house all female inmates together. The literature about women's prisons remains scarce (the exception, again, being Anglo-Saxon countries), especially in Eastern Europe.

Because women constitute a minute proportion of inmates, as Table 3 illustrates, there is often no classification among women, and they are housed together regardless of age or crime. The Prison Officers Association of England and Wales testified in 1978 that homosexuality was one of the dominant features of women's prisons.[120] There has been little written about this, except for accusations against prison officials for their intransigent opposition.[121]

Perhaps the worst accusation of the prison regime for women is embodied in the term 'infantilization,' which appears as a descriptor of female prison life with unusual frequency. It was used by an Italian terrorist, whose image of her imprisonment was that she was taken back to childhood ('infantilized') and deprived of all responsibility for herself.[122] Barney Bardsley, an English journalist, also used the term infantilization in her description of a paradox: 'women craving safety (and thereby abdicating power) and the prison regime fostering that process'[123] Pat Carlen used the identical term when writing about the imprisonment of women in Scotland.[124]

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119 United Nations - The fair treatment of women by the criminal justice system. Report of the Secretary-General, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/17 of 1 July 1995, paras. 62 and 65-66.

120 Hearings before the Expenditure Committee of the House of Commons, vol, 61, part vi, London, 1978-79, p. 130.

121 Bardsley, B. - *Flowers in Hell. An Investigation into Women and Crime*, Pandora Press, London and New York, 1987, p. 71.

122 Hanley, A. - 'Being alive often seems an unfair advantage I have denied others,' *The European Magazine*, 14-20 December 1995, pp. 13-15.

123 Bardsley, B. - *Flowers in Hell. An Investigation into Women and Crime*, Pandora Press, London and New York, 1987, p. 72.

124 Carlen, P. - *Women's Imprisonment. A Study in Social Contro*l, Routledge & Kegan Paul, London, 1983, p. 18.

Table 3. Women in the prison population, 1993 and 1996.

INCREASED PROPORTION OF WOMEN	1993	1996
Austria	4.8%	5.4%
Belgium	4.8%	4.9%
Cyprus	3.2%	6.4%
Czech Republic	1.7%	3.7%
Denmark	4.8%	6.0%
Finland	3.5%	4.8%
Ireland	1.6%	2.2%
Lithuania	2.9%	4.0%
Luxembourg	3.8%	6.0%
Norway	4.6%	5.7%
Poland	2.4%	2.5%
Portugal	7.3%	9.0%
Slovak Republic	3.0%	3.5%
Sweden	5.2%	5.6%
Switzerland	6.1%	6.3%
Turkey	3.2%	3.9%
United Kingdom (England and Wales)	3.7%	4.1%
DECREASED PROPORTION OF WOMEN		
	4.9%	3.0%
Bulgaria	4.1%	4.0%
France	4.3%	4.1%
Germany	4.6%	3.5%
Greece	5.7%	5.5%
Hungary	5.5%	4.3%
Italy	4.3%	3.7%
Netherlands		

Source: Council of Europe annual penal statistics (SPACE).

Elaine Genders and Elaine Player noted that 'there has never been a major review of the women's prison system.'[125] Canada responded to that call, but the results were disappointing. When prison reform is carried out on the basis of the perceptions of outsiders of how prisons function, the reform is not likely to be successful, and Canada learned this by doing. With the growing interest in imprisoned women and critique of the criminal justice system for their maltreatment, proposals for reform logically followed. The Canadian experiment had been launched by a 1990 call for a drastic reform of the prison regime for women and led to the establishment of a women-friendly prison sub-system, which could

125 Genders, E. and Player, E. - Women in prison: The treatment, the control and the experience, in: Carlen, P. and Worrall, A. (eds.) - *Gender, Crime and Justice*, Open University, Milton Keynes, Philadelphia, 1987, p. 175.

not cope with violent disturbance by women prisoners.[126] One important reason for this was that it had been based on an erroneous image:

> women offenders were often multiple victims of physical and sexual abuse who needed understanding and healing, that they were not dangerous, and that any violence was likely to be self-injury or could be handled by supportive female staff.[127]

The notion that all staff dealing with imprisoned women should be female, and also that female staff should be excluded from male prisons, has two distinct origins. One concerns the conventional operating procedures, where sex-segregation figures prominently with the corollary male staff for male, and female for female prisons. Another is more recent, and relates to the image of women offenders as victims, and victims of male abuse, which has to be eliminated from the prison by staffing women's prisons with women only. How this approach works in practice is an interesting topic for research.

Women as criminal justice professionals

The dilemma about a (or 'the') women's role within criminal justice has been present for a long time and revived with the current focus on gender mainstreaming and violence against women.

Experiences from all fields where there have been experiments with increased participation and/or representation of women show that no qualitative change can be discerned until women's representation reaches a critical mass of one-third or at least 25%. This is far from what has been accomplished thus far in any criminal justice system. The distinction between 'participation' and 'representation' is borrowed from the field of human rights, where the former denotes a mere quantitative presence of women (or any other previously under-represented category) in a specific profession or occupation, while the latter refers to decision- and policy-making strata. Calls for gender parity, especially frequent within parliamentary bodies of the Council of Europe and the European Union, place the ultimate goal even higher. A comparative review of the existing personnel policies of criminal justice systems could reveal whether such a policy has been adopted, and if so, how it is pursued and what the impact has been.

The entry of women into criminal justice was initially the outcome of political decisions made outside and above the system of criminal justice. The first UN survey found that the entry of women into the criminal justice system was attributable to 'some form of government policy or legislative action.'[128] The

126 Canadian Human Rights Commission - *Annual Report 1995*, Ottawa, 1996, p. 47, and *Annual Report 1996*, Ottawa, 1997, p. 51-52.

127 Shaw, M. - Changing women's prisons - Canadian experiences, in: Kruize, P. and Ravn, L. (eds.) - *Kriminalistisk Årbog 1997*, Det Retsvidenskabelige Institut D, Københavns Universitet, 1998, p. 95.

128 United Nations - The fair treatment of women by the criminal justice system. Report of the Secretary-General, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/17 of 1 July 1995, para. 103.

first entrants were thus seen as 'quota women'. In the USA, this was part of affirmative action policies,[129] in other countries a result of political commitment by the government or legislative changes aimed at equal opportunities for women in all professions and occupations.

The institutionalization of violence against women into criminal justice created a considerable need for policewomen, women prosecutors and judges. Cees de Rover perceives as a problem the segregation of policewomen into 'feminine' aspects of law enforcement, which keeps them at lower salary levels and absent from strategic, namely management and policy-making levels.[130] The policy routinely requires that female victims of (male) violence be dealt with by female criminal justice professionals. The assumption behind this approach is that the male criminal justice profession inevitably embodies a masculine understanding of violence (as a means of perpetuating the subordinate status of women), while 'the shared gendered experience of life' argues in favour of replacing male by female criminal justice professionals.[131] A mere change from male to female professionals may not enhance gender-sensitivity, as has been illustrated in Poland. The UN Special Rapporteur on violence against women was surprised to encounter a female-dominated judiciary (half of the judges countrywide and two-thirds of the judges in major cities are women) that was neither activist nor sensitive to trafficking in women and prostitution; perpetrators of trafficking were routinely given suspended sentences regardless of the legal requirement for imprisonment.[132]

Policies and practices within Europe vary a great deal, not only along the West-East line. In northern Europe, women's access to high-level positions within criminal justice is no longer reported by the media, which signifies that change has taken place. In some countries, the legal profession (including judiciary) has been feminized and efforts are made to redress the imbalance in the opposite direction.

Cases of discrimination against women are litigated, especially within the police in England and Wales. The application of the prohibition of discrimination against women to the police in 1975 led to conflicting views relating to the role of women. Both within and outside the police arguments in favour and against the entry of policewomen into all types of policing (from the night shift to carrying firearms and training in armed combat) proliferated. The exclusion of policewomen from carrying firearms was litigated before the European Court of

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129 Flynn, E.E. - Women as criminal justice professionals, in: Hahn Rafter, N. and Stanko, E.A. (eds.) - *Judge, Lawyer, Victim, Thief: Women, Gender Roles and Criminal Justice*, Northeastern University Press, 1982, p. 231-235.

130 de Rover, C. - *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*, International Committee of the Red Cross, Geneva, 1998, p. 306.

131 Hanmer, J., Radford, J. and Stanko, E.A. (eds.) - *Women, Poliicing and Male Violence*, Routledge, London and New York, 1989, pp. 189 and 191.

132 Commission on Human Rights - Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. Report on the mission of the Special Rapporteur to Poland on the issue of trafficking and forced prostitution of women (24 May to 1 June 1996), U.N. Doc. E/CN.4/1997/47/Add. 1 of 10 December 1996, paras. 97 and 99.

Justice, and discrimination against policewomen was litigated before the European Court of Human Rights.[133] The problems have apparently not decreased, judging from the publicity given to allegations of harassment of policewomen by their colleagues as well as to cases of sex discrimination in promotions.

Researching multifaceted reality

A range of interesting issues for research emerges with the abandonment of the uni-dimensional focus on womanhood, coupled with the uni-dimensional focus on their single role. This has been tackled already with the emergence of the 'battered-wife syndrome' in Anglo-Saxon countries, which forced attention to the interplay between the role of women as victim and offender. A similar approach could be generated with research into women's victimization within the system of criminal justice, where, as noted above, not even the notorious problem of custodial rape has yet generated comprehensive studies.

Women offenders as victims

A popular question during late 1960s was whether women offenders were treated within criminal justice more leniently than men. Evidence for this was found in England and Wales in the pattern of sentencing, but this was ultimately attributed to gender rather than sex, primarily to women's child-care responsibilities. This rationale was indeed a part of the sentencing policy. The Home Office advocated that negative consequences for children of imprisoning their mothers be avoided.[134]

It is often claimed that women are victims of criminal justice policies which simply neglect the fact that some offenders or prisoners are women. The conventional wisdom of policy design informed by the majority of offenders being young men still keeps women offenders invisible. The paucity of women's prisons prevents classification and all adult women are necessarily housed together. For migration-related offences, separation of women from men has often not been institutionalized because the status of migrant takes precedence over their being women, and migrants are deemed to be sexless in penitentiary statistics, although not always in law (to the detriment of women, one should add).

The attention to women as victims originates in feminist literature. As articulated by Hilary Allen: 'The positioning of female subjects as victims rather than aggressors is to some extent a structural characteristic of all feminist discourse, as is the refusal to allow female subjects to appear as morally guilty or personally

133 European Court of Human Rights - Halford v. United Kingdom, Judgment of 25 June 1997.
134 Home Office - Social inquiry reports before sentence, Circular No. 188/1968, and *Treatment of Women and Girls in Custody*, HMSO, London, 1970.

discreditable.'[135] The further fáf factors that lead women to crime provided further arguments for treating women offenders as victims. Meda Chesney-Lind found that 58% of imprisoned girls grew up with their mother alone, with drug or alcohol abuse present in 34% of cases and abuse of the girl in 32%. The initial response of the criminal justice system was often to criminalize the girls' coping strategy, such as running away from such home, and led to their first entry into the criminal justice system.[136] Subsequent abßnal justice system remains poorly documented.

The work of the European Committee against Torture (CPT) is illustrative of the slow and haphazard 'discovery' of women amongst detainees. Because most detainees are men, the CPT's prison visits are necessarily slanted towards detention facilities and prisons for men. Its visits to establishments housing women[137] did not revealuse, which may be the consequence of the CPT not having looked for it. During its visit to Hungary, it 'heard a number of allegations from women detainees that they had been subjected to verbal sexual harassment and that police officers had treated them in a demeaning fashion.'[138] It is truly ama 'custodial rape' does not emerge anywhere in the CPT documentation.

Women victims as offenders

The statistics on inter-personal violence often reveal women in the role of victims much more often than offenders. They provided a basis for legitimizing women's counter-violence. In a number of court cases in Anglo-Saxon countries, a woman's killing of her abusive husband was treated as an act of self-preservation. In Canada, a precedent-setting Supreme Court decision in 1990 prompted the

135 Allen, H. - Rendering them harmless: The professional portrayal of women charged with serious violent crimes, in: Carlen, P. and Worrall, A. (eds.) - *Gender, Crime and Justice*, Open University, Milton Keynes, Philadelphia, 1987, p. 93.

136 Chesney-Lind, M. - *The Female Offender. Girls, Women and Crime, Women and Criminal Justice System*, Sage Publications, Thousand Oaks, California, 1997, pp. 4 and 26.

137 The CPT visited Holloway and Bullwood prisons in England and reported no allegations of ill-treatment of prisoners by the staff. Moreover, for Holloway it noted that the triple problem of overcrowding, lack of integral sanitation and inadequate regime typical of male establishments existed in Bullwood Hall but not Holloway. [Report to the United Kingdom government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 29 July to 10 August 1990, Doc. CPT/Inf (91) 15, paras. 114-140.] In France the CPT visited the women's quarters in the Maisons d'arrêt in Marseille and Nice, noting overcrowding in the latter. The CPT also noted that both male and female detainees, when transferred to civilian hospitals, were chained to their beds, including women giving birth. [Rapport au Gouvernement de la République française relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en France du 27 octobre au 8 novembre 1991 et réponse du Gouvernement de la République française, Doc. CPT/inf (93) 2, paras. 90 and 115-120.] The CPT also visited Rebibbia maison d'arrêt in Italy and did not report on any specific concerns relating to allegations of ill-treatment or conditions of detention. [Rapport au Gouvernement de l'Italie relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en Italie du 15 au 27 mars 1992, Doc. CPT/inf (95) 1, paras. 97-107.]

138 Council of Europe - Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 14 November 1994, Doc. CPT/Inf (96) 5, Strasbourg, 1 February 1996, para. 17.

process of further reform of the law.[139] In England, two well-publicised court cases led to diminished charges against women who killed abusive husbands.[140]

This path towards legitimizing violence by the victim against the perpetrator opens an interesting issue for research because it combines violence against women with violence by women, again looking into the interplay between the changing roles of the same person. Nevertheless, it also raises the key question about the avenue to be taken. One can ask whether legitimizing any violence ultimately leads in the direction which is opposite to the general aim of enhancing freedom from violence. Perhaps the question which was posed with regard to violence by men will ultimately have to be asked for women as well, namely the perpetrator is provided 'with an opportunity to search endlessly for the cause of his violence without ever actually taking full responsibility for it.'[141]

A different facet of multiple women's roles in the system of criminal justice is associated with a phenomenon that is sometimes called 'structural violence' and is manifested in trafficking in foreign women for prostitution. These women are victims of trafficking, but are offenders because they are also illegal aliens. The routine coping strategy of criminal justice systems is to ignore the latter. The commitment to suppression of trafficking in women and assistance to its victims thus remains rhetorical.

Exceptions have been made in some countries in order to facilitate the prosecution of traffickers. A temporary residence permit introduced in 1988 in the Netherlands for victims of trafficking who are willing to testify against the traffickers postpones deportation till the trial is finished, and there is no information what happens to the women afterwards. Criticism has been directed against this practice (and a similar one introduced in Belgium) because of its restrictiveness.[142] The thrust of the criticism has been directed to the obvious priority for suppression of immigration over concern for victims of trafficking, or prosecution of traffickers.

Challenge for the future: Overcoming Institutionalized neglect of women

International human rights bodies started systematically addressing the human rights of women only during the 1990s. Criminal justice bodies are likely to follow during the 2000s, and the experiences of the human rights bodies thus might be useful. An overview of violations of the human rights of women still

139 Canadian Human Rights Commission - *Annual Report 1995*, Ottawa, 1996, p. 47.

140 Originally proposed by Justice for Women Network and endorsed in the Group of Specialists for Combatting Violence against Women - Final report of activities, Doc. EG-S-VL (97) 1, Strasbourg, 25 June 1997, para. 10.50.

141 National Committee on Violence against Women - *Position Paper*, Government Publishing Services, Canberra, 1994, p. 12.

142 Caldwell, G. - Trafficking women from the former Soviet Union, *The Forced Migration Monitor*, Open Society Institute, New York, No. 19, September 1997, pp. 1 and 7.

necessitates sifting through mountains of documents produced by various global and regional human rights bodies; mainstreaming has yet to be accomplished in the area of human rights. One can review documentation relating to indigenous and minority rights without finding a single reference to the fact that half of an indigenous people or a minority are women and likely to be victims of double discrimination. A similar fate might befall criminal justice bodies, if they concentrate on 'womanhood' to the exclusion of all other factors – race, ethnicity, religion, provenance, age. The illustrations regarding trafficking in women provided above demonstrate the necessity of recognizing the multiplicity of defining features for women. The replacement of 'women' by 'gender' should – but often does not – force policy-making beyond womanhood.

The small proportion of women amongst detainees and prison populations keeps them statistically and legally invisible. This legal invisibility is also a feature of human rights law, where women are mentioned only if pregnant or mothers of dependent children. The political invisibility of women in criminal justice policy-making is notorious. The current political priority for violence against women is likely to make the situation worse rather than better. Specialized programmes and units for violence against women are likely to be staffed with women, and – both institutionally and personally – these new units and staff will remain apart from the mainstream.

The rapid growth of interest for violence against women has yet to translate into detailed knowledge about the fate of women in custody. It is paradoxical that the principal objective of human rights – to prevent abuses by the state – has not led to an analysis of the victimization of women in prison but rather of physical abuse of women at liberty. A possible explanation is that the topic of violence against women originated from women's rather than human rights bodies, and was designed with a view to the vast majority of women in the world. The usual human rights priority for people in the custody of the state has yet to be remoulded to recognize that some of them are women, and quite a few are likely to be victims of custodial rape.

The question as to what should be accomplished in the application of research results to policy-development is particularly pertinent. Two approaches are advocated so as to change the system of criminal justice. One of these approaches seeks equality (and criticised from succumbing to the implicit male-based model) while another advocates differentiation, an affirmation of women's different needs and experiences. The former was illustrated by the inclusion of women prisoners into chain-gangs in Alabama in 1996, following a lawsuit that challenged previously male-only chain-gangs as unconstitutional.[143] This example highlights the risk of a catching-up approach, where the treatment of women is likely to get worse so as to be equal to that meted out to men before it gets better for both.

143 Chesney-Lind, M. - *The Female Offender. Girls, Women and Crime, Women in the Criminal Justice System,* Sage Publications, Thousand Oaks, California, 1997, p. 164.

The question about equal or preferential treatment also entails different views about what women can contribute both to crime prevention and to criminal justice. Anne Worrall thus summed up a still prevalent image of women:

> Being a normal woman means coping, caring, nurturing, and sacrificing self-interest to the needs of others. On the other hand, it is characterized by lack of control and dependence.[144]

This was supplemented by a related issue, that of how the socialization of women prevents their large-scale and serious offending. Ngaire Naffine pointed out the resulting dilemma: 'the very qualities which have traditionally been linked with women's oppression, in particular their compassion, have the positive impact of making women good citizens. From here it is but a short step to the anti-feminist proposition that women should be encouraged to shoulder their current load of responsibilities because it keeps them out of trouble.'[145]

Conflicting views are voiced about women's contribution to crime prevention and crime generation in their traditional role of mothers. A great deal has been written about the importance of early child development for the future of the child, as well as about the role of mothers in transmitting behavioural norms to their children. Carol Smart objected that mothers were 'held to be responsible for the delinquency of their children but it is the feelings and actions of children that are studied.'[146]

The finding that children below the age of one constitute the highest risk category of being killed by a member of the family has been replicated in Australia and England.[147] Their vulnerability is self-evident, but the role of their mothers is clouded in ignorance. Too little has been done thus far to study intra-family violence comprehensively, including its inter-generational transmission. Frances Heidensohn pointed to one line of research by asking: 'Why is it that girls and women accept stricter social control and discipline than boys and men, and how far are the processes transferable?' She added a thought that highlights how little is known about the process of socialization. Asking whether 'feminization of socialization' [148] could be a feasible path to explore, she opened a Pandora's Box: one side of motherhood is perceived as caring and nurturing role but its dark side is revealed in child abuse and killing of children under the age of one. The fact that women commit a great deal of child abuse continues creating controversy because it does not fit into the pattern of caring, nurturing, responsible motherhood, nor does it necessarily conform into women-as-victims

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144 Worrall, A. - *Offending Women: Female Lawbreakers and the Criminal Justice System*, Routledge, London and New York, 1990, p. 33.

145 Naffine, N. - *Female Crime. The Construction of Women in Criminology*, Allen & Unwin, Sydney, 1987, p. 132.

146 Smart, C. - *Women, Crime and Criminology: A Feminist Critique*, Routledge & Kegan Paul, London, 1976, p. 178.

147 National Committee on Violence - *Violence: Directions for Australia*, Australian Institute for Criminology, Canberra, 1990, p. 23; Travis, A. - London sits near bottom of national murder league, *Guardian Weekly*, 30 August 1998.

148 Heidensohn, F. - Women and crime: Questions for criminology, in: Carlen, P. and Worrall, A. (eds.) - *Gender, Crime and Justice*, Open University, Milton Keynes, Philadelphia, 1987, p. 26.

image.[149] Violence against women has further shifted attention from violence *by* women and creates a huge gap that research should strive to close in the future. It is possible that a comprehensive definition of gender-based violence should include both violence against women and violence by women. Allison Morris argued that 'given the opportunity and the appropriate social context', women are as violent and/or criminal as men, and pointed to the need to differentiate amongst women so as to explain which ones are protected from criminality. [150] Further research along this line seems particularly urgent today.

Women were – and often remain – invisible in criminal justice. They constitute a minute proportion of offenders, detainees and prisoners, as well as criminal justice professionals. Women's absence from serious offending prompted a great deal of study to identify those factors that impede criminality in women. The attention for women as victims reinforced that orientation. The ultimate goal that should be achieved within the system of criminal justice – gender equality – was defined by the Council of Europe as 'an equal visibility, empowerment and participation of both sexes.'[151] Equal visibility and participation are easy to translate into changes that should be set in motion, but what empowerment of women should mean in the area of criminal justice is an open question with which this text began.

149 Featherstone, B. - Victims or villains? Women who physically abuse their children, in: Fawcett, B. et al. (eds.) - *Violence and Gender Relations. Theories and Interventions*, Sage Publications, London, 1996, p. 197 et seq.

150 Morris, A. - *Women, Crime and Criminal Justice*, Basil Blackwell, Oxford, 1987, pp. 38 and 115.

151 Council of Europe -Gender mainstreaming. Conceptual framework, methodology and presentation of good practices, Final Report of Activities of the Group of Specialists on Mainstreaming, Doc. EG-S-MC (98) 2, Strasbourg, 6 April 1998, p. 5.

Women in the Criminal Justice System

Commentary by Mr Juan Medina

The paper by Dr Tomasevski starts with an interesting discussion of the international policy-framework of the 1990s on gender issues and then focuses on the challenges that current international priorities represent for policy-making and research in the area of criminal justice. I think that the main topics of the paper, the traditional neglect of women by the criminal justice system and the difficulty of translating feminist claims into the criminal justice discourse, are today accepted by most scholars as realities that we have to deal with and, thus, I will not discuss them thoroughly. I can also easily agree with many of the ideas presented by Dr Tomasevski. In particular, I want to emphasize my agreement with the following:

1. There is a risk in linking gender/human rights and violence against women issues if we allow the latter to become the dominant topic. Certainly, although ”violence against women became a central topic on the UN’s rights agenda in early 1990s... it does not encompass all pertinent human rights problems of women”. The description that Dr Tomasevski provides of this problem and how it originated deserves praise and careful attention.
2. The origins of violence against women issues in US and UK as somehow related to the concept of the minimal-state and the very scant attention given to social rights and the problems with exporting their models of response.
3. The recognition that the criminal justice system cannot deal alone with all the problems that women victims of violence face.
4. The problems associated with the development of specialized units within the criminal justice system that usually work with only female staff.
5. The need of considering different women realities (such as, for example, the ones exhibited by immigrant women).
6. The interest of the concept of gender mainstreaming and its application to criminal justice thinking and practice.

There are, fortunately, other issues where I think I have a different view or , perhaps more appropriately, I emphasize a different interpretation. I say fortunately because that facilitates a debate. In particular, I will refer to the assumption that the criminal justice system does not have much to offer to women victims of violence and to the assumption that the elimination of all forms of discrimination is a prerequisite for the eradication of violence against women. But before I do so, I would also like to suggest the possibilities of semantic problems surrounding these issues.

Although when we talk about violence against women we are usually thinking of interpersonal aggressive behavior or, in a broader sense, about acts of women abuse, it is possible that some of the problems that are making communication in this area difficult derive from the use of different interpretations of violence

from some feminist segments. Certainly, we criminologists, as well as criminal justice practitioners, tend to think of violence as a form of interpersonal behavior. However, that is not entirely true when we think about feminist scholarship. From the latter perspective, violence is also conceived in a broader sense, as institutional, structural or symbolic violence. As Lima Malvido, from Mexico, has put it: "beating up a woman is an example of behavioral violence, but the patterns of socioeconomic and political organization that allowed women to be victimized by their partners are examples of structural violence". From this perspective, as important as is visible violence, it is the hidden violence in the form of confinement of women to the domestic dimension as a cultural expectation, the subordination of a mother's will to everybody else in the family, the lack of recognition of women's desires, and so on. Indeed, these broader concepts of violence refer to a large extent to most forms of patriarchal cultural practices and forms of discrimination against women. Perhaps this is also a factor that should be considered when we try to think about the predominance of violence against women as a framework for international action.

The author recognizes in several parts of the paper the limitations of the criminal justice system in dealing with the prevention of violence against women:

- "Advocacy of a typical criminal justice response (arrest, trial, and imprisonment of the male abuser) entails a risk of doing more harm than good... Arguments against a criminal justice response to wife-beating or verbal abuse are many"
- "Projects aiming at assisting battered wives easily do more harm than good by disregarding the crucial importance of the financial dependence of wives upon their husbands. The recognition or absence of the wife's legal rights concerning housing, family property, or child custody and maintenance, should -but often does not- inform such projects. Projects designed to assist battered wives often include penalization of abusive husbands, routinely seeking their imprisonment, which then leaves the battered wife homeless and penniless"
- "Although criminal justice systems have obtained crime prevention as part of their mandate, they are notoriously constrained in that task. Acting in the name of the state, policemen and policewomen cannot simply broaden their policing powers to surveillance of intra-marital or intra-family relations and justify this by their commitment to preventing violence against women. Even if they obtained legitimacy for their intrusiveness (which would necessitate dispensing with the protection of individual privacy), it is questionable how much they would be able to achieve because the chain of causation requires simultaneous action by a large number of actors, most of who are outside the system of criminal justice"
- "The key question is: how far should the criminal justice system be reoriented from public to private -women's- security? Views as to what an appropriate response should be vary. One extreme demands resort to the full range of coercive powers against abusive men... another proposes an increase of supportive services rather than coercive powers of the state. If the decreased vulnerability of women to violence means their safety and independence, criminal justice approaches can -at best- cope with the former only. The latter

entails the full range of civil, cultural, economic, social, and political rights to enable women to be independent, to which criminal justice approaches cannot contribute almost at all"

- "The variety and complexity of factors that contribute to violence lie beyond criminal justice system"

These quotes create the impression that the author does not believe that the criminal justice system can do much for women who are victims of violence. It seems also as if the author contrasts two different models of response to the problems of violence against women: a social service/support response and a criminal justice/punishment response. In the best case, the author seems to believe that the criminal justice system alone cannot do much to solve the problems of women victims of violence and, in the worst, can be highly counterproductive. Indeed, there are numerous arguments that can be made to support this reasoning, particularly if we have a specific vision of what the criminal justice system is and does based on more traditional or mainstream models in contemporary Europe. There are no doubts that the criminal justice system alone cannot solve all the problems that women victims of violence face and there are many issues that have to be resolved through more responsive civil legislation and the work of social service agencies. Nevertheless, I do not think that the criminal justice system contribution to the prevention of violence against women is a minor or a secondary one. This, however, derives from a different interpretation of the functions and goals of the criminal justice system. In particular, I do not view the criminal justice system as a set of organizations whose only functions are case-processing and the delivery of punishment. I agree with Dr Tomasevski when she argues that the criminal justice system as we know it and the way it still operates in most European countries does not work to prevent domestic violence. Nevertheless, I think that we can develop a vision of a more responsive criminal justice system to the needs of women who are victims of violence. I think that it is already time to move our emphasis from the recognition of the limitations of the criminal justice system to start thinking and debating how we can use the criminal justice system to improve the situation of women victims of violence.

Although I recognize the historical neglect of criminal justice professionals and structures to violence against women, as well as the limitations of the criminal justice system in addressing all human/gender/social rights issues in their complex multidimensionality that the victims face, I still think that the criminal justice system can play an essential role in the prevention of violence against women. Indeed, it can play a role that no other social agency can play in the prevention of violence against women. The criminal justice system is in an ideal position to develop procedures and programs with the goal of providing safety to women. Dr Tomasevski seems to downplay the importance of this by putting the emphasis on the independence of women, understood as economic or social independence, but we should not forget that no independence is possible when we cannot guarantee first the safety of women victims of violence. Indeed, safety and independence are interrelated concepts and although we can wonder about the use of personal safety without independence, what remains clear is that

safety is a prerequisite of independence. In addition, because the police is the only public service that remains open 24 hours a day, seven days per week, with offices even in the most remote areas of the different European countries, and people usually call them in instances of domestic disputes, the police remains the branch of the public administration that first detects many instances of violence against women and, therefore, can also play an important role as liaison with other social and public health services.

The matter here is, to some extent, answering the question of to whom the problem of violence against women belongs. By emphasizing the responsibilities of other agencies and political actors outside the criminal justice system, we are supporting the view of many criminal justice professionals who do not want to take responsibility for it and perpetuate a particular view about the capabilities and function of the criminal justice system, not just regarding violence against women but crime in general. But evidence exists that shows that the criminal justice system can effectively prevent crime when it adopts the right approach.

We are used to the way politicians use the criminal law to ”solve” ”problems” and ”crises” such as the drug epidemic, terrorism, drunk driving, and so on, and how many social scientists and analysts comment on that by saying that the only real way of dealing with these problems is by eradicating their root causes and that the criminal justice system cannot do anything about it. (The difference with the violence against women situation is that some of the moral entrepreneurs that advocate for the criminalization of this problem are political groups that we are more used to see among the people who usually have criticized criminalization). The problem with both approaches is that they seem to equate criminal justice and criminal law and are, thus, not based on a real understanding of how the criminal justice system works, or might work, and can be used to prevent crime.

Even within that limited understanding of what the criminal justice system does, there are problems with the arguments emphasized against its use. First, critics of criminalization focus on the, perhaps, more complex scenario: male battering in intimate relationships; and make most of their arguments around this particular situation. However, this is far from being the only example of violence against women. Rape, stalking, or illegal traffic of women are some other examples. This is clear, for example, when we hear the critics of criminalization arguing that throwing the book at male batterers ends up making the situation worse for battered wives because the wives depend on the economic resources of the batterers. There are, however, additional problems with this argument. To start with, is it true? In the discourse to achieve social support for the battered women movement we have relied on particular public images of women victims that pictures them as white, married, heterosexual, non-violent, non-alcoholic, non-drug addict, nonimmigrant, and economically dependent on their husbands. But this image does not always reflect the real picture of battered women. Usually they are a much more heterogeneous group than this image suggests. In a recent study conducted by Victim Services in New York City public housing projects, we discovered that the large majority of these women were not married, were not even cohabiting with their partners, and were not economically dependent on them. That is not to say that they were living in the abundance, but this somehow questions the argument about incarcerating the batterers as something

that is going to have a direct impact in the economic situation of women victims of violence. Actually, what seems to have a negative impact on the labor opportunities of women and, therefore, on their socioeconomic situation is the pattern of abuse and control that they suffer. In addition, we also know that many men who batter their wives are unemployed and cannot provide decent resources or the resources, anyway, to their families. Indeed, there are scholars who argue that this may be an important factor in understanding the etiology of domestic violence. If this is the case, again, the argument weakens.

But what do we really want to emphasize when we say that criminalization worsens the economic situation of battered wives? Does this mean that we should not arrest and incarcerate men who batter their wives? This question raises important ethical issues and also leads us to think about gender mainstreaming in ways that are not explicitly envisioned in this paper. To argue that we should not use the criminal justice system resources in this situation raises not only questions about just desert, but also about equality issues. Why don't we hear this argument in other cases? Indeed, that would be the most accurate interpretation of gender mainstreaming. It is not only in these cases that women might suffer economically from the incarceration of their husbands. This might also happens when their husbands are incarcerated for other crimes. Nevertheless, we hear over and over the same argument applied to domestic violence cases, and not in other cases, leading to the formation of prejudices among criminal justice professionals that help very little in the effective prevention of domestic violence.

Ultimately, and still considering this limited interpretation of what the criminal justice system is all about, we should not forget that there is evidence showing that some of the remedies offered by the criminal justice system seem to have, at least, a minimal deterrent effect. Nevertheless, one of the more common arguments of critics of criminal justice interventions is that they are not very effective. An argument that, by the same token, could be easily extended to other criminal situations as well. But the evidence is far from conclusive. The most recent analyses of the Spouse Abuse Replication Program with merged data from all the sites showed that the arrest of the offender has a weak, but significant, deterrent effect. Given the weak nature of the intervention, this cannot be simply interpreted as a failure of these policies, but, as evidence that the police, even by doing something as simple as arresting the offenders when they respond to a domestic violence situation, may be preventing violence against women. There has also been some initiatives that have been successful in reducing the level of fear experienced by battered of women, as well as other experiences that demonstrate that the police can make a difference on preventing rape and combatting the organized groups that exploit women's sexuality. In addition, the literature on the treatment of male batterers as a criminal sanction also include some examples that achieved success.

In any case, do we mean by implication of the criminal justice system that we ultimately have to throw the book at male batterers and incarcerate them? Is punishment the only answer that the criminal justice system can provide? I hope not. Indeed, the use of coercion as a last resort is what characterizes the functioning of criminal justice, but that does not mean that the only activity of the criminal justice system is to deliver punishment. I think that sometimes we,

in a very simplistic fashion, equate the criminal justice system and the enforcement of criminal law. The truth is that the reality of the criminal justice system is far more complex than that. Indeed, the fact that in Europe most criminological debates are monopolized by lawyers does not help to unveil these realities and this is a challenge that, as part of the European criminological community, we have to face. The truth is that even the concept of the criminal justice system as a ”system” is in crisis today, and more and more people starts to understand that criminal justice organizations are something more than case processing agencies that operate in a fashion that is isolated from other agencies or the community and with the only function of being ”the mouth of the law” or enforcing the criminal law. Concepts such as problem-oriented policing, community prosecution, community courts or the use of civil and administrative remedies by criminal justice actors are not simply new solutions to old problems, but constitute the following logical step in the recognition of the complexities of the work carried out by criminal justice organizations. If criminal justice organizations never did simply ”just that”, case processing, how can we make visible, more reasonable, more democratic and effective their actual practices? That may possibly be the question that we should be trying to answer instead of simply displacing the responsibility of the criminal justice system in preventing crime to other social agencies. Indeed, the work of other social agencies is crucial to maintaining change and the process of recovery from victimization. But as criminal justice scholars our main role probably should be to discuss how that work can be facilitated by the criminal justice system and to talk about other ways in which the criminal justice system can help to prevent this problem.

Dr Tomasevski then touches on a more philosophical question, that the police cannot broaden their mandate to intervene in intrafamily situations, since this affects the intimacy of the family, and violence against women cannot be used as an excuse to break that intimacy. It is not evident from the paper if this statement reflects a personal opinion or what the author believes most professionals in European criminal justice systems think. I do believe that in these cases the criminal justice system is not only justified but forced to act in order to preserve more important objects of legal protection, such as personal freedom and dignity, personal health and life. The police, in these cases, is not trying to ”broaden their surveillance” to deal with intrafamily situations, they are not trying to teach the partners how to go about their relationships, they are just trying to do something more concrete: they are trying to stop the violence and to create the conditions that would allow the victims of violence to decide what to do with their privacy and with their intimate relationships. This is a very legitimate objective. Historically, the privacy argument has been employed to justify the lack of response from the criminal justice system to this problem and, indeed, many criminal justice professionals may still share this argument. But from a strictly legal viewpoint this is an argument that is no longer sustainable, and the so-called ”privacy concerns” are no more appealing than the ones that can show up in other criminal cases from drug-dealing to medical malpractice. The questions that we should be trying to answer, once we recognize this, is ”and now what?” What can we do to change the perception and discourses of those criminal justice professionals who still hold this set of beliefs? And how can we

fulfill our responsibilities to preserve the health and safety of women without detracting from their agency?

As criminologists our responsibility and function is to help the criminal justice professionals and policy makers come up with concrete proposals and ideas on improving their response to violence against women and the way they use their discretion and problem-solving skills to deal with this phenomenon. It is true that the criminal justice system is not perfect and is going to need to coordinate its efforts with other agencies. We already know that. The question now is ”what's next?” How can we carry out these efforts at coordination? What particular programs and solutions are more promising? What is actually being done in different parts of the continent? What are the particular problems that the changing and progressively more interrelated and complex Europe is adding to the complexities of the problem of violence against women? These are the kind of questions that I think we should be focusing on instead of continuing to emphasize the limitations of the traditional or current response of the European criminal justice systems to this problem. I will come back later to some of these issues, but now I want to discuss something else.

Dr Tomasevski very nicely describes some of the problems of linking violence against women and more general gender issues in the political debate because of the possible problems of co-optation. However, she, as many others, then pushes the argument that what we really need to prevent violence is to achieve gender equality. Here we end up with the same problem of co-optation but from a different angle. I know I'm entering here into the dangerous domain of politically incorrect discourse, but sometimes you have to be the devil's advocate and show that dominant discourses or politically correct discourses are not always completely accurate.

I think that is wrong to link women's liberation to the elimination of violence against women in the way that Dr Tomasevski and many others argue. Indeed, today it has become a very powerful and commonplace rhetorical figure to argue that the ”elimination of all forms of discrimination is a prerequisite for combatting violence against women”. This is based on the notion that ”comprehensive equal rights guarantees... would give women realistic possibilities of rupturing an abusive relationship” and in the idea that unequal rights are THE cause of violence against women. But this is true and it's not true. It is true and it is not true in the same way that saying that poverty is the ultimate cause of crime is true and is not true.

Indeed, this theory would lead us to expect that women, because they are in a secondary and more vulnerable position in society and the family, are more likely to be victimized than men are. However, those who maintain this position never explain why then most victims of crime are men who, at least in theory, occupy a position of privilege in the current societal arrangements. I have no doubts that improving the economic and social situation of women would place them in a better position to cope with the phenomenon of victimization, violent or not. But that is one thing, and it is a very different one to expect that the prevalence of victimization among women is going to be reduced by improving the economic and social situation of women.

One of the most popular theories of personal victimization is the lifestyle theory. This theory precisely explain the lower level of victimization of women and the higher level of victimization of men because of the unequal and unfair societal arrangements and norms about gender roles. According to this theory, women are less likely to be victimized because, unfortunately, culture and society still defines the home as the right place for a woman to be. From this point of view, the less exposure to criminal opportunities, the lower the chances of being victimized. If women improve their socioeconomic and cultural situation and begin enjoying the degree of freedom that they obviously deserve, they may as well be more exposed to the same kind of dangerous situations than men frequently are. No doubt, the lifestyle theories of criminal victimization don't pay enough attention to women's victimization at home, but even when we do so, the fact remains that this theory might provide a plausible and consistent explanation of victimization that is inconsistent with the liberation hypothesis.

Now, does this mean that women's liberation is wrong or a step that we should not take? Of course that is not my point. My point is that there are political causes and human rights issues that are worthwhile by themselves. Women's liberation is one of them. This issue does not need any additional evidence to merit social and political support. By overemphasizing violence against women as one of the reasons why we need to eradicate all forms of discrimination against women we jeopardize the solutions to both problems. Why? Dr Tomasevsky explains part of the problem. The other part is also easy to understand. Women's victimization is a complex phenomenon that cannot be explained simply from a feminist perspective. There are other ecological and psychological factors that can be conceptualized as risk factors for violence against women. If we only consider gender inequality, we may be forgetting the relevance of those other factors. In fact, we do not know yet what is the comparative relevance of gender inequality versus those other factors. The existing literature seems to suggest that, at the individual level, patriarchal attitudes toward women may be more of a distant influence that only becomes relevant as a justification for violence in the interaction with other more direct and relevant factors.

Indeed, we cannot understand the social response to violence against women and the way the criminal justice system deals with gender issues without understanding our cultural heritage of discrimination against women. Of course, we may have to apply the principle of preferential treatment, as suggested, to address these issues within the criminal justice system. In addition, we need to understand this heritage in order to understand the problem of violence against women. In fact, we can still argue that all things being equal, even with more exposure to criminal opportunities, traditional norms about gender roles and particular conceptions of masculinities and femininities can be interrelated with women's victimization at home and outside the home. Moreover, in a way it is true that the elimination of all forms of discriminations is a prerequisite. It is unlikely that the system will even care about safety issues and deal with them in an effective way in the context of an absolute disregard for other gender issues. But we should avoid simplistic explanations of complex problems. To say that violence against women is only or primarily caused by discrimination against women is a simplification of a complex problem. The challenge is to be able to

develop a theoretical framework that incorporates modern criminological thinking and, at the same time, is gender sensitive.

Finally, I do not share the same pessimistic view about the negative repercussion of the emphasis on violence against women on the practices and organization of the criminal justice system more generally. Indeed, the creation of specialized units staffed with female personnel only and the discovery of feminine aspects of police work is an example of the risks and problems that we face in this area. (And, by the way, this does not speak against the creation of specialized units in this area. I do think that might be a good idea if they are properly designed.) But the debate about violence against women may have also a positive impact in the ways of thinking about women and practices of the CJS or, at least, it can be used in that direction. And, although there may be resistance, and although the presentation of women as "victims" and vulnerable can reinforce some stereotypes, I do think that this issue can be employed to challenge and work against those stereotypes and that, indeed, some criminal justice professionals might be developing a particular sensitivity about gender issues that they did not have before.

Besides these points, there is a set of topics that I think we also have to discuss and cover when we talk about violence against women and about women and the criminal justice system more generally. First, I do think that it is important to consider the intersections between general violence and violence against women. Although from the traditional feminist perspective there was an emphasis on separation, the evidence suggest that there is not only a high degree of similarity regarding risk factors, but also a fair degree of overlapping. Indeed, more traditional feminist thinking has been challenged by current conceptions that use a gender-sensitive framework to explain violence generally by using the construct of masculinities. Second, I think that current perspectives on female and male offending should be considered. The old fashioned reference to patriarchy as a concept that could explain everything has been substituted by discourses that recognize a higher degree of heterogeneity and agency when we think about gender. Theories of masculinities and femininities are currently being developed to explain both male and female offending, and also the different ways in which male and female victims react to their victimization. In addition, there is a growing concern about the possible similarities among the factors that explain female and male offending. Although there are criminologists who have emphasized different etiologies for female and male offending, now we also see a new generation of scholars who are challenging this view, or at least the most extreme manifestations of this view. Third, although I believe that Dr Tomasevski has done an excellent job in framing the problem of women and the criminal justice system within an international policy context, nevertheless I think that it is also important to frame this problem within the context of new developments and transitions in the ways we conceptualize and think about the criminal justice system. In particular, I think that it is important to understand how the shift toward a model of community justice and proactive responses to crime can affect the way we think about violence against women. Fourth, Dr Tomasevski also hints at some important problems when she talks about the Council of Europe and refers to issues of immigrant women. I think we need a more systematic

understanding of how the issues that the New Europe will face in the near future as a consequence of the demographic, economic, and political changes that are taking place in the continent will affect the situation of women in their relations with the criminal justice system. Finally, and coming back to something that I hinted before, I think that we need to discuss the responsibility of the European criminological community in this discourse. Before doing this, perhaps we need to question whether we can really talk about an European criminological community, and if the answer to this is negative, what can be done to create one. There are many more innovations than we can imagine taking place in different countries of Europe that are related to the issue of women and the criminal justice system. However, we know very little about them, and the governments and agencies that are experimenting with these new approaches have not much interest in evaluating these proposals. Although Europe is becoming more of a community, knowledge about experiences in other countries is rather limited and this, to a very large extent, is due to the non-existence of a strong criminological community that exchanges and discusses these experiences. Indeed, initiatives as these European Colloquiums are the right step in the right direction, but we should start considering less elitist and more open forums of discussion. When the Caribbean division was created last year within the American Society of Criminology I could not avoid thinking about the fact that we still do not have any kind of association or organization that brings together European criminologists to discuss this and similar topics. There are many organizational possibilities such as, for example, the creation and stimulation of an effective European division within the International Society of Criminology with more regular meetings. In fact, I do think that institutions such as HEUNI and the other criminal justice related United Nations institutes in this area should push in that direction and promote that kind of change that, ultimately, would produce a real European Colloquium about crime and crime prevention issues.

Women in the Criminal Justice System

Commentary by
Prof. Frances Heidensohn

Summary

The aim of this paper, as the author herself points out, is 'to contribute to discussions about women and criminal justice' in advance of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders'. To this end she provides coverage of policy making in the three areas of women, human rights and criminal justice; she also indicates issues for discussion, of concern and for further research. I have commented on each section in turn, seeking to develop the points raised in order to stimulate debate and further research and preparation for the Tenth United Nations Congress. On two subsections, those on women as offenders and women as criminal justice professionals, I have written at greater length because I think the work already achieved on these topics contributes considerably to our understanding of them and needs to be considered.

In conclusion, I draw four key themes from Dr Tomaševski's work which should provide a framework for a lively and productive debate. These are:

I Right Approach
What is the right approach to women and criminal justice? Should the questions be about equal or preferential treatment? Are there other approaches?

II International Perspective
What is the value of taking an international perspective or framework in this area? Does this have particular advantages? Is it possible to produce universal prescriptions for action in this field? How do we know what has been achieved?

III Agenda Setting
What is the right agenda for applying to criminal justice systems: What issues should feature e.g. women as victims? as offenders? as both? as criminal justice professionals? Where should the focus be: On legal or non legal systems? on private or public spheres?

IV Questions for the Future
What are these and how should they be addressed?

This sets out some of the key issues to be covered later in the report and introduces the entirely necessary and appropriate tone of debate of some uncertainty. At the start the author raises the question of the unlikely influence of 'the contemporary international political priorities on policy-making for criminal justice', a theme which is central to the later discussion. Another statement made here is that there has so far been too little research generated thus far to enable such discussions

to be adequately informed. This is surely too persimistic. Aside from the point of how much would be 'enough' research, there are certainly some relevant commentaries, some historical and comparative studies which can give substance to the debate. Later in the summary, Dr Tomaševski mentions ample supplies of feminist research and writing outside official criminal justice structures, but regrets that 'most of it is of Anglo Saxon origin and thus not 'exportable' to other legal and political systems'.

There are several important assumptions being made here, and they recur throughout this paper: that research findings can either not be replicated and/or applied outside the system in which they are made, that feminist perspectives are uniquely Anglo Saxon [a term nowhere defined in the paper or curiously, applied to Ireland and Cyprus at one point]. Should these assumptions be valid, then the core aim of the paper is lost from the outset: if we really cannot generalise from research in one nation or system, we shall be incapable of making progress since everyone is located in one system or culture.

Nevertheless, I would agree with the author that caution is needed about aspects of transferring some conclusions and using them as the basis of policy elsewhere. This does apply not just to projects conducted in the UK or the USA, although, I shall argue later, there are grounds for believing that successful shifts of concepts have taken place, but also to the most basic concept of all, of the category 'women'. Considerable discussion has taken place in the past decade deconstructing the term, it has been argued that black women, lesbian women, working class women, women from countries in the south do not have enough in common with the white, middle-class women who led the first stages of modern, second-wave feminism (Ramazanoglu, 1989; Benhabib, 1992). Indeed, this has led to an extended debate on the notion of 'standpoints' in research and how far a researcher who does not share a subject's standpoint may validly represent them through research (Stanley and Wise, 1990). Obviously, those of us who have the privilege of addressing our thoughts to policy makers or others who shape and influence politics, must be careful not to speak too confidently; we can only make modest claims based on knowledge from certain sources. We can make these available for testing and experimenting.

Introduction

This prefaces one of the longest sections of the paper, that on the international policy-framework, and outlines a crucial shift which the author perceives. Until the 1990s she argues, it would not have been possible to focus on women in an international context as she does in this paper. Prior to this 'the advancement of women was defined as a primarily development issue'; now a new human rights agenda, plus the recognition of the position of victims in the criminal justice system have all produced a new situation.

Certainly this is true in the specific way described here by Dr Tomaševski. However, it is important to reflect on some notable historic parallels. The late 1990s are certainly not the first decade during which international campaigns around the rights and protection of women flourished. The period from the 1890s to the First World War and again between the wars saw an extraordinary range

of activities often, but not always, led by first-wave feminists and connected with women's suffrage and emancipation. Criminal justice, law enforcement and trafficking in women were issues which were of particular concern.

The International Bureau for the Suppression of the White Slave Trade held a conference in London in July 1913 and passed various resolutions, including one on the need for the appointment of policewomen in order to control this evil trade. (H.O. file PRO London). In 1914, they were actively lobbying the Home Office on this issue. By 1920s women activists and their supporters had gained influence in the League of Nations, so that an Advisory Committee on Traffic in Women and Children was set up at an early stage. It succeeded in getting the Secretariat of the League to collect information from member states on the employment of women in the police, and a report was published in 1927. (*The Policewoman's Review*, Vol.1, No.6, 1927). That this international approach was not confined to the Anglophone world is demonstrated by a report on the same topic commissioned by a committee of Dutch women, which was designed to show the parallels in and value of such preventive work by women of women and children in German-speaking cities in Europe (Beaujon, 1911).

Today we would find some difficulty in accepting the confident moral prescriptions of these pioneers of female-centred law-enforcement. While they wished to *protect* women and young girls from sexual abuse and exploitation, they could become over-interventionist and were often drawn into protecting society and men instead. Indeed, there were real conflicts within the groups over such issues and these can provide salutary lessons for welfare projects even today (Radford, 1989).

The international campaigns to improve the moral protection of women across the world had some impact, although the depression of the 1930s, and the rise of fascism in Europe caused huge setbacks and of course many of the links and campaigns were destroyed by World War II. Their example is important now because this is arguably not the first decade in which the situation is propitious for action within a new universal framework. We should learn from the past what might be effective. The second reason for referring to this history is as a prelude to later comments on the position of women in criminal justice professions. Women entered law enforcement very early in the twentieth century, and by the 1920s they were widely so engaged across the globe. Most importantly, this aim was achieved by *outside* pressures, not from governments but coalitions of feminists, moral entrepreneurs and politicians.

International policy framework

The author provides some discussion here about the terms sex and gender and notes the 'terminological maze surrounding gender'. She gives considerable detail about the often confused and confusing approach by various UN agencies. It would be helpful to have this set out schematically, and also to have a glossary of the innumerable acronymic agencies. For the Tenth United Nations Congress, this will obviously be *the* key framework and it is valuable to have it. However, other international bodies are not included and thus an important opportunity is missed to set the subsequent discussion in a wider context.

The section on principles of criminal justice policy refers to the Council of Europe and, in passing, to the role of the European Court of Justice and its role in effecting changes in the laws of member states on part time workers. What needs to be explored is the potential for development under the 'third pillar' of the Maastricht Treaty and the growth of transnational policing in Europe (Heidensohn, 1997; Sheptycki, 1995). References throughout this part of the paper suggest that differential ages of marriage for men and women exist, and that there are other differences in access to citizenship. Most of these are unspecific and unsourced, although most citations elsewhere in this part of the paper are European. It would be helpful to have data here in tabular form, perhaps as an appendix, on political representation, age at marriage (and of consent) citizen rights etc. Since the author herself has introduced the distinction between 'Anglo Saxon' and other judicial systems, it might be fruitful to use comparative models in order to analyse respective systems (see e.g. Bayley, 1985).

Application to criminal justice

In this section there is an extended consideration of human rights, victims rights and violence against women. Here the author brings together something of a comparative framework, some key concepts and some examples of practice. She suggests some theoretical assumptions about how issues relevant to women's welfare become priorities and notes that, counter-intuitively, the 'Anglo Saxon' countries where tackling violence against women has become a priority did not have a high level of female political participation. It is probably more appropriate to use the concept of the 'femocrat' in this case and to note how feminists moved into bureaucratic positions in governments in Australia, Canada and the USA and changed aspects of the gender agenda (Rock, 1993, Outshoorn, 1995; Yeatman, 1990). Many people would find it difficult to believe that the period 1979-1997 was one in which the interests of women were advanced in the UK. Nevertheless, at least one analysis also emphasises the key roles played by various women's organisations in changing police policies and practice on rape, domestic violence and child abuse in Britain in the 1980s. They also highlight the crucial part played by the media in achieving this (Jones et al, 1994). In considering how violence against women may become a priority matter in other nations, these examples are worth reviewing.

A pair of rather unclear tables on legal definitions and responses are a feature of this part of the paper. As the author points out, data, especially statistical material, is lacking in this area. There are some useful sources not cited here; for instance the three International Crime Victimisation Surveys have compared self-reported exposure of women to risk of sexual assault. (Mayhew and Van Dijk, 1997). There is, in addition, a range of evaluation studies of new ways of handling domestic violence cases. While these are predominantly 'Anglo Saxon' again, they can obviously be replicated and also have already raised important issues which need to be taken into account if such policies are followed elsewhere. Thus Sherman and Beck's (1983) evaluation of the 'Minneapolis experi-

ment' in the USA led them to favour a presumption of arrest of offenders in domestic violence cases and this approach was adopted in several police departments. However, later research suggests that this may actually *increase* the violence experienced by women (Sherman et al, 1992).

Systematic presentation of comparative material of this kind together with legal frameworks would help fully inform debates of this type. Listing legal definitions or responses without providing information on how successfully women have *used* the system and its remedies is unproductive. We need to know what works for women and where examples of good practice may be found and emulated.

Women as offenders

This is a fundamental issue for the themes of this paper and I should like to extend the range of material which informs these themes. It is an area of criminological research which has seen major developments in modern times. Thirty years ago, it was possible to argue that female criminals were neglected or severely stereotyped in the literature (Heidensohn, 1968). Since then there has been an explosion of studies, many of them feminist inspired. One review found two hundred and fifty scholarly articles published in English on women and crime between 1986 and 1993 *excluding* those on female victims. (Heidensohn, 1996, XIV). It is thus possible to address some key questions and also to contribute to policy debates.

While there has been, as Dr Tomaševski notes, a real growth in this field, much of this work is by American, British and Australian authors and drawn from material on those countries, there have been several international surveys which cover the non-English speaking world. Freda Adler produced two such accounts for the UN in 1975, one for the Fifth United Nations Congress and published a book on the topic in 1981. I have reviewed the topic across Europe (Heidensohn, 1991). More local and specific studies have become so numerous that they have been summarised and synthesised (Daly and Chesney-Lind, 1988; Heidensohn, 1996; Morris, 1987; Naffine, 1994). An international Encylopedia on *Women and Crime* is due to be published in 2000 (Rafter, ed).

Appraising this extensive activity, it is possible to select some key central questions which link the material and for which some answers may be found.[152]. The foremost issues are the

- gender share of crime,
- gender and justice,
- explanations of female crime.

152 Rather than cite sources for every one of the following points, I refer the reader to the summaries already mentioned and to the additional references quoted below.

Gender share of crime

That the female share of recorded crime is very low is a widely recognised phenomenon. 'Women are only 10% of the trouble' is one colloquial way of putting this. Much effort has been put into trying to reduce the gender gap in official crime figures. Hidden icebergs of female crime have been so right in concealed domestic homicide, in theft by servants. Self-report studies do reveal unreported female crime, but they also indicate that there is much hidden male crime too. There is some historic evidence that the gender ratio was different in the past, with a higher proportion of female to male offenders. On the whole the lower female performance remains a reasonably robust finding.

Contrary to some assertions, women do contribute, albeit modestly, to most forms of criminal activity. They are less likely than men to be convicted of violent offences, to be recidivists or to be involved in organised crime. Some criminologists have argued that it is due to the *chivalry* of the police and the courts that women are less likely to be criminalised in most criminal justice systems. This view has led to lengthy debates and numerous studies (see below).

Explanations

Criminologists exploring female offending have to address two key areas of explanation: why are female crime rates so low when compared with males? and why do women offend in the ways that they do? It is increasingly recognised that the first question should be answered by considering male *excess,* rather than female underachievement and there have been several interesting attempts to explore masculinities, including some with an international dimension (Newburn and Stanko (eds), 1994; Kersten, 1996). For the second, those interpretations which focus on factors which are additional to gender, such as poverty, ethnicity and social exclusion appear to have the most salience. To develop one example cited in the paper, there is a growing phenomenon of women from third-world countries who are used as drug couriers by dealers. These women are usually poor and in debt, have children and are extremely powerless compared with those who exploit them. It can also be instructive to explore what factors in social structures and ideologies support female conformity and whether these might be shifting. Data from several countries suggest that the female share of crime has been rising faster than the male and that women offenders, especially young ones, are becoming more violent and predatory. There may indeed be a long-term trend in this direction, although there also appears to be a pattern of moral panics over the topic, finding its expression on a previous occasion in the 1970s in the slogan that 'liberation causes crime'.

Gender and justice

As the author says, earlier work on the chivalry issue, often called gender bias or equity studies in the literature, was contradictory. Very extensive recent reviews (see Heidensohn, 1996, pp.207-8) do not find sound evidence of clear-

cut gender bias in sentencing. Amongst the reasons for this are greater awareness of the issues involved. Other research which has focussed on women offenders themselves has highlighted the ways in which they may feel themselves the victims of 'double deviance' and of stigma in the criminal justice system. 'Double deviance' and its effects are reported by women who suffer from spouse or community sanctions or punishments in addition to their official ones. Stigma and shame are also experienced by women, sometimes very dramatically as in parts of the Indian subcontinent where they extend not only to a female offender herself but to her sisters and family.

Other research has charted and analysed the experiences of women in prison. These include some important international comparative work (Bertrand et al, 1998) as well as single institution explorations and consideration of the alternatives (Carlen, 1990) and the way women cope with prison (Eaton, 1993). Other major projects are under way. Much debate has focussed around the 'Cinderella situation' since women are only a tiny minority of those in custody at any point, they suffer additionally because facilities are fewer, they are further from women's families, the scope for innovative programmes is less and penal systems are generally run for male offenders, not females. There are specific issues which merit consideration and where, since there is no international consistency of approach, useful comparisons can be made. The Home Office in Britain, for instance, has recently reviewed the current practices in other countries over keeping babies and small children with their mothers in prison and found considerable variation (Caddle and Crisp, 1997).

There are clear policy implications from all of this. Many of the concerns which can be raised about female offenders and their treatment in the criminal justice system can be answered, or partially so, by evidence from a substantial body of research. Moreover, this work has increasingly been reviewed and challenged, presented to wider audiences and even taken on board by governments. We can call, for instance, on a range of sources on corrections to inform any debate on whether this may be a way forward. Official bodies have lagged somewhat in the wake of international feminist and other groups who have organised to disseminate and discuss ideas and to promote action, as they did at the start of the twentieth century (Bertrand et al (ed), 1992; Rafter and Heidensohn (eds), 1995). More research is needed, as is more systematic collection of data, but we should use what we already have and ensure that it is widely disseminated.

Women as criminal justice professionals

This topic is covered only very briefly in the paper, although the author acknowledges aspects of its importance in relation to female law enforcement officers handling rape and domestic violence cases. There are however, other issues to consider as well and they have wider impact on the subjects in this paper.

First, the length of time over which women have been employed as criminal justice professionals should be stressed: from 1910 in the USA, 1912 in Germany, 1915 in Britain (all these as police officers). They were also able to practise as lawyers from about the same time in many jurisdictions. Female prison officers

(or matrons) have an older history, beginning usually in the early nineteenth century although they often were not actually in charge of prisons until later in the century. The entry point varied very markedly, with some otherwise 'modern' nations, e.g. Austria, only recruiting policewomen quite recently while a few, such as Germany, had to restart their units twice in the twentieth century (under British occupation on both occasions). Secondly, as I have already indicated, the role of women in policing was very actively promoted by an international 'policewomen's movement' early in the twentieth century. Despite serious setbacks, their goals were eventually achieved. However, in almost every case, the tasks of female officers were restricted to their preventive work with women and children; they were not in main-line police duties (Schulz, 1994; Heidensohn, 1992).

In the latter part of the twentieth century male and female officers were integrated into one force or department in most systems and the special role of policewomen abolished. Formal equal opportunity policies usually apply and are backed by legislation. The percentages of women still remain quite low with no country yet attaining the 25% 'level advocated by Moss Kanter as the point of 'tip over' into acceptance, although at least one US city, Detroit, has achieved this, as has Stockholm.

Pioneers of the policewomen's movement believed that it was vital to succeed for several reasons: on *equity* grounds women should be represented in law enforcement as a career; but they were much more committed to the need to protect women, children and the public good by making a distinctive, feminine contribution to social control. From the beginning they were met with hostility from within police agencies, hostility which still persists in some places. There is still a real debate about the importance of women's role in these and other criminal justice bodies and its significance for justice for women. As Dr Tomaševski points out, female representation per se does not automatically make for female friendly or equitable approaches (Martin and Jurik, 1996).

Challenge for the future

The author begins by considering what she calls the institutionalized neglect of women, especially in relation to their human rights. She contrasts equity and difference approaches and argues for equal visibility empowerment and participation of both sexes, of which the first two are easy to achieve but the last 'an open question'.

In my own concluding remarks, I should like to return to the summary questions I listed at the start and drawn from this text and to develop them for discussions.

I and III The right debate? and its relevance for criminal justice

It will surely never be possible to find answers as to whether men and women should be treated on the same or different principles. What we can provide are examples of both sustained discussion of the principles involved and analyses of

examples of both approaches. Several authors have explored the implications of providing distinctive forms of criminal justice systems for women. Building on the work of Carol Gilligan (1982), I discussed a *Persephone* model of relational justice, which would contrast with the traditional rational-legal *Portia* model, but concluded that such an approach involved too many difficulties (Heidensohn, 1986). Daly pursued this idea (1989) and Masters and Smith (1998) have recently developed a synthesis of this approach with Braithwaite's theory of reintegrative shaming, using empirical material from Japan and from Family Group Conferences in Australia and New Zealand. This paper is presented by its authors 'as an encouragement to further debate and theorizing' (op. cit., 1998, p.5).

Several past experiments designed to provide groups of women with distinctive forms of penal treatment have been analysed by historians. Rafter (1993) reviewed the Massachusetts reformatory, noting how benign intentions became exploitative; Zedner (1991) traced the rise and fall of institutions designed for female inebriates and for those labelled 'mentally defective' in Britain. All can be considered failures, or only partially just. These histories repay consideration. The future for the debate and the application of principles and experience to policy lies surely in developing existing approaches such as these.

II International perspectives

The paper contains much material on United Nations organisations and a certain amount on the Council of Europe. The author is pessimistic about the possibilities of success, given the very different concepts of gender, equality etc. employed by various agencies. Instead, perhaps we can look at the effectiveness of other bodies, especially NGOs, and international links between groups of women. In this commentary I have already mentioned the late nineteenth century and early twentieth century campaigns on trafficking in women, the recruitment of policewomen and the protection of juveniles, all of which had some impact. While the situation is now very different, there are parallels still which can be built upon. In Europe for instance, the European Network of Policewomen, formed with Dutch government support in 1989, aims to optimize the position of policewomen in Europe. To achieve this objective it promotes the formation of networks in European countries. It has NGO status and after the 1995 Beijing Conference, it has focussed efforts on combatting violence against women.

At quite another level, groups of researchers and campaigners increasingly link up globally. In 1991, an international conference was held in Montreal on the theme of *Women, Crime and Social Control* which included both scholars and activists with very different perspectives. (Bertrand et al (eds), 1992; Rafter and Heidensohn (eds), 1995). As Shaw has pointed out, alliances such as these, as well as those with women who actually experience the criminal justice system, can provide us with salutary lessons (Shaw, 1992).

Dr Tomšaveski concludes her paper by asking what empowerment of women might mean in this context. Part of the answer must surely lie in the expression of voice, of being heard and taken notice of. Women have had a great deal to say about themselves and how their concerns might be met. We can at least begin to listen.

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Indicators of Crime and of the Performance of the Criminal Justice System

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Introduction

This paper reviews the existing research on indicators of crime and of the performance of the criminal justice system. It will also outline the methodological and theoretical issues related to the definition, measurement and interpretation of these indicators. Finally, areas related to the indicators that need further research or development will be mentioned, and suggestions will be made as to how this component of criminological research may best be used in policymaking.

1 Crime indicators defined

For the purpose of this discussion, crime indicators are measures of the extent of crime and victimization. They are usually quantitative measures gathered periodically, expressed in terms of percentages and rates. Crime indicators are of use both to the criminological research community and to criminal justice managers and policymakers. They are gathered at different levels: local, subnational, national and supranational. Crime indicators may be ”official” statistics – those established by criminal justice agencies which reflect, essentially, crimes and victimizations known to and recorded by these agencies. Crime indicators may also be measures of crime and victimization obtained through surveys, such as victimization surveys or self-report surveys. Perhaps one of the most important contributions of 20th century criminology has been the development of these complementary measures of crime phenomena.

2 Existing research

As would be expected, a great deal of criminological research exists in the area of crime indicators. A common question posed to criminologists is usually, ”How much crime is there?” or ”Are crime rates going up or going down?” While other disciplines may be able to answer these apparently simple questions of quantity

relatively easily, they routinely stump criminologists. Indeed, there are a myriad of ways to define and measure crime and the methodology for doing so is constantly being updated. Generally, there are three ways to measure crime: you ask the workers who detect, record and process crime, you ask the victims of crime, or you ask the perpetrators themselves.

Official crime indicators – those collected by workers in criminal justice agencies such as the police, courts and prisons – have been around longest and offer criminal justice historians the most fertile source for looking at long-term changes in crime. Most countries gather some sort of official crime indicators. Official crime indicators are gathered at the level of small units (e.g. police statistics from one neighbourhood of a city; court statistics from one court) so that they can be said to ”stand for” those units, and they can be aggregated to ”stand for” subnational units or an entire nation. Official crime indicators may be quite valid for certain crimes which are not captured by other means of measuring crime. For example, homicide rates drawn from official statistics (police statistics; public health statistics) are often used by researchers and policymakers because homicide is usually not included in complementary crime measures and is such a serious crime that it almost always comes to the attention of the authorities. Other crimes, such as those where insurance reimbursement requires that an official report to the police be made (car theft, some burglaries), can also be quite well counted in official statistics if insurance coverage is nearly universal. Because crime indicators gathered by criminal justice agencies reflect different agency priorities and workloads, many of them are appropriate as performance indicators, which will be discussed in the next section.

Official crime indicators have many disadvantages. Perhaps the most important is the fact that not all crimes come to the attention of the authorities; many victims choose not to report their crimes and many offences are impervious to police observation. Therefore, official statistics represent only part of the reality of crime. Furthermore, research indicates that this reality is a biased one. There are a series of factors which affect the probability of victim reporting, and the police are not omnipresent. Thus, some crimes are more reported than others, and some types of victims report more than others, and the characteristics of the police force and its reaction to crime also influence the degree of reporting. Official statistics also offer a limited amount of information about the perpetrator and the victim. They may also be manipulated by criminal justice agencies and policymakers who may wish to have the numbers higher or lower depending on political pressures. This manipulation may be quite blatant, and it may be quite subtle. Police managers may be instructed by their higher-ups to simply deflate crime statistics by reducing serious crimes to misdemeanors. Or statistics gathered at lower levels may simply be modified once they are centralized. Apart from manipulation, official crime statistics are prone to error because they involve many intermediaries (for example, police officers responding to the crime; police officers in charge of maintaining statistics who put the information into a computer; police managers who review local monthly reports; other police managers or researchers in the hierarchy who compile centralized reports). Furthermore, the compilation of international crime indicators based on official statistics – such as the United Nations Crime Survey and Interpol statistics – are

a source of further error since statistics gathered with national definitions must be redefined into other categories of crime.

The twentieth century has meant the advent of crime indicators that are not based on official statistics, but rather on surveys that are often closer to the crime event and involve fewer ”intermediaries” between the crime event and the data collector. Victimization surveys and self-report surveys are examples of these data gathering techniques which also yield crime indicators. Victimization surveys ask the general population whether one has been a victim of crime; about the type of victimization and repercussion; about police reporting and police satisfaction; about personal characteristics, fear of crime and attitudes towards the criminal justice system. National victimization surveys date back to the 1970s. Victim surveys, of course, offer relatively little information about the offender, do not cover homicide or victimless crimes, and are usually administered to adults in private households. Most countries do not routinely conduct victimization surveys.

Self-report surveys are another complementary data collection technique that supply us with crime indicators. Self-report surveys are also close to the crime event and involve fewer ”intermediaries” between the crime event and the data collector. Self-report surveys ask the general population (usually youthful) whether one has been involved in a crime or antisocial act; about the characteristics of the act and its possible detection; about consequences of being detected; about personal characteristics, behaviour and attitudes. Self-report surveys date back to the 1940s. Self-report surveys, of course, offer relatively little information about the victim, do not cover homicide or other very serious crimes, and are usually administered to young people. Most countries do not routinely conduct self-report surveys.

International victimization surveys were first conducted in 1989, and an international self-report survey has been conducted once, in 1993. These surveys use a common instrument and similar sampling designs across countries. It is not surprising that surveys of this latter type have emanated from European initiatives given the fact that in recent years the European Union has pushed nations to homogenize and produce comparable data. A new ”European Criminology” confronted the issue of existing crime indicators in a continent where there are many different languages, laws, and criminal justice systems. It seemed logical that if one wanted to compare crime indicators, it was best to obtain them directly using similar but culturally adapted methods.

The International Crime Victim Surveys and the International Self-Report Delinquency Study are examples of European initiatives to build databases of primary data, in the hopes that such data will be more valid and reliable, and thus more suited to international analysis and policymaking. Although these methods present another set of problems, they do at least produce indicators which are based on similar definitions and samples, and thus, one would hope, contain fewer errors due to misunderstandings. Furthermore, they benefit and can continue to benefit from the methodological developments in victimization and self-report surveys over the past thirty or forty years.

3 Methodological and theoretical problems

The theoretical issues surrounding crime indicators are that crime indicators are deceivingly theory-neutral. In reality, what we choose to gather as relevant information for determining the quality and quantity of crime is usually based on some sort of theory, assumption or view of the world. All three forms of data collection are heavily biased towards street crime that occurs between strangers in urban or semi-urban settings. White collar crime, violations of human or civil rights, environmental victimization, family violence – these sorts of events are not readily captured – but perhaps could be through these data collection methods. Most of the information gathered through these means is also based on predominantly sociological theories of crime. Rarely do we see in victimization surveys questions about the psychological repercussions of victimization, and rarely do we see in self-report surveys psychological scales measuring impulsivity, self-concept or moral development.

The methodological problems affecting official crime indicators are their bias due to uneven victim reporting and uneven police crime detection operations; error and manipulation due to political pressures; and at the supranational level (and sometimes at the national level, in federal states), lack of consensus about shared definitions of crimes.

The methodological problems affecting complementary crime indicators include sampling error (it may not always be possible to generalize with confidence to a specific geographic area, and it may not always be possible to analyze certain rare crimes in a very detailed way); social desirability on the part of respondents, and telescoping and memory decay; and other variables related to respondents which affect their reporting a victimization, such as education (see Alvazzi del Frate et al., 1993 for good discussions of the methodological problems of victimization surveys, and Klein, 1989 for good discussions of those affecting self-report surveys).

4 Areas in need of research

A. Coordination and consultation between criminal justice agencies and the criminological research community in the production of standard crime indicators.

Although almost every country gathers some sort of official crime statistics, not every country has an active criminological research community that helps to make sure that these statistics are well gathered and made public. Furthermore, few countries conduct regular victimization surveys, and a lack of consultation is frequently evident between criminal justice agencies and the criminological research community. Recently the Ministry of the Interior in Spain spent many tax dollars on a victimization survey which used an instrument which was not only lacking in quality, but was not comparable internationally. Although efforts were made to convince government officials to put the money into participation

in the third international crime survey instead, these efforts were not successful. In an era of globalization and increasingly transnational crime patterns, criminologists should push for good national crime indicators that can also be exported to an international comparative context.

B. Assistance in helping nations develop ”model” research initiatives which seek to ameliorate or develop new crime indicators

The most advanced criminological research in crime indicators tends towards specialization. There are many types of crimes and victims that are not captured, or are captured insufficiently, in official statistics, victimization surveys, and self-report surveys. As ”new” crimes and ”new” victims ”emerge” (here I use quotes because many times what appears to be new has in fact been around for a long time but had never never noticed), it becomes increasingly important to have information about these phenomena, and some of the standard methodologies are not made for capturing this information. For example, victimization surveys are rarely administered to businesses, to young people, or to prison inmates. However, there is now research that shows that commercial, juvenile and prison victimization are serious events with grave repercussions which should be measured. Specialized surveys of female victimization have been developed in Canada, the United States, and New Zealand which are based on instruments geared specifically to the types of crimes that women experience – sexual harassment, rape, stalking, domestic violence, etc. New sources of criminal justice data, such as emergency room data and police calls for service data, provide us with official statistics that are closer to the crime experience. Attitude surveys may become increasingly necessary if we wish to anticipate crime and victimization – for example, surveys on racist and xenophobic attitudes, surveys on vulnerability to pedophilia, prostitution and pornography, especially through the internet.

Again, in an era of globalization and increasingly transnational crime patterns, criminologists should strive to develop these new indicators in collaboration with colleagues from other countries. It is rarely necessary to ”reinvent the wheel” and it should also be possible to export good national crime indicators to an international comparative context.

C. Increasing attention paid to translation and linguistic nuances in the production and interpretation of internationally available crime indicators

In the constant search for good crime indicators at the international level, criminologists should be sensitive to language differences. This is easily overlooked because most international research endeavors occur in English, and we simply assume that it is everyone’s first language. A careful probe at a recent meeting of participants in the International Self-Report Delinquency Study revealed that the translation of an item on the international self-report survey referring to ”stealing from school” into different languages resulted in differ-

ences in meaning which could affect results. Different national usages of prepositions meant that the item varied in different countries from ”stealing at school”, to ”stealing in school” and ”stealing from school.” Interpol has a homicide definition which it terms ”murder” in English, which is not necessarily the same as the concept of ”homicide” in many countries. Other international endeavors pay closer attention to translation issues, and crime indicators – whatever their source – would be more valid and reliable if language issues were treated more seriously.

D. Research in the area of anticipatory crime indicators

Most crime indicators look at crime after it has occurred. Although time series data can indicate trends, there is a need for indicators that would truly be anticipatory – indicators that would enable nations to know where possible crime problems may lie in the future. There is little research on this topic, despite the fact that ”new” crimes emerge that governments appear unprepared to deal with effectively (internet crime, environmental crime, football hooliganism, transnational crime, trafficking in women and children, etc.). Crime forecasting through anticipatory crime indicators would be particularly useful to policymakers.

5 Policy applications of crime indicators

Crime indicators are essential for international criminal justice policymaking as they provide the empirical support for possible changes in policies and programs which may work to prevent or control crime. It seems quite difficult at times, however, to convince policymakers of the necessity of having accurate data on crime and to invest the funds needed to obtain these indicators. In particular, while some policymakers are willing to invest funds in improving official statistics, which they perceive as ”real”, they typically distrust crime surveys, dismissing them as ”just another unreliable poll”.

Here, again with a perspective from southern Europe, it is increasingly important to educate policymakers in the necessity of these indicators and of having them available periodically. We have not yet been able in Spain to convince the government that periodic victimization surveys with the same instrument should be conducted, and I am sure that other countries as well show a lack of institutional ownership of crime indicators, and a lack of commitment in assuring their continuity and methodological improvement.

It is quite another thing to encourage policymakers to use available data on crime indicators to shape and plan policy. For example, although the International Self-Report Delinquency Study offered a number of policy implications, whether this has had any effect on policy is unknown. In Spain, for example, our data revealed that should the age of legal majority be raised from 16 to 18, as was foreseen by the new penal code, an influx of youthful offenders now dealt with by the adult system would be released into the juvenile justice system, currently largely unprepared for this more mature class of offender. Yet little has been done

to prepare the juvenile justice system for this influx. What is probably needed is a concentrated effort to make research reports easy to read and policy-relevant, as occurs in some countries. Full results from Spain's 1989 participation in the international victimization survey were never even published in Spanish, and few policymakers at the Ministry of Justice (the sponsor) even knew of the data's existence.

In the international context – and particularly the European context as the focus of this paper – crime indicators can also be a source of friction as opposed to enlightenment in political arenas. When international surveys are conducted, few countries like to be in first place for incarceration rates, and in last place for satisfaction with the police. Instead of fostering the sharing of explanations and experiences, the publication of crime indicators in international contexts seems to promote ill will and cultural stereotyping. Here I would emphasize that crime indicators by themselves are not sufficient in aiding policymakers in addressing crime problems. Policymakers must be aided by good, in-depth criminological research on the crime problem; witness the enormous debate among practitioners and criminologists ensuing in the United States over the crime rate decrease in New York City. Crime indicators should only indicate to policymakers where research is needed (for example, see Young and Brown, 1993 for a sophisticated analysis of international incarceration rates). If rates seem inexplicably high or low, research should be conducted to ascertain why.

6 Performance indicators of the criminal justice system defined

Performance indicators of the criminal justice system are those measures which can be compiled which give feedback as to whether the criminal justice system is ”doing a good job” or at least doing what it is supposed to be doing. The term ”performance indicator” is relatively new, yet efforts to create performance indicators and foster their use in policymaking are not. Many countries gather measures of the effectiveness of the criminal justice system without buying into this terminology. However, the development of performance indicators is a more in-depth process which goes beyond computing police arrest clearance rates, conviction rates, or recidivism rates; most of the literature comes from the United Kingdom and North America. And most of the recent literature has emerged in an era of shrinking tax dollars, where public sector services must justify themselves to the taxpayers much as a private corporation must justify its actions to its shareholders.

7 Existing research

There is probably agreement in nations with democratic regimes that the criminal justice system must be held accountable to the constituency in terms of its actions and the results ensuing from them. Yet is is a much harder question to determine

what the real objectives of the criminal justice system are and how much can the public realistically expect from its police, courts and prisons. There is a certain fatalism surrounding the purpose of the criminal justice system, and although few would favor its abolition, many would be hard pressed to say how they would know if their criminal justice system was ”doing what it is supposed to”. Still others are convinced that the criminal justice system fails to work consistently because ”nothing succeeds like failure” (Reiman, 1984). In an era of increasing privatization of public services (private security, private prisons, subcontracting of community corrections programs to non-profit groups, etc.) performance indicators seem to be the key to justifying public expenditures in the right ”language”. But the idea of the ”bottom line” remains a problem.

Performance indicators can be developed internally as outlined in the figure below or externally, in the fashion of an ”audit”. The prime example of this sort of performance indicator development and monitoring is that of the Audit Commission, an independent body in England which monitors the performance of certain public services there; performance indicators largely reflect what the public expects of public services. In the United States, performance indicators are developed either by the agencies themselves or by consulting criminologists, according to a process which, outlined by Boone and Fulton (1996), consists of the following steps:

Step 1	Clarify values
Step 2	Define a mission
Step 3	Clarify organizational goals
Step 4	Select activities that support organizational goals
Step 5	Identify performance-based measures

The first step in establishing performance indicators is to ascertain what the ”values” are that guide a criminal justice agency (police, courts, corrections). These values are often legal mandates, and they are the force behind a ”mission statement”, which is the overall *raison d’être* of the agency. While some criminal justice agencies already have mission statements, others do not (particularly some non-government organizations that run community corrections programs), and so, the process of developing performance indicators can have the side effect of providing a very useful exercise in organizational development.

In order to fulfill the mission statement, agencies spell out objectives or goals, and in order to come up with performance indicators, it must be possible to carry out activities in order to achieve these goals. The activities then must be measurable and quantifiable. Often, standards already exist for criminal justice agencies, such as standards for the fair treatment of prisoners and for effective probation supervision. In many instances these standards are being converted into performance indicators, and thresholds of ”acceptable” vs. ”non-acceptable” limits are being established.

Although the last step – measuring and quantifying activities – is a fairly technical one, akin to producing an operational definition for a concept, the previous steps are real policy decisions which have engendered a new debate on the purpose of the criminal justice system. This ”new” debate is a shrewd one. Some criminal justice scholars such as James Q. Wilson (in Bureau of Justice Statistics – Princeton University Study Group on Criminal Justice Performance Measures, 1993) feel that the public simply expects too much of its criminal justice system, which cannot, in his opinion, be held responsible for the failure of other social institutions (communities, schools, etc.) in preventing crime. According to him, the police can only do so much to reduce crime rates, since crimes rates are caused by factors beyond the control of the police. Therefore, ”crime rate” is an inappropriate performance indicator of policing.

The first step in establishing performance indicators of the criminal justice system is then to establish ”new”, ”realistic” objectives, and then come up with operational definitions for these objectives. Logan, for example, in the same publication, delineates eight objectives for prisons (security, safety, order, care, activity, justice, conditions and management) and activities and performance measures for each objective. Recidivism rates figure nowhere in his list, because he believes that recidivism rates are beyond the control of prisons. Who defines organizational goals, then, defines performance measures, and opens up a pandora’s box in terms of vulnerability to public opinion and political reaction to it. Not surprisingly, Klockars, in a 1997 workshop on performance indicators attended by police managers and criminologists, warns police that ”anything you measure can and will be held against you” and that police agencies should ”measure all those things that can be counted to your credit”.

Existing research on performance indicators gives us a myriad of measures to choose from. Effective policing can be measured by such classic performance indicators as response times, crime rates, arrest rates, and clearance rates. However, current debates about the ”rethinking” of policing mean redefining performance indicators. Such things as public satisfaction, levels of fear of crime, quality as opposed to quantity of service, presence of victim assistance schemes, problem-solving strategies used, number of citizen complaints, use of community policing, etc. may well be included.

Performance indicators for prisons can be equally numerous. Here I will highlight representative indicators from Logan’s chapter in the Bureau of Justice Statistics – Princeton University Study Group on Criminal Justice Performance Measures (1993). ”Security” objectives could be measured by the number of shakedowns, positive urine tests for drugs, inmate discipline reports, escapes, inmate freedom of movement, and perceived lack of security by prison staff; prison ”safety” could be measured by a prison victimization survey, and official records of inmate discipline reports, perceived staff safety and official records of staff injuries; ”order” could be measured by the number of discipline reports, incidents of staff use of force, percent of discipline reports resulting in a sanction; ”care” could be measured by an inmate stress scale, average number of days inmates are ill, use and satisfaction of inmates with medical, dental and counseling, programs; ”activity” could be measured by the number of inmates involved in work programs, education or training, recreation and religious activities;

”justice” could be measured by inmate impressions of staff fairness, number of grievances filed and results of these, including delays in the grievance process; ”conditions” could be measured by crowding measures, internal freedom of movement, facilities per capita (number of inmates per shower, for example), ”satisfaction” could be measured with data on sanitation and food, noise levels, visitation rates, and furloughs; and ”efficient management” could be measured by staff job satisfaction, a job stress index, staff turnover, staff participation in training, and inmate-staff ratio.

An example of court performance indicators are those set up by a Trial Court Performance Standards Project, initiated in 1987 by the National Center for State Courts and the Bureau of Justice Assistance in the United States. It took ten years for these indicators to be developed. They are based on five simple standards: (1) access to justice, (2) expedition and timeliness, (3) equality, fairness and integrity, (4) independence and accountability and (5) public trust and confidence. Measures are not specified exactly, but subdimensions of the standards are addressed and techniques for measurement are also suggested. For example, ”Public Trust and Confidence” could be measured through surveys administered to court employees and the general public on their perceptions of court performance, and through structured group techniques with other justice system representatives regarding their perceptions of court performance as well (Bureau of Justice Assistance, 1997).

8 Methodological and theoretical problems

Establishing objectives is one thing, but defining and measuring them is something else. Performance indicators require much attention to methodology. First definitions must be clear and unambiguous, and performance indicators should not require vast new data collection efforts. That would imply that they cost more money than they are supposed to be saving. Since performance indicators are often based on multiple measures, it is hard not to envision the need for additional data collection. Criminal justice managers should be able to take advantage of existing records and worker routines in the production of data for performance indicators. Obviously, some countries would find this easier to do than others. The federal correctional system in the United States, for example, periodically conducts a prison social climate survey, which can be used to feed measures for performance indicators. Other countries would find it difficult to produce these sorts of measures without devoting more funds for research.

Since the criminal justice system has many contradicting objectives, it is not unusual to find methodological glitches in the research literature on performance indicators. For example, Petersilia (in Bureau of Justice Statistics – Princeton University Study Group on Criminal Justice Performance Measures, 1993) argues that in the case of community corrections, recidivism rates (which she does accept as a performance indicator) can indicate both success and failure. Lower rates from one community corrections program to another may mean that more offenders are being reintegrated into society; yet higher rates may mean

that effective surveillance has taken place and community safety has been improved. By the same token, increasing police presence might lower the number of crimes known to the police – by increasing deterrence – but it is equally likely to result in higher detection rates due to increased visibility. Furthermore, if increasing police presence increases satisfaction with and trust in the police, crime rates may rise due to an increase in victim reporting of crime.

Another example stems from conflicting objectives in prison, where security and treatment intermingle. Logan (1993) mentions that the same criteria (freedom of inmate movement throughout the prison) counts as a plus for an objective he calls ”conditions” and a minus for ”security” objectives. Although he terms this a ”fact of life”, the ramifications are confusing. Would a prison warden then be wise to provide for more inmate movement, or less?

Performance indicators are based on criminal justice theory, whether this be explicit or implicit. The new policing performance indicators – which measure the police's response to the victim, the application of problem solving strategies, and fostering good community relations – are based on modern policing theory. Logan states explicitly that his corrections performance indicators are based on just deserts theory. This is important to remember, because there are enormous variations between nations and even within national jurisdictions on criminal justice theory. Thus, while establishing objectives for the criminal justice system may be challenging on the national level, due to competing and contradicting purposes of the criminal justice system, it is even more challenging to consider establishing international comparative performance measures. Consider the case of Spain where Article 25 of the Constitution dictates that the overriding purpose of imprisonment be the reeducation and social re-insertion of the offender. Spaniards would be offended to have the effectiveness of their prison system measured by performance indicators of confinement and security. Consider as well the role of the prosecutor in Spain, which is both in theory and in practice much more impartial in the court process than is that of the American prosecutor. Spaniards would indeed be puzzled by having the effectiveness of their prosecutors measured by conviction rates.

Performance indicators seem to be thriving in nations where the private sector is a strong cultural force, and where taxpayers really feel empowered to demand accountability from their government. In these nations, actions are frequently evaluated in a cost-benefit framework, and the public demands transparency from its social institutions. Performance indicators of the criminal justice system are at home in these sorts of cultures. In other cultures, performance indicators may be harder to implant. Policymakers may be content to spend money where it appears to be needed and by being able to give feedback that is not quantifiable or comparable. Public spending may be so tight that any sort of evaluative research is viewed as a luxury. Taxpayers may be less organized, less educated and perhaps less demanding. This may be more likely to occur in nations with weak or transitional governments. In short, performance indicators are not for everyone.

9 Areas in need of research

The existing research highlighted here shows performance indicators at their best – highly developed, minute measures of carefully thought out objectives for the criminal justice system. Perhaps the area most in need of research is whether international standards for policing, the administration of justice and correctional institutions can be translated into a series of simple, easy to gather performance indicators. Would this aid us in further monitoring the effectiveness of the criminal justice system? International human rights agencies already do part of this task for us. Yet if professional standards exist that could be easily measured, perhaps we could go a long ways towards helping nations improve their criminal justice systems – nations whose budgets would not permit them to go to the lengths of engaging in exhaustive performance indicator development programs.

10 Policy applications

From a research perspective, performance indicators are useful but should never replace a rigorous evaluation. Perhaps the most important legacy of Martinson's 1974 "What Works?" article was that it encouraged evaluations of criminal justice programs. Evaluations give policymakers a thorough explanation of why a service or program is working well or not. Performance indicators do only that – indicate. They may indicate that a program, service or policy is working particularly well or particularly badly. But a good evaluation will tell us why. Certainly the results generated by evaluations (see Sherman et al's "Preventing Crime" as a good, user-friendly analysis) are more telling than the myriad of numbers produced as performance indicators.

Conclusion

Indicators of crime and of the performance of the criminal justice system are essential to national and international criminal justice policymaking. But they are not enough. Strong criminological research communities need to be encouraged on the national and international level both to demand and monitor the production of these indicators and to provide in-depth research into the causes and correlates of crime and the effectiveness of the criminal justice response.

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Indicators of Crime and of the Performance of the Criminal Justice System

Commentary by
Elmar G.M. Weitekamp

In the first part Barbaret discusses the strength and weaknesses of existing crime indicators by looking at official police crime data, self-reports, and victim surveys. It becomes clear that crime classifications are required in order to ascertain the nature of crime problems and to assess the extent to which the police, the courts, and the penal system are able to handle the crime problem in societies. However, as McClintock argued already in 1977, crime classification cannot be based on legal criteria or else they will be misleading or at best be uniformative. What we need are more situational classifications, which should provide a descriptive typology of the nature of crime in its social context.

How difficult it is to get good classifications can be illustrated by the work of McClintock (1977) who developed a descriptive classification of violence based upon a large variety of substantially different behaviours in either theory or criminal policy as descriptions of social reality which looked like the following:

A. Personal violence in the course of furtherance of theft (mainly robbery):

1. Robbery of persons who, as part of their employment, are in charge of money or valuable goods.
2. Robbery in open places of ordinary citizens.
3. Robbery in enclosed premises (private dwellings or commerical premises).
4. Robbery after preliminary association of short duration between offender and victim (including circumstances of prostitution and vice).
5. Robbery in cases of association of some duration between offender and victim.

B. Crimes of violence against the person (without theft).

1. Attacks in order to perpetrate a sexual offence.
2. Attacks on police officers, or civilians, intervening to prevent crime or to apprehend the offender.
3. Attacks arising from domestice disputes, quarrels between neighbours or between persons working together.
4. Attacks in and around public houses, cafes and other places of refreshment or entertainment.
5. Attacks in thoroughfares and other public places.
6. Attacks in special circumstances, including attacks on prison officers, injuries resulting from criminal negligence and attacks by persons of insane mind.

Even these more informative classifications inform only in a general way – McClintock (1974) developed a classification for violence based upon the

circumstances of the offences which had no less than 120 subcategories – about the circumstances of the violent acts. However, if one examines today's police statistics, offence descriptions in self-reports and victim surveys one will find that these rudimentary improvements as suggested by McClintock more than twenty years ago have largely been ignored and cannot be found especially in official police statistics. We often do not even find differentiations according to instrumental violence, interpersonal violence, ideological and political violence, distructive and sensational violence, and disorderly conduct and public disturbances.

Especially the police statistics should be interpreted carefully. First, they reflect the police work and tell us little about the extent and nature of crime. 80 to 95 per cent of the crimes reported to the police are reported by the victims and/or witnesses of a crime. However, if one examines the reasons why victims and/or witnesses are not reporting a crime one can easily come up with twelve scenarios:

1. The damage is only minor.
2. The victim and/or witness did not think it was a crime.
3. Victim and/or witness do not care or are too lazy to initiate action.
4. The victim and/or witness fears being regarded as despicable for having been a "snitch".
5. The victim and/or witness felt sorry for the offender out of religious or political reasons.
6. The victim and/or witness despises public institutions.
7. The reputation of the victim might be damaged (e.g. hotels).
8. Fear that the police will not believe the victim in the case of sexual offences.
9. Fear of being compromised.
10. Fear that hidden desires will be made public (e.g. being the victim of a theft by a prostitute).
11. Fear that one's own crimes would be detected.
12. Fear of revenge.

These reasons alone can lead to massive misinformation. How misleading information in the police statistics can be, could be illustrated by the German crime statistics. In the 1996 statistics we find on page 61 information on the victims of homicide and learn from the table that 82.4 per cent of the victims were over 21 years old. We also find that 65.3 per cent of the robbery victims in Germany were over 21 years old. However, if we examine the risk of being murdered in Germany, the group of the 18 to 21 years old has by far the highest risk of being murdered and for robbery it is the group of the 14 to 18 years old which is the most vulnerable to being victimized by a robbery.

If we look at crimes and want to weigh the injuries of violent crimes or the financial damage caused by property crimes one we look in vain at police statistics. Again, I want to illustrate this with German data. If we take the offence of shoplifting we find that the police statistics indicate substantial monetary losses. However, Hauff (1992) found that in 95% of all the reported shoplifting cases no monetary damage could be found since the stolen property was returned to the shelf. He could also demonstrate that in over half of the auto thefts the car

was returned and the reported monetary loss did not occur or was negligible. These measurements do not make too much sense. We can for Germany also construct the scenario that an offender breaks into an apartment, causes 5000 DM damage on windows and furniture, but steals only 30 marks. This would appear in the statistic as theft of 30 DM and the real damage would not be counted. These examples show how careful one has to be in interpreting this kind of information and we are convinced that this is true for each and every country. We will not extend the description of these peculiarities to the other statistics commonly used in criminology, such as self-report surveys, which I have critiqued elsewhere (Weitekamp 1989) or the victimization surveys which have been critiqued by Barbaret.

As my next step we move to the performance of the criminal justice system. We agree with the critical review of Rosemary Barbaret and would extend her critique further. We think we have very bad tools to judge the performance of a criminal justice system. Barbaret pointed out that most of the performance scales and methods were developed in the USA. We find it kind of ironic that in the Western country with the highest incarceration rate and a country where 38 of the States are under constitutional supervision because of basic human rights violations in their prison system, ergo also their justice system, these instruments were developed and stir a dedate. We think we should be more interested in developing basic standards for the treatment of offenders, as it is done by the United Nations, and try to evaluate if these are met by the member States. Also, people in the criminal justice system are usually only those who were caught for committing crimes and therefore we measure only the performance of the criminal justice system for this clientele. We should be much more interested in evaluating the perfomance of the criminal justice system with regard to how we treat victims of crimes and what societies do in order to allow their citizens to live in a safe, peaceful, and secure enviroment. Victim and citizen satisfaction should be one of the key factors which should be taken into account when we evaluate the performance of the criminal justice system.

We agree with Sherman et al. (1997) that we need strong evaluation research in order to find out what works, what doesn't work and what looks promising. Also research results based on random experiments are essential, if we really want to know what works and what might prevent crimes. A much neglected research area, among many others and one that has been pointed out by Barbaret, is the interrelationship between offender and victims, meaning offenders as victims of crimes and victims as offenders of crimes. An analysis of the National Youth Survey reveals that especially during the young (juvenile) years, the majority of offenders are also victims and vice versa. Friday (1998) found in his evaluation of victims of gunshot wounds in Charlotte, NC that 71 percent of them were also guilty of serious crimes. Knowledge in this area has far-reaching implications for the measurement of crime, the performance of the criminal justice system and society at large.

One of the major and most advanced ways in how to measure the real damage caused by crime and to evaluate the costs of crime is (still!!!) the Sellin-Wolfgang Index. How useful such an index (in a positive way) is also for criminological theory, praxis and criminal policy was illustrated by a debate which occurred

during the 1970s in the context of what is now called restorative justice in its various forms. According to that debate, the major obstacles for restorative justice programs in praxis were the restrictions of this approach to certain offender groups and populations. These limitations were introduced by Schafer (1970) who based his arguments on the writings of Garofalo (1914), both arguing that the punishment aspect of a sentence could not and should not be completely replaced with restorative justice justice models. According to Schafer (1970, p.126) restitution/restorative justice can be then, at best, an accessory to punishment, never a replacement. His argumentation seems to be quite contradictory since he also argues that victims of crimes do not enjoy a certain expectation of full restitution and he refers to the days of the American forefathers when restitution/restorative was living practice which he considered to be wiser, more reformatory, more deterrent, and more economical than today's form of punishment.

Schafer's rejection of restitution/restorative justice as an alternative to punishment and incarceration seems to be quite wrong, since the historical development of restitution/restorative justice reveals that in the days of our ancestors models of reparative justice were often used as the sole form of punishment even for the most violent crimes (see for example: Michalowski 1985, Sessar 1992, Tallack 1900, and Weitekamp 1989). If we apply the Black's Law Dictionary definition of restitution (reparative justice), an offender who made restitution according to the damage he or she caused would have made good, and there would be no reason whatsoever to punish him or her further. Making good on the wrong would be all that is required. Therefore, we do not understand why Schafer limited his concept of restitution/restorative justice and did not consider it as a viable alternative to punishment, fines and imprisonment.

Unfortunately Schafer's ideas were among the most influental ones for the recent establishment and development of restitution/restorative justice programs. One can find hundreds of publications about restorative justice (programs) in which his arguments have been cited without any critical reflection. The sad reality, however, is the fact that in most of the current discussions about restorative justice and its practical implementation the concepts limit their clientele to first-time, property and/or juvenile offenders. One can almost always find the arguments that restitution/restorative justice for serious or even violent offenders is not feasible, possible, or too problematic to be established on a grand scale. The main reason for this argumentation is that restitution/ restorative justice seems to be fine for less serious offences, but in the event of serious, violent offences it is the obligation of the state to administer the punishment and for the citizens and the victims to be kept out of the process of punishment. We would like to refer again to Christie (1978), who considers conflicts as property, argues in this context that criminal conflicts have become other people's property, primarily the property of lawyers, a process in which the victim is a nonperson in a Kafka play and goes away more frightened than ever before and even in greater need of an explanation of criminals as nonhuman.

We think that an additional argument by law professionals and criminal justice administrators is that they claim that the citizens and especially the victims of crimes want revenge and severe punishment of the offenders in severe criminal

cases and that this kind of punishment can only be guaranteed through the state and its legal institutions. Therefore the basic argument used by representatives of the state is that the public demands revenge and severe punishment through the state and the state through its criminal law professionals has to administer it and has to protect the offenders from the revengeful public. We doubt this logic and think that the public and the citizens are much less vengeful and do not demand severe punishment as is assumed by criminal law professionals. This fact was demonstrated quite powerfully in a study by Sessar (1992) in Hamburg. Quite to the contrary we suggest that the claimed vengeful attitudes and the cry for severe punishment of the citizens is being used by the criminal law profession for their own legitimization, which can lead to such disastrous developments as in the United States of America where right now approximately 2.000.000 people are behind bars.

One way to illustrate this discrepancy between the historical application of restitution/reparative justice and the newer establishment and implementation of this approach, is to look at crime severity studies. Since the question of the applicability of restorative justice programs to serious, violent offences is such a crucial one, and since crime severity studies are not discussed at all in this context, we provide a detailed discussion of the development and results of crime severity studies.

The Development of the National Survey of Crime Severity

Criminologists and criminal justice researchers have been interested in methods of determining the seriousness of criminal events for many years. Until 1964, however, the year Sellin and Wolfgang published their pioneering study ”The Measurement of Delinquency” in which they introduced the Sellin-Wolfgang Index, the measurement of the severity of crimes and penalties remained intuitive and primitive. Through the application of a psychophysical scaling technique Sellin and Wolfgang obtained a scale of the severity of offences (for a detailed description of the Sellin-Wolfgang Index see: Sellin, T. and Wolfgang M.E. ”The Measurement of Delinquency” 1964/1978; Wolfgang, M.E., Figlio, R.M., Tracy, P.E. and Singer, S. ”The National Survey of Crime Severity” 1985; and also for an excellent critique see Alemika, E.O. ”Continuities in the Research on the Measurement and Scaling of the Perceived Severity of Crime and Delinquency” 1983).

Sellin and Wolfgang’s primary purposes for scaling offences were threefold:

1. to select from multidimensional features of delinquency a single dimension, taking into account the relative gravity or seriousness of delinquent acts;
2. to produce an empirical, objectively ascertained set of components of delinquency that would be examined by socially significant groups whose evaluations could be used as a basis for scoring;
3. to arrive at a system of weights for delinquency events for use in the construction of an index (1978, pp. 236-237).

Sellin and Wolfgang viewed delinquent events and not delinquent juveniles as their major focal point for establishing an index of delinquency. They constructed a sample of descriptions of offences which represented the stimuli that were presented for rating by the surveyed population. All together they constructed one hundred and fourty-one offence descriptions which were given to an non-representative sample of police officers, college students, and juvenile court judges. Sequence or order effects were controlled through the randomization of the order in which the stimuli were represented. Although the developing, conducting and compiling of the results of the severity study was a complex process using highly sophisticated mathematical techniques, the process of rating for the respondents was relatively simple. They were given a description of a crime, "A person steals a bicycle parked on the street", and told that the seriousness of this crime was 10. They were given then a list of other crimes and told to compare them in seriousness to the bicycle theft; for example: if a crime seemed to be three times as serious, they were to rate it at 30, if it seemed to be half as serious, they were to rate it at 5, and so on.

Sellin and Wolfgang used magnitude and category scales in their study and constructed the final Sellin-Wolfgang Index on the basis of the scores of the magnitude scales (for a discussion of the advantages and disadvantages of magnitude scales see: Sellin and Wolfgang 1978, Figlio 1979, Bridges and Lisagor 1975, Shelly and Sparks 1980 and Alemika 1983). These magnitude scores were then transformed into ratio scales and the raters' variances were also reduced by performing the following procedures:

1. each individual raters' variances score for each offence was transformed to its logarithm;
2. the transformed score for each rater was standardized;
3. the standard measure scores were substituted based on each rater's mean and variance for each offence rating; thus all raters had a similar mean and variance in their rating;

For all the one hundred and fourty-one offences Sellin and Wolfgang obtained a single severity score by scaling all ratios to the severity of the theft of one dollar.

The pioneering study of Sellin and Wolfgang was later replicated in different parts of the United States, Canada, China, Germany, etc. The broad findings of the original study, that considerable agreement over which crimes are serious and which are not, has been found to hold consistently in the replications. Although the severity scale has been criticized by various scholars, Stanly Turner concluded in the introduction of the Patterson-Smith reprint of "The Measurement of Delinquency" in 1978 that:

> "In the decade and half since the pioneering work of Sellin and Wolfgang many attempts have been made to verify or criticize the scale. What may be concluded from these efforts? I believe that it may fairly be stated that the authors' final version (the elements and their additive weights) is not their best representation of their data. Further it may be conceded that the techniques for making international comparsions have not been fully thought out. But the original study has held up under repeat replications on diverse populations.....

> All of this is to say the minimum claim advanced by Sellin and Wolfgang has not been successfully challenged. The scale (or some version of it) appears distinctively useful for making decisions about individuals in the criminal justice system. Of how many endeavors is this true? How many survived replications and criticism? It may be said of Sellin and Wolfgang's work what was said of it when first reviewed: It is probably the most sophisticated attempt in sociology to measure an elusive yet important variable" [(pp xx-xxi) cited in Wolfgang, Figlio, Tracy, and Singer 1985].

In 1977 Wolfgang and collegues had the chance to replicate the crime severity study on a grand scale. Their survey of the seriousness of crime was conducted as a supplement to the National Crime Survey. The survey, which included 60,000 persons 18 years of age or older, was the largest ever made of how the general public ranks the seriousness of a wide range of crimes. The National Crime Survey, a stratified random sample representative of the entire United States, was conducted over a six-month period beginnig in July 1977. The 60,000 persons participating in the survey each rated 25 specific criminal events. Twelve different forms were used, each with a different set of items, adding up to 204 different crime descriptions. Some descriptions appeared on more than one form and five appeared on all forms. Each of the descriptions in the survey is quite specific as to the details of the crime and its consequences. These consequences strongly affect the ratings, meaning that the ratings differ tremendously if one asked about the facts of a crime but changed the consequences of the fact. For example, the crime description of planting a bomb that goes off in a public building was scored 72.1, 43.9, 33.0, and 24.5 despite the fact itself being the same in all cases. What made the differences was that the outcome of the crime descriptions ranged from 20 people being killed, to one person being killed, one person injured and to no one is injured.

Results of the National Survey of Crime Severity

In order to pursue our question on how vengeful the public is and if there exists a cry for severe punishment one can look at the ratings of the crime descriptions and how and in which context the public ranked them. One has to keep in mind that the descriptions did not entail any information about the relationship of the victim to the rater; e.g. the victim was never an acquaintance, family member, or friend. The victims were always "neutral" fellow citizens. Also, one can not distinguish between raters who were never victimized themselves or raters who have been victims of one or more crimes they had to rate. In addition we have no information if a close family member(s) had been victimized.

Assuming that a substantial number of raters have been victimized themselves or a family member(s) of them as the results of the National Victim Surveys tell us one could expect that these raters would assign higher scores to the items they are asked about in general and particularly those of which they became a victim. On the other hand one can assume that the raters who had never been victimized

themselves and who did not have a family member(s) who had been victimized would assign lower scores to the crime descriptions they had to rate. Therefore one can safely assume that all things even out quite nicely, meaning that the ratings of the 60,000 persons in the survey represent the general public with regard to the perception of how serious a crime is and how to rank its seriousness in comparsion to the bicycle theft. This ranking procedure implies also how punitive the public is, how vengeful and how severe the punishment should be. An examination of the results of the National Survey of Crime Severity will therefore allow us to answer the crucial question of how punitive the public is and if restitution/reparative justice programs have to be restricted to first-time, juvenile, and/or property offenders or if it can be applied to serious, even violent criminals.

In order to achieve this, we assigned each of the 204 offence descriptions a number, where # 1 represents the offence that was considered the least serious offence (A person under 16 years old plays hooky from school with a ratio score of 0.25) and # 204 represents the crime that was considered the most serious offence (A person plants a bomb in a public building. The bomb explodes and 20 people are killed, with a ratio score of 72.10). Since the offence description of the National Survey of Crime Severity always entails information about the damage/injury caused by the crime, one can compare offences which describe the loss/damage in terms of a dollar amount with crimes that lead to injuries/severity of injury or even death.

One crucial aspect of the offence description is whether the assessment of the circumstances of the crime and the intent of the offender have an influence on the rater's perception of the seriousness of the offence or if the external aspects (amount of injury, theft, or damage) are more influential. Riedel (1975, cited in Wolfgang, Figlio, Tracy, and Singer 1985) analyzed this problem in a replication study of the Sellin-Wolfgang Index and came to the conclusion that offence severity will continue to be looked on as a measure of the costs to the victim rehardless of whether that victim is an individual, a group, or society in general. If one examines the results of the National Survey of Crime Severity, one finds in general a rather interesting trend: crimes of violence, even those that lead to severe injuries or death, correspond to property crimes of relative low value.

The offence description "A person robs a victim. The victim is injured but not hospitalized" ranked # 54 on the severity scale and corresponds to "A person picks a victim's pocket of $100" which is ranked # 55 on the scale, meaning that the damage of a robbery with an injury is, according to the ranking of the Crime Severity Scale, equal to a theft of $100. In terms of restitution/reparative justice this would mean that a robbery with an injury could be compensated through a restitution payment of $100 since the public ranks and perceives the severity of these crimes to be equal.

At first glance this may sound strange, but when we examine the arguments of the restitution/reparative justice debate and the definition of restitution this makes a lot of sense. Once more, according to the definition restitution is an act of restoring; restoration of anything to its rightful owner; the act of making good or giving an equivalent of any loss, damage or injury; and indemnification. While

it is easy to assess the amount of damage in cases of property damage or loss and to agree upon compensation it becomes quite difficult to assess the damage in terms of a dollar value for the damage or injury caused through a violent crime. This might be precisely the reason why criminal law professionals always argue that restitution/reparative justice is not feasible for such offences, namely to find the equivalent dollar amount which might be suitable to restore the damage/injury caused by a violent crime. The above-mentioned example from the National Survey of Crime Severity enables us to do just that: obtain an estimate of how the public perceives the severity of a violent crime in relationship to property crimes, thus giving us an idea of how to assess damage or injury in terms of a dollar value which then could be used as an estimate in determining the amount of restitution the offender has to repay.

Based upon the crime severity scale one can construct a great number of comparsions between offence descriptions which include a dollar value and others where the damage is a physical one in order to get a better understanding about the severity of these crimes and in order to get estimates of what kind of value needs to be restored. The offence description ”A person, armed with a gun, robs a bank of $100,000 during business hours. No one is physically hurt” ranks at # 164 on the severity scale compared to ”Knowing that a shipment of cooking oil is bad, a store owner decides to sell it anyway. Only one bottle is sold and the purchaser dies” which ranks at # 166 on the severity scale. Taking the above-established logic this would mean that in order to compensate the death of a person we are in the vicinity of a dollar amount of $100,000, which seems to be reasonably cheap. Another comparsion reveals that ”A person intentionally shoots a victim with a gun. The victim requires hospitalization” is ranked # 185 on the severity scale, and is almost equal to ”A person intentionally sets fire to a building causing $100,000 worth of damage”, which is ranked # 186. The latter offence description corresponds also to ”A woman stabs her husband. As a result, he dies” which is ranked # 191 at the severity scale. Once again we find that the public ranks a murder or death in the vicinity of a crime where the dollar amount of the damage lies around $ 100,000.

To give some additional examples we found that offences such as ”A teenage boy beats his mother with his fists. The mother requires hospitalization” which is ranked # 154 on the severity scale and ”A person robs a victim of $ 1,000 at gunpoint. The victim is wounded and requires treatment by a doctor but not hospitalization” which is ranked # 156 and ”A person, using force, robs a victim of $ 1,000. The victim is hurt and requires hospitalization” which is ranked # 158 rank according to the national severity scale even a bit lower than an offence such as ”A legislator takes a bribe of $ 10,000 from a company to vote for a law favoring the company” which is ranked at # 160. The point with these examples is that the public perceives crimes which involve serious injuries at the same time as a monetary loss of $ 1,000 to be in the vicinity of a crime where no injury occurs and the monetary damage does not exceed $ 10,000.

As we pointed out earlier, one of the main obstacles to extending restitution/restorative justice programs is the argument that they are not suitable for serious, violent offences. One of the reasons for doing so seems to be the fact that one

can easily assess the amount of damage caused through property offences and thus calculate the amount to be restored. This is not easily done for violent offences. So far people and primarily criminal justice officials were fishing in the dark in evaluating the damage and, more important, for identifying the appropriate form of punishment. Is an armed robbery of a pedestrian who is wounded in the incident worth 2 or 15 years in prison? We seem to sentence such an offender in a rather arbitrary manner and dismiss the idea of a restorative sentence in which we would have to attach a monetary value to the damage done. According to criminal justice officials, a prison sentence in this case seems more appropriate, but they do not provide a reasonable explanation why a restorative sentence has to be dismissed.

One way to iluminate this dilemma is to look at crime severity studies in which populations are asked to rank a variety of offence descriptions according to the perceived severity of the crimes. An examination of the results of the National Survey of Crime Severity revealed surprising results. 60,000 respondents in the U.S.A. ranked a robbery in which the victim was injured as being as severe as a pickpocketing of $ 100, serious robberies with injuries and aggravated assaults which led to hospitalization of the victims were ranked as severe as taking a bribe worth $ 10,000, and intentionally causing the death of a person and killing a person were ranked as severe as burning down a house worth $ 100,000.

If one transfers these results to the application of restitution/restorative justice sentences one can establish quite well some monetary value for serious and/or violent offences. This value was obtained by the ranking of criminal events by the public, a ranking which does not seem to be revengeful or interested in severe punishment, as has been claimed by criminal justice officials. A sentencing practice based upon the National Crime Severity Scale seems to have a solid basis. At least this sentencing practice is based on the opinion and the perception of seriousness by the public and not, as with the current sentencing practice, on the opinion of criminal justice officials who lack such a basis. Last, the present sentencing practice sends serious offenders behind bars. After serving the prison sentence they usually come out worse than they were before, and the victim has received nothing. If, on the other hand, one would base the sentencing practice on the Crime Severity Study and implement the sentences within a restorative justice model, the offenders would be forced to make good the damage/injury they have caused and the victims would not be the big losers in this process.

This example of restorative justice praxis, which was hampered by theoretically based barriers, could be illuminated and advanced by a valuable measurement tool, namely the Sellin-Wolfgang Index. It shows the value of good measurements about the extent and nature of crimes. They can be used to influence criminal policies in a good and creative way. The same is true about the fact that restorative justice is at the moment doing better than ever before during this century, also with regard to violent offences. However, the sad truth is that in most cases bad measurement and documentation of crimes is the reality and is being used to look at the performance of criminal justice systems and to establish criminal justice policies.

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Indicators of Crime and of the Performance of the Criminal Justice System

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Introduction

As a researcher who took part in the preparation of several reports on crime situation in Estonia, I will concentrate my attention mostly on the problems connected with the indicators of crime. Whenever it is possible, I will illustrate my views with examples from the Estonian case.

There is general agreement in the criminological literature all around the world on how could one estimate the extent of crime in the given country. The standard criminology textbook will definitely contain a chapter on crime indicators. About three fourths of this chapter will discuss official statistics as the main source of data. Victimisation surveys would also be described as an alternative to the official statistics and, at the very end of this hypothetical (typical) chapter, the self-report study will be mentioned as well. This sequence somehow reflects the attitudes towards data gathering techniques: statistical data are trusted most of all, and survey data are acceptable with some reservations. What are the reasons for such a validation of sources? The historical traditions along with the general trust to the statistics gathered by the state are probably the most significant ones.

"Official" crime data

The very term 'official crime data' that is usually used for the number of recorded crimes (either in absolute numbers or per 100000 of population) shows that statistics are trusted most of all. This is why, in order to obtain the 'right' numbers, the numbers that reflect the reality of the crime situation as precisely as possible to, are very important.

The main potential sources of errors in the crime statistics are listed in Barberet's paper. The disadvantages of the crime statistics are that:

- official statistics represent only part of the crimes actually committed
- crime statistics are biased towards certain types of crimes
- information about the offender and the victim is limited
- the process of data collection involves many instances that could be potential sources of error
- for international comparison, national statistics should be reclassified.

I have experienced some of the problems several times while preparing drafts for the Estonian national crime report in 1995-1996 or in attempts to compare crime rates in different countries. I use the expression 'drafts' because after the first version of the report prepared by the criminologists, it is usually discussed, commented and edited, firstly, in the sub-committees of the Estonian Council for Crime Prevention and, finally, in a meeting of the Council. Every effort is made in the final version of the report to show that the performance of the criminal justice system is as effective as possible.

a. The comparability of the statistical data

The extent of crime in a given country is, as a rule, assessed in comparison with (a) the previous years; and (b) other countries. In countries with a stable justice system, the former comparison is not a problem at all. In countries in transition, such as Estonia or the other ex-communist countries, the penal code is changing all the time. Crimes are always recorded and categorised according to the criminal code in force at the time in question. This is, however, usually overlooked, especially when crime trends are analysed. The crimes that belonged to one category in 1992 could be counted as a different type of crime in 1997. In addition, some offences have been decriminalised, and others have been criminalised.

When comparing the level of crime in different countries, a similar situation emerges. The problem here is not only the linguistic one of how to translate the local terms (usually into English). Different countries classify crimes differently. Therefore, the main problem is how to make these categories comparable. To take just one minor example, in Estonia, there is no simple crime category of 'theft'. There are two different categories for thefts: 'secret theft' and 'public theft'. When comparisons are made with other countries, the category of 'secret theft' is usually used as 'theft', and 'public theft' is either omitted or added to the category of 'robbery'. There is no agreed English translation of the terms used in Estonian statistics, no agreement about how to classify data in order for it to be comparable with that of other countries.

b. Registration of crimes

The process of recording crimes is not only a potential source of accidental error. It is also the moment when the number of recorded crimes can be manipulated deliberately. We should not forget that the clearance rate (the proportion of cleared-up crimes out of registered crimes) is often used as an indicator of police performance. The possibility of under-recording crimes in order to obtain better numbers for police performance is not just theoretical. From an interview with Andres Anvelt, a senior police officer in Estonia, I learned that during the Soviet regime it was the usual practice to register only those crimes where the offender was already known. He also mentioned that, although this is not common today, in some regions it is still an on-going routine to some extent.

c. The 'magic' of numbers

Regardless of whether or not they are collected in the proper manner, crime statistics have to be interpreted. Here I will quote a small paragraph from the

Report on the Crime Situation in Estonia in 1997. I am fairly confident that a corresponding passage could be found in similar reports from any other country.

> ”In 1997, less then one third of all registered crimes (31.7%) were cleared. In absolute numbers, the clearance rate for the crimes has increased from year to year. In 1997, 12,994 crimes were cleared. The number of cleared crimes has increased by +12.7% in comparison with 1996. However, because of the 15.7% growth in the number of registered crimes, the number of unsolved crimes increased as well.” (Estonian Council for Crime Prevention, 1998)

The message one could read from this paragraph is that the police are working as hard as possible to clear the crimes. Every year the police solve more and more crimes. Due to a variety of reasons, however, the number of crimes grows faster, and the result is an increase in the number of unsolved crimes.

This message, which is very favourable for the police, is difficult to refute. Everything is true. Nevertheless, it is also true that in 1996 the clearance rate in Estonia was 32.5% while in 1997 it decreased to 31.7%. When numbers are presented this way, the picture is rather negative. And this is the magic of statistics. The data could be interpreted in different ways. On one hand, the growing number of registered crimes could be treated as a dangerous social trend. On the other, it could also be treated as a sign of the greater effort made by the police to register crimes. To overcome this ‘puzzling’ problem one should avoid simplistic interpretations. Before making any conclusions, various facts and social processes should be taken into account.

d. Complementary statistical data

As was mentioned earlier, the official statistical data is the most trusted source of information about crime. Therefore, every effort should be made to record it as precisely as possible and to avoid manipulation at any stage of the process of collected data. One way to improve the reliability of the statistics is to use available complementary statistical data provided by the different agencies. For example, as was mentioned in Barberet’s paper, in case of homicide the police statistics could be compared with the public health statistics. Homicide statistics are probably the most often used example. The control data for other types of offences could possibly be found as well.

Victimisation surveys

Victimisation surveys do not cover the entire ‘reality’ of crime. They reflect only specific aspects of the crime situation – crime experienced by an individual. If the task is narrowed to describe this specific sphere, the victimisation surveys provide the best description of the situation. Theoretically, if the survey is carried out accurately, this technique overcomes the major part of limitations described in the case of statistical data on crime. The possibilities of manipulating the data are avoided because there is no political pressure. Data is collected directly from the victims of crime; therefore, numerous stages of data collection, the potential source of error, are avoided.

The International Crime Victim Surveys, as is stressed in Barberet's paper, are the best way to avoid the above-described problems also when comparing the crime situation in different countries. As is noted by Barberet: "these methods ... at least produce indicators which are based on similar definitions and samples and thus, one would hope, contain fewer errors due to misunderstandings". (Barberet R., 1998)

The main problem with the International Crime Victim Survey in Estonia is that it is not conducted regularly. No institution in Estonia took the responsibility of carrying out the survey. The survey was conducted twice, in 1993 and in 1995. Both times, it was financed primarily by foreign agencies and co-ordinated by the Finnish National Research Institute of Legal Policy (Aromaa & Ahven, 1995:1).

Victimisation surveys are not only complementary measures of the crime situation. They also measure the public assessment of the crime problem, and public attitudes towards the police and the criminal justice system.

Self-report studies

While victimisation surveys could complement our knowledge about crime with information about victims, self-report studies allows us to learn more about unreported crime or antisocial acts and their perpetrators. In Estonia, self-report studies are not commonly conducted. At the beginning of 1990s there was an attempt made by sociologists at Tartu University to conduct a self-report study among school children in Kohtla-Järve, a city in the northeastern Estonia. The attempt failed. Almost all the questionnaires were returned uncompleted. I am not aware whether other attempts have been made in the former Soviet countries/republics and whether those attempts were successful or not. The reasons for the failure of the self-report study in the former Soviet states could be found in the nature of the relationship between the individual and the state apparatus that is characteristic of the totalitarian regime. Lydia Rosner, an American criminologist who has studied criminal activity among immigrants from the USSR to the United States notes that:

> "...[They] distrust written questionnaires, having had only bad experiences with bureaucratic forms and work papers. Equally, they distrust people who they perceive as representatives of official agencies. [They] tend to view all such social agencies or research personnel as an arm of the government..." (Rosner, 1986:75)

The fear that research such as self-report studies is made in co-operation with the police and that the police or the other authorities could punish persons for any unlawful act that they report, is still a real one. Therefore, attempts to conduct self-report studies in totalitarian or post-totalitarian countries would rather fail.

Indicators of victimless crimes

All three ways of collecting information about crimes (official statistics, victimisation surveys, and self-report studies) have one feature in common. They mostly reflect so-called conventional or everyday crime. Other crime forms, such as corporate crime, corruption and organised crime are not well documented when only these techniques are used.

These ”new” crimes are often issues of great public concern. The lack of a possibility to grasp the knowledge about corruption, economic or organised crime is often seen by the public as an inability of the police to cope with this type of crime. Once documented, this ‘unusual’ crime would become less frightening in the eyes of the society.

There are additional ways to gain knowledge about these types of crime. Information about crimes against enterprises, for example, could be obtained through the implementation of the International Survey of Crime against Business (Aroma&Ahven, 1995: 2-4). Several countries have started to record organised crime using a specially designed questionnaires. When this method is used, the police authorities are interviewed concerning their knowledge about a particular grouping, crime or leader. Each questionnaire describes one group. (An example of such a questionnaire could be found, for example, in: Contribution of the Netherlands Delegation, 1994: 63)

A short version of the questionnaire on organised crime was conducted by the author in the Estonian Security Police. Once the information was recorded and summarised, the picture of an overwhelming underground society has been shrunk to a couple of hundred professional criminals. The result has surprised the policemen themselves (Markina, 1998).

Indicators of the performance of the criminal justice system

I have very little to add to the overview of the criminal justice performance indicators presented in Barberet’s paper.

Taking into account the notes considering crime indicators presented above, I would like to mention that the choice of indicators of criminal justice performance should not influence the crime indicators (remember the example where the clearance rate is used as a police performance indicator that could influence the registration of criminal acts).

Final words

The indicators of crime and criminal justice performance are needed to describe the reality of crime as precisely as possible. What is the 'reality' of crime and what is, in this case, the objective of the criminal justice system, is a very complicated theoretical question. In my opinion the perception of the crime situation by the public and the fear of crime are the factors that define to a large extent the crime situation in a given society. This fear is often influenced by the unknown, by the feeling of being unprotected, by a distrust in law enforcement agencies, and, the same time, by tremendous crime figures presented by the mass media. One of the goals of the criminal justice system should be to reduce this fear.

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"Indicators may be all right but what about their use(r)s?" Indicators of Crime and of the Performance of the Criminal Justice System

Commentary by Kauko Aromaa

1 Two separate tasks

Crime indicators and performance indicators are, in my view, two quite separate things. One is concerned with grasping something that is "out there" and tends to avoid measurement. The other is about monitoring a set of bureaucracies and related organisations and entities. Some aspects of the real worlds are, however, shared by both, such as, for instance, the question of the general public´s participation in activities related to the criminal justice system (saying, in effect, that the general public actually IS part of the said "system", if understood in a broad frame of reference. So are, indeed, everybody else involved, offenders included).

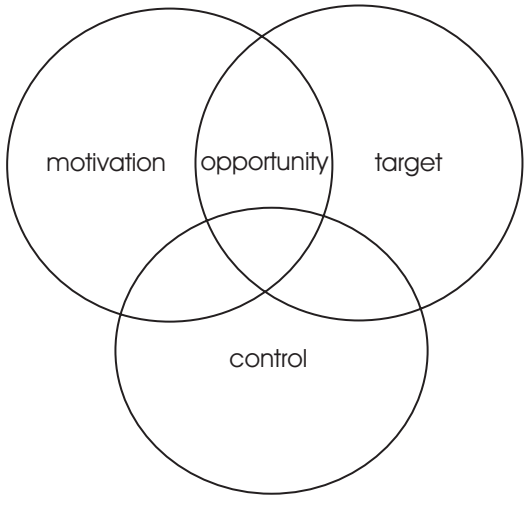
Whether indicators in general are good to have or not needs hardly to be discussed at length. It might, however, be mportant be to point out that no indicator is "objective" in the sense that its form and its interpretation would be independent of underlying assumptions and understandings as to their objectives. Equally, on the other hand, an indicator is an indicator – of what, remains to be defined by each (mis)user separately.

Indicators may be quantitative, qualitative, or both. It is primarily the quantitative part that is meant when indicators are being discussed.

2 Basic problems with crime indicators

I wish to introduce this part with an analysis of the idea of "crime", its logical elements. These could be envisaged as providing a framework of description: which aspects we might like to have covered if indicators were to be satisfactory with regard to relevance. The question is whether central aspects required for a "correct" interpretation of indicator rates are available and included, and how far beyond the actual observable phenomenon ("crime") the measurement should be expected to go. If, for instance, "crime" is understood as the outcome of an interplay of motivated offenders, suitable targets, and lack of adequate control, then a "crime" indicator that just reflects the number of incidents (or victims, or offenders) that correspond to given event definitions is perhaps not very satisfactory. If, on the other hand, "crime" is understood as something that just occurs,

a simple prevalence/incidence measure suffices. Then, separate interpretations would need to be made, where this amount would need to have a homogenous interpretation across incidents. The interpretation, for example, where ”crime” is related to quality of life concerns, would probably require that high values are understood as ”bad”, and low values as ”good”. This is, of course, not necessarily always quite clear, unless the event environment is grasped correctly.



As Barberet points out, all indicators are (mostly implictly and sometimes even explicitly) based on theoretical assumptions of the nature of the phenomenon to be monitored. At the same time, however, indicators often are derived – in a seemingly a-theoretical and decelptively value-free manner – from what is easily available. This is, in a way, another instance of invisible limitations of which much of existing research suffers: available data too often tend to dictate what is being studied, and it is unusual that the data really is being designed expressly to meet the demands of the underlying theoretical objectives of measurement. This is not really a criticism of research endeavours as such – this is a matter of realities with which research must cope, and a critical use of sources is an obvious basic requirement of any scientific endeavour. In the context of indicators, however, the danger of paying too little attention to this obvious fact is particularly great.

A further point to have second thoughts about is the choice of individual crimes: each jurisdiction has defined a more or less unique list of ”crimes”. Which of these are to be included in an ”indicator” collection? For national purposes and local assessments of change over time, the solution might be quite different from what is adequate for cross-nationally comparative needs. Many ”crime” phenomena are, albeit, quite similar over time and across countries, but many others are not. Constant development and evaluation work is therefore called for, as well as critical re-thinking with regard to needs and possibilities of improving existing solutions. If standardisation and comparability across jurisdictions, on one hand, and over time, on the other, are seen as important objectives of indicator development, as they ought to, this matter is one of central importance. No

jurisdiction has been able to retain its list of criminalised acts intact for a long time. No two jurisdictions share an identical list of criminalisations.

3 The basic problem with performance indicators of the criminal justice system

Here, an entirely different world is opened, or so it would seem at first sight. The central value of an analysis of this realm is probably in that it makes it necessary to ask and aswer basic questions related to the objectives of the criminal justice system, together with illustrating the need to define what is included in the readily used concept of ”the criminal justice system” – at this point, it might be eye-opening to point out that not all jurisdictions even share an independent expression for this, a concept that seems to have come to much of European analysis from the Anglo-American tradition. The history of the term might prove helpful if its target phenomenon is to be understood.

Often, we might likely be saying that this ”system” consists of the bureaucratic structures that take care of law enforcement, sentencing, and corrections (and maybe something more). What should be immediately obvious is that this represents an extremely biased and theoretically unfounded view.

Performance indicators are constructed for a basically different purpose than indicators of ”crime”. The idea is not to find out how much of something there is or how it is distributed, or any similar matter. What they share with crime indicators are ideas of relevance and problems of a technical kind and problems regarding data sources.

4 Commentaries regarding some details[153]

II. Existing research: the author does not explicitly mention business victimisation surveys. By and large, the problems and strengths in this case are not basically different from such surveys of the general population. This topic is taken up in part B. of the paper but not discussed in the present context. Some observations would have been welcome also here, as surveys of corporate victimisation might be seen as one more important and independent contribution to the efforts of improving the standard set of tools to be used in creating crime indicators. This observation actually makes me think of quite another general idea with regard to the indicators debate: perhaps a central contribution of the scientific community to this realm of applications is that it develops a balanced set of approaches, a ”standard tool-box” that could always be recommended when indicator needs are observed. This contribution could be seen as valuable in itself even if there has never been very much success in achieving the goal of

153 The numbers refer to the sections of Dr Barberet’s paper.

regularly and globally producing similar, standardised and comparable indicators of all relevant aspects of crime (see also IV.A).

One of the unique contributions of self-report surveys is that they are able to provide information about some victimless crimes. Also, they are able to provide measures of apprehension/detection that represent a definitely different perspective to crime than the one provided by the questions on reporting crimes, often included in victimisation surveys. Admittedly, the author does mention these items – why I take this point up is that I believe that such information could be used for important indicators relevant both to crime and to the criminal justice system.

III. Methodological and Theoretical Problems: a further dilemma has to do with the generally cross-sectional nature of crime indicators. The bulk of information relates to sudden or short-lived incidents, and thus reflects an atomised view of ”crime” as a mass of unrelated single incidents. This dilemma requires in-depth research before much of an improvement could be achieved. Just by way of example, this dilemma is reflected in authority-based crime data in the virtual lack of information on criminal organisations or organised criminal acitivity; or, in victimisation data, it is quite rare that social processes (such as the events leading to the victimisation, or the consequences of the incident to the victim or to his/her/its environment) connected with victimisation would be even touched upon. Similarly, as the author points out, the ”gallup” approach does suffer from a bias related to, among others reasons, the history of polling, where the measurement largely concentrates upon superficial items easily and immediately grasped by the ”outside observer”, and thus easily overlooks matters that are inside and in the history of the informant, or rather on the macro level, outside of him/her/it. As a matter of fact, the survey techiques typically applied here do suffer from this kind of restrictions, while they of course at the same time have clearly represented a major improvement in the development.

IV.C. ...linguistic nuances... The Council of Europe ”Sourcebook” project deserves special mention in this context. The objective is to produce a crime and criminal justice data collection that would provide improved possibilities of comparisons of all Council of Europe member countries. What this project has made painfully clear is that, even if seriously tried, it is very hard to produce even elementary data on central traits of the crime scene from the existing sources. The problem is at the same time linguistic, legal, and cultural.

Such observations have, indeed, been one of the motives for trying to develop measures that are initially designed for comparative purposes. The warning of differences in the meanings of seemingly identical formulations is therefore most relevant.

IV.D. ... anticipatory... This idea strikes me a somewhat strange. I am aware of initiatives by police authorities where crime forecasting has been given as the objective, and also seem to remember that such projects have resulted in a compilation of fears and hopes, spiced with the latest newspaper scares. I am probably mistaken, and the author might easily be able to straighten this out.

V. Policy applications: A more valuable contribution that the ”indicator debate” could make to policy is on the macro level: if an indicator perspective is adopted, then also the basic idea is likely to be received positively that indicator

rates may be influenced – that there may be ways of changing policies that could result in changed values of the indicators in question. Additionally, adopting one indicator set is likely to open the way to constantly questioning the basic assumptions related to the indicator choices.

In any case, research should be carried out in order to interpret indicators. Thus, if there is an agreement about the general usefulness of given indicators, then there also ought to be an option for interpretive research. This does not always happen quickly but more important is that the option is opened.

VI. Performance Indicators of the Criminal Justice System Defined: This is a matter different from crime indicators. The basic problem here is the same as with any bureucracy or organisation. What is decisive is the idea of the main objectives of the organisation. An analysis of such questions may be most revealing and, therefore, most disturbing, as the author points out. This is developed aptly in the following passages (VII).

VIII. Methodological and threoretical problems: Here is the central restriction that defies most attempts to create totally new regular indicators: the data should be created as a side-product of normal (administrative) routines, otherwise the costs involved are often viewed as being prohibitive. Many indicator proposals clearly do not meet this criterion. What has also become obvious if we consider points already dealt with in this paper, it seems to be equally clear that indicators that only rely on existing routines are very unsatisfactory.

Thus, satisfactory indicator development and use is not very likely in other countries than the most affluent ones. Even in those, the situation is far from satisfactory. Also, it is likely that future resource investments in this respect are not going to be made by the ”scientific community” but by representatives of powerful bureaucracies who wish to protect their autonomous interests rather than try to achieve some ”common” or ”societal” good.

IX. Areas in Need of Research: This passage presents another difficult dilemma: when speaking of ”international standards” we may be tempted to ask who has the right to dictate what is to be measured? A more acceptable avenue might be a suggestion for the promotion of democratic and material development where such ideas are more likely to be accepted and adopted. -An extreme example of the inherent problem would be the case where a wealthy and powerful nation exerts pressure against others in order to make them apply a given policy (say, the death penalty) with regard to a certain crime problem that is seen as a major problem by this wealthy nation. Of course, indicators are no death penalties. But the value dilemma is similar.

X. Policy Applications: could we not think that a good indicator also always includes thorough information on how it is constructed? Thus, already before and without an evaluation, the indicator user, whoever it is, would have the right to expect an open background explanatory note without which the indicator should not be used.

5 Concluding remark

I found Dr Barberet’s paper highly rewarding.

Indicators of Crime and of the Performance of the Criminal Justice System

Commentary by
Gordon Barclay (Home Office, London)

Introduction

This topic area is one of considerable interest to the United Kingdom and to the Home Office.

However, as I started to read Rosemary Barberet´s paper and those of the other respondents I felt my role would be that of a defence of official statistics. As someone who has collected, analysed and disseminated official statistics over the past 24 years I clearly am aware of both the plus and minus points about their use. However, there are many other points about this topic that occur to me and I have therefore divided my comments into three areas:

a) The current Governmental interest within the UK in the use of performance measures.
b) Some reflections on the use of official statistics for international comparisons.
c) Some thoughts about indicators across the criminal justice system.

a) The UK Governmental interest in performance measure

I welcome the support that Barberet's paper gives for the use of crime indicators. However, the response that she has received from policymakers over the investment of funds into the production of such indicators seems very different from the current UK position.

The paper has already spoken about the use being made by organisations such as the Audit Commission in England and Wales of crime indicators. Such indicators have developed slowly over the last few years. However, they have had no central co-operation, and so indicators tend to be drawing criminal justice agencies in different directions without any single measure of success. In all aspects of life in Britain performance indicators have started to play a major part. For example, the train that I take into central London each day is now privatised (and French-owned). It must meet a target of 88 % trains arriving within 5 minutes of the expected time. Last month it achieved 65 % so all commuters are looking forward to a refund on their season tickets. It is clearly a pleasure to be in Helsinki without my daily travel problems.

The election of Tony Blair in May 1997 has seen a major change both in the introduction of better co-ordinated planning (joined-up policies) and in the setting of clear measurable targets. The Government has set itself the goal of identifying the clear aims of any policy or Government body (for example, what

are the aims of the Home Office). It has identified indicators to measure how these aims are being achieved, and has begun to set measurable targets. Thus it has started to identify what is meant by success and the Government will be judged by whether it meets or misses these targets.

For those involved in assisting policy makers in areas being considered there are two particular points which are important:

a) There is a need to be involved in setting these targets. To take the view that such targets are not helpful and should not be supported will result in others less knowledgeable setting them.
b) There is a need to be involved in measuring these targets to ensure that they reflect truly the successes and failures of the Government. I can see in advance the problems that may occur when there is a dispute over whether an indicator has truly judged failure or merely reflects an administrative change.

Listed in the Annex are examples of these indicators linked to four of the Home Office aims:

a) Reduction in crime, particularly youth crime, reduction in the fear of crime, and the maintenance of good order and public safety.
b) Delivery of justice through effective and efficient investigation, prosecution, trial and sentencing and through support for victims.
c) Prevention of terrorism, reduction in organised and international crime, and protection against threats to national security.
d) Effective execution of the sentences of the courts so as to reduce re-offending and protect the public.

Targets have not currently all been set but one of which I am aware of is for reconviction rates. Here the target for next year is to lower the actual reconviction rates for all types of non-custodial supervision orders. The aim is to achieve rates lower than those currently predicted based upon the age, gender and offence of the offender. Another target is that vehicle crime will be required to drop by 30 % over the next four years.

Such targets will require new or in some cases more frequent collection of data. For example, consideration is being given to introducing an annual rather than biannual British Crime Survey to cover the data requirements for some of the indicators. Extra public money is being set on new policies which aim to meet such targets.

I would be interested to hear about other countries setting similar targets. In addition, we may see international bodies developing the use of such targets as the basis of their work program.

b. Official statistics for international comparisons

Official statistics are normally the product of administrative systems with data input by operational staff such as police constables or prison officers. For staff whom are busy with day-to-day tasks involving contact with the criminals or the victims of the criminal justice process, completing forms or inputting data

electronically may not appear important except when it is then translated into a performance indicator. Yet through the knowledge and central involvement of the staff completing the returns it provides a unique set of data about the current state of the criminal justice system in any country.

In using such data it is important to remember these points:

– As in surveys, each observation will have an error related to response rate, sample size and design. Official statistics are similarly subject to error and vary in quality with the efforts put into validation.
– Statistical rules as well as legal definitions are equally important. For example, for crimes recorded by the police it is important to know the point of time at which the observation is made and the rules for multiple offences.

Thus the use of official statistics without knowledge about such factors (often called meta data) is similar to using survey results without knowing the sample size. The Council of Europe´s recent survey into crime and criminal justice statistics (currently being analysed) has tried to collect such meta data from Member States. Although this has its problems, an acceptance that data and meta data cannot be separated is essential in any comparative context.

The publication in August 1998 of a Press Notice by the Home Office covering data on homicides in European and North American cities has illustrated how even an offence that many would feel has a common definition can create problems. The data in question was collected (and double checked) with either the Ministry of Justice or Statistical Institute in each country. However, on release many countries disputed their own figures mainly on definitional questions. The result has been that the data recently republished (Criminal Statistics, England and Wales) are now better comparatively. However, for all countries it was not the figures that were incorrect, it was their interpretation of the requirement and the definitions adopted. Many would say, "use the World Health Organisation figures for homicides". However, when I looked at the England and Wales figures a couple of years ago I found that they undercounted homicides in England and Wales by about one-third. With two administrative sources you will probably get two different answers, both of which will be wrong.

Official statistics can give you trends over time on the assumption that other factors have remained constant (see the trends in recorded crime for the main OECD countries in Criminal Statistics, England and Wales). For absolute comparisons official statistics, although providing a rich source of data, must be accompanied by a process of validation and definitional checks. Thus work on such crime and criminal justice indicators needs to follow a similar process with a cautious approach to any usage.

c. Indicators across the criminal justice system

Indicators that I have seen in previous papers have all related to crime and its measurement with little attention to cross criminal justice system indicators. I have two current interests in looking at such indicators across the criminal justice:

– The Council of Europe´s study of crime and criminal justice statistics.
– Analysis of statistical information on race within England and Wales.

In the case of the Council of Europe, data was collected for 12 countries originally for 1990 and published in 1995 (Draft Model European Sourcebook of Crime and Criminal Justice Statistics). This publication used three indicators covering the use of imprisonment:
– Number sentenced to imprisonment per 100,000 inhabitants.
– Number sentenced to imprisonment per 100 recorded crimes.
– Number sentenced to imprisonment per 100 suspects.

These indicators were looked at for three offences: assault, total thefts (including burglary) and drugs. Its aim was to try and see at which stage of the criminal justice process variations in the use of imprisonment developed. Ranking countries using these indicators for particular offences makes it possible to identify whether a high apparent usage of imprisonment results from a high crime rate rather than a high use of imprisonment. Similar types of analysis are being considered for the full report covering 36 countries and 1990-96.

Turning to the question of race and the over-representation of ethnic minorities within the criminal justice process: the document published on 8 December 1998 by the Home Office (Statistics of race and the criminal justice system 1998) brings together information on the position of ethnic minorities based upon monitoring of the police, prison and probation services. No information is currently available on the courts and sentencing. However, in order to show cross criminal justice comparisons, the following indicators are included by ethnicity for the ten police force areas with the highest ethnic populations:
– Percentage of arrests resulting in a prison reception
– Percentage of arrests resulting in a commencement for a criminal supervision order.

Such comparisons (Table 1) suggest that variations between forces are far more significant than those between ethnic groups. However, these are only the first steps in a process of collecting criminal justice statistics and research. They nonetheless illustrate that it is important to look across the criminal justice system and not to restrict indicators to only one part of a complex system.

Conclusion

My conclusions are therefore that this is an area where work is just starting with a need to develop indicators for the future that can act as a guide for policy makers. However, we must tie in work on such issues with the methodological problems that arise in international and national comparisons to ensure that such indicators can be used safely.

Annex A
Home Office aims and objectives

a. Reduction in crime, particularly youth crime, and in the fear of crime and the maintenance of good order and public safety.
- The long run growth rate of crime.
- The fear of crime.
- Reconviction rate for persistent young offenders.
- New measures to be developed for police output and efficiency.

b. Delivery of justice through effective and efficient investigation, prosecution, trial and sentencing, and through support for victims.
- Time from arrest to sentence or other disposal.
- Time from arrest to sentence for persistent young offenders.
- Needs of victims and witnesses met by the criminal justice system.
- Clear-up or sanction rate.
- Efficiency of the criminal justice system.
- Police discipline-time from laying charge to result.

c. Prevention of terrorism, reduction in other organised and international crime, and protection against threats to national security.
- Number of terrorist incidents.
- Number of organised criminal enterprises disrupted.

d. Effective execution of the sentences of the courts so as to reduce re-offending and protect the public.
- Number of offenders serving prison and community sentences completing programmes independently accredited as reducing re-offending.
- Reconviction rates compared with predicted rates for prison and community sentences for all offenders and for persistent offenders.
- Annual unit cost of community orders and supervision on licence.
- Prison average cost per uncrowded place.
- Proportion of relevant supervision cases where breach action taken in compliance with national standards requirements.

Table 1. Percentage of persons arrested who were received into prison or commenced criminal supervision orders by ethnicity for selected police force areas 1997/98.

Police force area	Percentage of persons arrested received into prison			Percentage of persons arrested commencing criminal supervision orders		
	White	Black	Asian	White	Black	Asian
Bedfordshire	8.9	10.5	8.8	9.9	7.4	5.5
Greater Manchester	7.8	10.4	3	5.6	5.2	3.3
Hertfordshire	5.1	5	4.7	8.7	5.9	5.5
Leicestershire	8.2	11.8	9.1	11.8	9	7.8
Metropolitan	7.5	9.1	4.8	8.4	6.7	4.1
Nottinghamshire	7.5	10.8	5.6	9.9	12.1	4.6
Thames Valley	3.3	3.6	2.4	8.3	5.1	4.5
West	6.8	7.5	6.2	9.6	5.8	4.8

Public/Private Partnerships in Crime Prevention Slovenia: Between Tradition and Transition; From a Strong State to a Strong Democracy

Dragan Petrovec (University of Ljubljana, Slovenia)

1 Tradition: strong state – weak democracy

The social system developed by Slovenia after the Second World War could not differ significantly from the system in Yugoslavia, since Slovenia was a part of Yugoslavia, with some autonomy, but with more limitations than freedom in choosing its own destiny. This political system was based on the ideas of socialism, common or corporate ownership and many restrictions on private property. This ideology contributed to regulation by the state of most vital areas, while there was no room for private initiative. The consequences of such an ideology were mostly bad for the economy. Even so, we have to admit that a ”social state” was being developed in a way that had none of the differences that we can witness nowadays. People were not very rich, yet they were not poor either. At least, no social gap could be seen until such a gap had been brought about by a free market economy with no feeling for social security The spirit of free enterprise and business brought about a split in society, between a small number of extremely rich people on one hand, and on the other people with average incomes, more and more of whom are approaching poverty. The poor ones are not poor due to their incapability of earning or working properly; they are poor due to the incompetence of the system in taking care of social issues. This bears mentioning also in the present connection because it is criminogenic.

The former state that was ”social” in terms of caring for citizens, took care of crime prevention as well. The police, prosecution and court as the three major state systems had the task of shaping an adequate crime prevention policy. The primary concern of the former state was, inter alia, a crime prevention strategy. Although someone might expect that the legislation reflected the ”almighty state”, the situation was actually quite different. Although the first Penal Code, adopted by the Yugoslav assembly in 1947, was for political reasons modelled on the Soviet Penal Code, the next Penal Code from 1951 and even more so its amendment in 1959 were closer to European criminal legislation. Eminent European scholars (such as Marc Ancel) considered the Yugoslav criminal law to be modern and democratic (Bavcon, 1994; 292).

In spite of democracy, there was almost no private initiative, in the business sector or in any other sector. There was no room for partnership in preventing crime. It was considered most inappropriate to have a system parallel to the state agencies, which would take over the crime prevention activities.

However, in open defiance of common sense, we witnessed an unexpected development of the socialist social system.

A theory of the ”withering away of the state” was being developed by leading ideologists, predicting that most state competence would gradually be vested in the people. The term used for this was ”socialisation of state competence”. One of these fields was crime prevention. This idea was in compliance with the ideology of self-management, a trademark of the Yugoslav socialist social system.

a) Social self-protection

Ideas and practices related to this social self-protection appeared as a new ideology of the crime protection and prevention system. After the Second World War when Yugoslav ideology was closely related to the Soviet system, it was believed that crime would soon disappear after a new social order had been established. According to the prevailing attitude, criminality was a remnant of a bourgeois social order. Yet it was Slovenia and its Criminology Institute that, during the 1960s, talked about crime as a legal phenomenon that could not be ignored by socialism. The socialist social system did not in itself guarantee a society free of crime (Bavcon, L. et al. 1968; 101-104).

Being aware that a strong state with its repressive system causes more evil than does crime itself, the idea of social self-protection seemed to be quite acceptable as a new crime prevention strategy.

> This idea is very close to the military defence concept which included the idea of so-called ”total national defence”, which was strongly influenced and encouraged by positive experiences during the Second World War. Confronted with the enormously overwhelming military force of German, Italian and Hungarian armies, the Slovene resistance succeeded only by using partisan tactics supported by a ”total national defence” strategy.

Although partisan resistance soon became formal resistance, with a military structure and hierarchy of its own, social self-protection, with only one exception, remained an informal system of crime prevention.

The ideas of social self-protection were based on the expectation that everyone is responsible for avoiding victimization. A common denominator in social self-protection and official crime prevention activities existed in their defence of the same values, i.e. fundamental rights, personal integrity, property, the social order etc. Even so, there was an important difference. While crime prevention activities carried out by the state have always had sanctions to back them up, self-protection has never involved any such weapons against perpetrators. This did not mean that the state was excluded from intervening. It only meant that when prevention failed it was time for the state to appear. Self-protection has always acted in a preventive way by, to put it simply, always being alert. The

system of self-protection was actually an ideology. It had roots partly in the incompetence of the state to fight crime more efficiently. In the language of social science, it was a process of socialisation that was the opposite of etatism.

The self-protection ideology had the clear advantage of being much less aggressive, which may contribute to less repression in general. On the other hand, we have to admit that official crime prevention as carried out by state agencies has always been based on professional standards and criteria, while self-protection may quickly turn into emotionally based overreactions leading to several forms of phobia, including fear of crime, xenophobia etc.

A good example of an exaggeration of the role of crime prevention activities was to be found in Slovenian legislation dealing with traffic safety. (I presume that Slovenia was not the only such case, and that such regulations might have been found also in other states.) A driver who had left his or her car unlocked (even with no intent) could have been punished for his or her ”provocative” behaviour, since leaving the car unlocked could encourage a possible thief to steal the car.

In this case, everybody who does not help in fighting crime, even though they may fail to do so through negligence and not by intent, are classified as criminals and are punishable by law.

Another, much more bitter experience with the social self-protection ideology was during the time of the ”cold war” in 1948, when the conflict between the Soviet Union and Yugoslavia broke out. There was a high probability of aggression, as subsequently happened in Hungary in 1956, Czechoslovakia in 1968 and later on in Afghanistan. Until that time there had been a strong friendship between the Soviet Union and Yugoslavia, based mostly on Soviet military assistance in fighting the German army and in liberating part of Yugoslav territory, including Belgrade, the capital. In 1948 the weakest point of defence against the Soviet Union seemed to be that very friendship. Many people, including politicians, were simply unable to suddenly treat Russians as enemies. Therefore, many sentences were passed according to martial law, and too many people were sent without being sentenced to concentration camps in some of the Adriatic islands in complete isolation, where many of them died. The self-protection ideology, in a way perverted by fear and hatred, contributed to these convictions. To arrest and even eliminate a person, it was sufficient that someone went to the police and expressed his or her suspicion that some other person sympathises with the Soviet Union or even with its ideas. No further evidence was needed.

The renaissance of the social self-protection idea came during the period of relative peace during the 1970s, and no negative side effects have been reported. The people concentrated more on real crime. It is very difficult to evaluate the impact of this ideology on crime in general. Even so, there are trends that are worth mentioning. The crime rate in Slovenia is rather low compared to other European countries. The number of prison sentences passed from the 1970s up to the middle of the 1990s has steadily decreased from more than 2000 to approximately 700 per year. (Brinc, 1994; 309). More by mere intuition and not

by some firm evidence, we might presume that this could contribute to less crime in general.

b) The Reconciliation Boards

The only exception to the application of the social self-protection idea as informal social control was to be found in the ”reconciliation boards”, agencies established by law and consisting of lay members. These boards existed in former Yugoslavia as well as in Slovenia since 1959. Their task was to arrive at a compromise between persons in dispute, through the use of informal, non-compulsory and voluntary approach. The Yugoslav constitution classified reconciliation boards as a self-government judicial authority, since self-government was a trademark of the Yugoslav political system. The role of reconciliation boards was not to pass judgement or establish the truth; they did not seek to establish the facts of a case or allocate guilt and responsibility. They were only social authorities composed of lay members, and they acted only by consent of persons in dispute. In this way they contributed to the decrease in the repressive function of the state.

The number of reconciliation boards in Yugoslavia

1964	5,148
1968	6,073
1972	6,696

The number of cases dealt with by reconciliation boards

1963	79,332
1968	70,125
1971	58,904

The number of cases entrusted to reconciliation boards differed very much in the different republics of Yugoslavia. In Slovenia this number was rather low. Comparing the number of boards and the number of cases we can see that for instance in 1971 there was an average of less than 10 (8,8) cases for each board per year. A study carried out in Slovenia showed that boards were successful in reconciling the parties in dispute in 24% of cases in urban areas and in 32% of cases in rural areas (Pečar, 1973; 368).

It has been estimated that reconciliation boards played an important role in preventing crime for many reasons. They were not compulsory, they had an educational role by encouraging feelings of empathy, by removing frustrations and tensions, and even amending the consequences of some criminal activity. The nature of reconciliation boards did not allow them to broaden their competence or to make their decisions more formal, for example by issuing formal orders or whatsoever. Their decisions had to remain informal in order to be trusted by the parties involved.

Later on the reconciliation boards, especially in Slovenia, gradually left the stage and the new legislation, since independence has established other, less

aggressive crime prevention measures, such as mediation within the criminal procedure. The author's experience with reconciliation boards is rather unique. During a four year mandate there was only one case and even then one of the parties changed his mind and opted for the regular court.

2 Transition: weak state – slow reanimation of democracy

a) Private security agencies

Since 1991 independence and democracy are supposed to be a trademark in Slovenia. Both dimensions of a new-born state should be considered rather carefully. There is no objection to independence in a political sense. Even so, there are many side effects of independence in economic terms. The Slovene economy was closely linked to the economy of the other Yugoslav republics. On the one hand it had been quite expensive to support other, undeveloped parts of Yugoslavia through constant special taxes, while on the other hand we were able to sell all our products to the rest of Yugoslavia. The interest was mutual, but Slovenia always had a feeling of being exploited, a feeling which in a way fostered a dream of independence. After achieving it we suddenly realised that running a state is an expensive enterprise, much more so than we had expected.

In respect of crime prevention, the first sign of financial restrictions on government activities was the withdrawal of the police from providing major companies with security services. The Ministry of Internal Affairs decided that the police would disconnect technically protected sites previously connected to police alarm centres. In addition, they stopped approving requests for new connections. Because of governmental cutbacks and a limited budget, the police have been forced to rationalise their work in all fields, but most importantly in areas where the tasks which are not directly required by law are carried out (Anželj, 1998; 1).

Simultaneously, the Private Security Act was adopted, regulating all sectors of protection not covered by state agencies. This Act might be considered as an inevitable consequence of the free market economy and as a new opening for private initiative, but also as a consequence of the state's inability to properly function in all sectors due to the financial restrictions.

Security has suddenly become a commercial commodity that is available to those who can afford it.

> This situation was confirmed by the author's personal experience. A citizen, repeatedly threatened and even assaulted by an aggressive neighbour with a long police record, asked policemen how to be protected in the future since the perpetrator had always been released after a few hours and did not seem to stop his criminal activity. He was advised to get a private security agent, as the police were not able to provide him and his family with any protection.

The new legislation did not create clear limits between the state and private security activities (Anželj, 1998; 2). They may appear and act simultaneously. Private security activity can help the police in the investigation phase by apprehending the criminal or by providing useful information about him or her (Dvoršek, 1998; 120). This could be treated as a public/private partnership in crime prevention.

After the enactment of new legislation many private security agencies were established. Today we have 11 major agencies in Slovenia with 1763 employees (ranging between 50 to 355 employees each). Among other tasks they provide security services for more than 6000 buildings and can field more than 60 mobile squads. One of the agencies specialised in protecting property in stores has apprehended more than 3000 perpetrators over the last few years.

The equipment the agencies have at their disposal is often more sophisticated and expensive than what the police can afford (Balažič, 1998; 39).

Some experts within the police system say that the potential for police deterrence has become limited, but mass crime and organised crime does not stagnate. The considerable amount of private security activity therefore implies that the strategic possibility for the police to use those resources which had previously been used for situational crime prevention, should now be directed towards the deterrence of organised and other dangerous crime (Dvoršek, 1998; 120).

However, the rise of private investigation and private security systems brings with it some problems.

Private security has become a business. Unified standards do not exist regarding the ethical neutrality of those in the sector, nor is the ideal of justice strictly followed. The police are expected to follow the rules and obey the law much more meticulously than are private agencies (Pečar, 1977).

This opinion seems to be confirmed by the attitudes evident in the following citation from V. Balažič, Director of the Association of Private Investigation Agencies:

> ”Reporters who, in the mass media, protect thieves and impostors are constantly endangering the work of private investigators; the reporters are capable of ruining any private detective or agency if they decide to. On the other hand, politicians and reporters are protected by court, in that they are never punished for what they do to private detectives. The work of private investigation agencies is regulated by law so that they have to comply with the same standards as the police. That was something the detectives were most afraid of. Therefore, people prefer to hire ”detectives” without a licence, who guarantee *more discretion and protection of human rights* (?!)” (Balažič, 1998; 32-34; emphasis by D.P.) Balažič continues by suggesting that ”anything connected with detecting crime seems to be forbidden”, and that ”vigilante movements that were about to regain their value were regretfully suppressed a few years ago” (ibid, 39,42).

These statements provide evidence that we should carefully evaluate the positive and negative effects of private investigation agencies and how much effort is needed to establish a partnership instead of envious competition in

preventing crime. We obviously have a lot to learn, since the privatisation of activities which were formerly within the police jurisdiction is a new phenomenon for countries in transition.

b) Private initiatives for the protection of victims

So far in Slovenia, victim protection programmes are rather dispersed, and are primarily run by individual non-governmental organizations. In spite of a few years' experience, such activities have suffered from an obvious lack of scientific and professional background. Programmes depended primarily on volunteers who were interested in dealing with victims.

In the beginning of 1998 a private agency, "B&Z", that had been chartered by the state to help unemployed persons, organised thorough and fundamental training in helping victims. The program was in accordance with the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34).

The persons who were to become advisers in the victim support programme were carefully selected, with consideration to such qualifications as integrity, a humanitarian approach and a university degree. They had to have a good ability to communicate with people, lead groups, give support and be capable of empathy. Furthermore, they should not be primarily aggressive towards delinquents. They had to undergo several months of training conducted by the leading experts and university teachers in the field. Their training included subjects such as victimology, criminology, psychology, penal law, criminal procedure and sensitivity training.

In July 1998 the B&Z agency established 11 centres for victims of criminal offences in all the major cities in Slovenia. Simultaneously, a communication network was established among all the respective governmental organisations (police, prosecution, centres for social work, medical institutions, schools, mayors) and some NGOs in order to inform as many agencies as possible about the new project and secure the co-operation necessary for its implementation.

The table below shows the increase in the number of victims seeking help from the newly established centres:

July (1998)	6
August	43
September	96
October	108

These numbers seem small, even though they may show a significant increase over time. Nonetheless, it should be recalled that Slovenia is a small country with only two million inhabitants. From this point of view, the total number of 253 victims in less than four months is far from being negligible. When asked for help, centres for victims react in several ways.. The first is by providing *support*. This means that someone is always there when needed. "Always" means 24 hours a day and free of charge. The adviser at the centre has to create an atmosphere

of confidence, benevolence and understanding; he or she must be capable of providing emotional support and the relevant information. The next phase is *classification*. Special knowledge is needed in order to determine which agency is most suitable for helping victims. Due to the good relations that are established with the victims, we are able to identify their needs for further treatment. The final phase is *advocacy* in terms of social activity and definitely not in terms of legal activity, since there is no such provision in the legislation. Advocacy as a social activity means the providing of emotional support and practical help with contacts with the police, prosecution, investigation, court or when confronted with the perpetrator (Helping Victims, 1998; 5,20).

c) Vigilante movements

In a small country with a relatively peaceful atmosphere in respect to crime, public opinion and the mass media are shaken by every major case of violence. As a consequence of such crimes, even though they are rare, informal "committees" have been founded, consisting of anyone who feels able to contribute to resolving victim/crime problems. The major problem with such committees is that the initiators are usually those who are somehow closely related to the victim. Some years ago I discussed the problem of victims who become judges (Petrovec, 1996), and the unavoidable side effects that go with such a change in roles. This very situation has been confirmed in a few cases we have experienced in the last two years.

The first was the case of alleged violence against a young 13-year-old girl who became pregnant after living with her 20-year-old friend for a year. He was prosecuted for having committed a sexual assault on a child. The problem was that they were both living in a gypsy community according to their tradition. It has been well known that most of the girls there are sexually mature at that age and many of them live married lives in accordance with the gypsy tradition and have children, even though in the light of criminal law they are themselves treated as children. In fact, it is not surprising to find 13-year-old girls with their own children. Two eminent experts who have conducted research on life in gypsy communities were appointed by the judge to present to the court an opinion on this case. They both stated that this has been the gypsy way of life, and has not changed for decades. The judge acquitted the defendant on the grounds of a mistake of law (error iuris), with the reasoning that the perpetrator justifiably had not known that such an offence was unlawful.

The sentence aroused much discussion in public; demonstrations were organised in the capital and even some university teachers were involved, especially from the feminist movement.

On the appeal of the state prosecutor, the High Court vacated the judgement and remanded the case to the court of first instance for retrial and new disposition. In a new trial a suspended sentence was passed on the perpetrator, and public opinion seemed to be satisfied that justice had been done. Nobody was aware of the paradox of the sentence:at the time of the trial the young girl

was already 14 and could not be treated as a minor. This meant that the young man could not repeat the offence he had been sentenced for.

An overall impression was that the court bowed to the pressure of public opinion, which had been stimulated by ”moral entrepreneurs”, and the court rendered a sentence that it never would have in a neutral atmosphere. Finally it should be mentioned that over the past 50 years this is the single case that has been brought to court regarding such behaviour among gypsies, regardless of how unacceptable the practice is to the rest of the community.

Another case, occasionally still discussed in the mass media, including TV, was the rape of an 11-year-old girl that had happened at school. The girl identified the perpetrator bon the basis of pictures shown to her. As the offender seemed to be a 13-year-old boy from the same school, no investigation in terms of criminal procedure was possible since he was treated as a minor. Nevertheless experts in police laboratories tried to find more solid evidence than mere identification by the victim. The results were not convincing. The Centre for Social Work, which was the only institution authorised to decide upon the measures to be taken against the boy, hesitated, since there was no clear evidence. Meanwhile a ”committee for the protection of victim” had been founded in order to accelerate proceedings against the boy. The mass media have repeatedly been informing the public of the fact that the young boy is a criminal ”beyond a reasonable doubt”. The policemen who investigated the case (within the limits of their jurisdiction with respect to the minor) and the state prosecutor who wrote that it was absolutely clear who did it, gave the very same evaluation. The Ministry for Schools and Education that had to decide on whether or not to transfer the boy to another school also hesitated. Four independent experts were appointed to assess the circumstances of the crime. After careful examination of all the evidence and separate work, all of them unanimously decided that there was no evidence that this boy had committed the crime. It was much more probable that another person, not yet known, had in fact been the offender.

Such a conclusion was totally unacceptable to the committee, consisted of some persons who once themselves had been victims, and of the victim’s parents, who still firmly believe that they knew who did it. The conclusion was also totally unacceptable to the mass media, which could not admit that it had published false allegations and were engaged in a ”lynching” of the young boy. Furthermore, it seems that the committee has done more harm to the victim than the perpetrator himself, whoever it might be. Her parents namely reject any help offered by experts, psychiatrists, psychologists, until the boy is treated according to their expectations, which is at least to be expelled from school.

In spite of the predominantly bitter experiences with overly aggressive and narrow-minded vigilante committees, often composed of persons who once were victims, some experts emphasise that these committees have certain positive influences. The police are less and less able to control crime; therefore a private or public interest in preventing crime is welcome. Finally, vigilante movements,

especially in local communities, are said to reduce fear of crime that may be more noxious than crime itself (Pe ar, 1998; 274).

It seems, however, that we should not expect vigilantes to become a force parallel to the state agencies in preventing crime. Reactions against crime and criminals are not tempered; they are based to much on emotion, primarily hatred and aggression. For this reason it will occur too rarely that actions against crime are in accordance with the law. In that case, regardless of the best intentions (with which the road to hell is paved) it is not far from crime.

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Public/Private Partnerships in Crime Prevention The SSP-Co-operation in Denmark

by Karsten Ive

1 Background

The Crime Prevention Council in Denmark was established in 1971, more by necessity than by choice. Crime rates had been very stable until the 1960s, but then in the course of only a few years, there was a veritable explosion in the number of criminal offences and law-breaking. This situation was very much similar to what occurred in most countries in the Western hemisphere. At the same time, during the early 1970s, a major reform of the decentralised structures in the administration took place. One result of this was that several small municipalities (1280 in number) were combined into large municipal units (275 in number), and the number of counties was reduced from 25 to 14. The organisation of the police was also reviewed. This led to a reduction in the number of police districts from 72 to 54. One consequence (among others) of these reforms was a weakening of social control and a need to develop advice regarding co-ordination in cross-disciplinary questions at the local level.

Urbanisation and the disintegration of traditional family patterns and life styles left their mark; a massive increase in crime was and continues to be a dark side of modern society.

New avenues had to be explored to stop this development – and the Crime Prevention Council was established with the following declaration of intent: ”To work for the prevention of crime by implementing measures to promote security, by spreading information or by any other expedient means”.

The Council has had a broad foundation from the beginning, with more than 40 public and private organisations providing the 80 members who serve on various committees. The Council is headed by an executive committee while a permanent staff – the secretariat – handles day-to-day tasks. The secretariat co-ordinates the work of the different working groups and handles case work, teaching, information and co-ordination. The secretariat has a versatile staff whose backgrounds range from the police to law, sociology, education and social work.

2 Some basic considerations regarding crime and crime prevention

It is well documented that different factors have to be present at the same time before a crime can be committed. These factors include (1) a person (the potential

perpetrator), who has the ability and willingness to commit a crime; (2) an object (a person or a physical thing) that seems attractive to the perpetrator; and (3) a lack of capable guardians in a specific situation, either in the form of formal control (such as the police or surveillance equipment) or in the form of informal (social) control, based on the presence of other persons in the area. Other and more detailed factors could be added. However, these factors have been indicated in order to stress the need for a multi-sectoral approach in crime prevention.

Crime prevention can not be seen solely as a question of criminal policy or as a problem that should be dealt with only by the legal system. Crime prevention covers a range of different areas of policies: policies of social welfare, of education, of housing, of cultural questions and so forth.

As society is constantly and more rapidly undergoing rather large changes, one should be keep in mind that new areas of policies should be represented in crime prevention. To put it in another way, crime prevention strategies must be under constant review, and the strategies should be very flexible in order to cover the actual situation. This means that the work on building an efficient crime prevention programme never ends.

The ”ultimate crime prevention programme” has not been developed, nor will it ever be.

As pointed out previously, the individual criminal act depends on different factors on the local level and in society. This means that activities and initiatives for the prevention of crime must have their point of departure at the local level, and the activities should reflect the needs and possibilities of the local community.

In order to facilitate the local crime prevention work, some type of advisory board has to be established. The main tasks of this board should be to establish an overview of the trends in crime and of the causes of crime, to work out methods of crime prevention that take into consideration the different types of efforts and activities, and, based on this knowledge, to provide advice to the local municipalities and police districts.

3 Crime prevention policies in Denmark

The above-mentioned considerations on crime and crime prevention were fundamentally taken into account when setting up the Crime Prevention Council in Denmark. They continue to characterize the way in which crime prevention is carried out in Denmark today.

The main headline of crime prevention is that only joint action can achieve results. This headline is reflected in the way that the Council is organized – as an umbrella, covering more than 40 different public and private organisations, bringing into the Council knowledge and experience about various parts of society. It is also reflected in the way in which crime prevention is organized and carried out at the municipal level, through the cross-disciplinary SSP Co-operation.

The second headline could be described by stressing that crime prevention has two starting points or domains which, in principle, are very different. These two domains are of equal importance and should be dealt with simultaneously.

One domain covers what we call prevention of victimization. This comprises advice to citizens on what measures to take so as not to become victims of crime. We describe this as ”objective crime prevention”. In the international context, the phrase ”situational crime prevention” has been used.

The other principal domain covers activities aimed at inducing people, typically children and young persons, to refrain from engaging in criminal conduct.

Using the WHO definition of health, we call this ”opting for a good life”. This type of activity we describe as subjective crime prevention, internationally known as social prevention.

Since the beginning of the 1980s the importance of finding the proper balance between these two domains has continued to grow due to the development of new – and reasonably priced– technical equipment designed to safeguard property. The use of technical or electronic means of protection can in itself give rise to a sense of being unsafe in public areas. This could lead to a vicious circle, where there are constantly escalating demands for more protection.

In this context crime prevention in Denmark is seen as a tool to maintain an open society as well as a sense of well-being for all citizens. From the crime prevention point of view, there is an urgent need for stressing this issue of balance when discussing and choosing the way to handle crime problems.

It can be said that, throughout the years in Denmark, this issue has been a specific theme in crime prevention policies (as has been the situation also in the other Nordic countries).

The third basic principle or policy governing the Danish approach concerns the involvement of citizens themselves. They should not be passive recipients of a ”public” service; they should contribute actively to providing the framework for ”the good life”.

In practice this means that the different public services have a duty to provide information to the public and to specific target groups on crime problems and on how to prevent crime from occurring. It also means that the professionals – for example, schoolteachers, social workers and police officers – should be aware of trends in lifestyle and conditions of life among groups of citizens in order to develop proposals for preventive activities. It also means that the professionals should facilitate the possibilities of citizens to become involved in crime preventive activities.

In order to provide the necessary framework for this joint public and private partnership, in 1975 the Crime Prevention Council established the SSP Co-operation scheme.

4 The central aim and types of effort invoved in SSP Co-operation

In Denmark, Schools, Social services and the Police are all directly obliged by law to carry out crime preventive work in the widest possible sense. At the same time, it is specifically these three organisations that have a thorough knowledge of and close contact with children and young people in their local area. To ensure a relevant and effective effort, it was natural to bring the three parties that are especially responsible for the well-being and upbringing of children and young people together in commitment and partnership. In this partnership, the focus is on finding the reasons why children and young people commit crimes, and on responding to these causes. This means that the area of crime preventive work also encompasses the prevention of, for example, alcohol and drug misuse.

However, it is not only the social services, the primary schools and the police which are in a position to prevent crime among children and young people.

Also other organisations, such as clubs, housing estates and sports clubs have considerable knowledge of and contact with children and young people. These organisations should therefore be part of the shared crime preventive effort in the local area.

SSP co-operation is particularly aimed at children and young people. The effort is to be initiated as early as possible and preferably before the traditional sanctions have been brought into use.

The central aim of SSP co-operation is defined as being

- to build up a local network that
- has a crime preventive effect on the daily life of children and young people.

The activities or efforts of SSP co-operation is divided into three different types or levels of action, depending on the target group and the goal:

The general effort is aimed at target groups that have not shown signs of criminal behaviour. The general effort is concentrated on working on the causes of crime among some children and young people.

The specific effort is specifically directed towards groups of children and young people who have been in trouble with the law or who show signs of suffering from child neglect with regard to care and upbringing.

The individual effort is individual and directed at people who have already committed crime. The aim is to prevent a relapse.

In respect of individual efforts, it is generally agreed that this type of action (due to rules of confidentiality and to the fact that the situation mostly calls for treatment rather than preventive measures) should be handled by the professional civil servants. Private organisations and private individuals should be brought in only with the full acceptance of the child/youngster and his or her parents.

In respect of general efforts and specific efforts, a full-scale partnership between civil servants and the private sector is possible, and this is generally recommended by the Crime Prevention Council.

5 The SSP local network

Based on more than 20 years of experience on what works, the Council today recommends that the local network be developed on three levels:

- the management level,
- the co-ordinating level, and
- the implementation level.

These three levels should also be clear in the organizational model that is selected. Local conditions, such as the size of the municipality, the geography and the composition of the population, should be decisive in deciding how best to plan the organisation.

On the management level the task is to establish the general framework for the joint crime prevention effort of the municipalities, and to ensure that it is possible to fill out this framework. This implies that one works out a joint and local declaration of intent for the SSP co-operation (and selects the target groups). It also implies that one earmarks the necessary resources, either in terms of staff or money (or both). To enhance smooth co-operation, it is also necessary at this level to clearly allocate competence down the levels of the organisation, so that the organisation can act quickly and efficiently in the tasks to be undertaken.

Members of the management level should include the (politically elected) chairmen of the municipal school board and social board, as well as the Chief Constable.

On the co-ordinating level the most important task is to establish crime preventive work as laid down in the declaration of intent and within the framework of the resources at their disposal. This is to say that one should ensure that the work is co-ordinated and that the crime preventive effort in the municipality is evaluated and followed up. Moreover, it is on this level that contact must be taken with the people who are to be in charge of the practical crime preventive effort in the area.

Another important task on the co-ordinating level is to collect information about the development in crime in the specific local areas. It is also important to gather general information on the conditions of children and young people in the municipality. This includes the young people's use of alcohol and drugs, and the possibilities of recreational activities that are available for children and young people.

The co-ordinating level should also gather information on the experiences of crime preventive efforts in other municipalities. Lastly, it is important to pass on information, so that the goals of the work can be appropriately adjusted.

It has proved expedient to establishing a co-ordinating committee to handle the tasks on the co-ordinating level. The members of this committee should be employed in the school administration, the social administration and the police, persons who, by virtue of their standing, have the authority to make decisions regarding what efforts are to be undertaken and how to use the resources at their disposal.

In order to ensure that important information is passed on to the entire organisation, a specifically assigned SSP consultant should be a member of or secretary of the committee.

The implementation level is responsible for the actual crime preventive work. One factor that is critical to success is that the management level and the co-ordinating committee are clear in their instructions.

It is also important that crime preventive work has priority, and is a necessary part of the work of each individual institution. A crime prevention culture should be established in the same way as the already existing cultural tradition in teaching and social treatment has been established.

It is on the implementation level that the staff is in daily and direct contact with children, young people and their parents. This contact takes place in many different contexts, such as for example clubs, sports clubs, schools, social services, the local police, and in residential areas. For this reason it is not possible to lay down a blueprint for how preventive work should be carried out. This depends on the specific situation.

The management level and the co-ordinating committee both have their authority invested in their position. Nonetheless, it is important on the implementation level to involve all local people and institutions who work with children and young people in crime preventive work. In addition to representatives from schools, the social service and the police, it is relevant on a voluntary basis to involve people from for example youth clubs, sports clubs, housing estates, and parents associations.

In the Council's experience *cross-disciplinary district committees* in the local areas or town districts can be a source of inspiration and development for the work. The composition of such district committees will naturally depend on local conditions. The composition of the district committee will characteristically be considerably broader than the co-ordinating committee, and they will consist of representatives from all the institutions and organisations that work with children and young people in the local area.

In the autumn of 1998 a survey of the municipalities that has established an SSP organisation was conducted. This survey showed that about 245 out of 275 municipalities have implemented the SSP partnership as a joint public and private way of preventing crime.

6 The need for a permanent effort in crime prevention

Discussions on or the implementation of a crime prevention programme are often initiated by a concrete problem or situation. The decisions on a course of action are made with the intent to solve a concrete problem. The organisation that is established reflects the situation, and when the actual problem has been solved, no further action is taken.

These problem solving partnerships may actually solve the concrete problem. Even so, from the point of view of crime prevention they will not bring lasting results.

There are several reasons why this type of programmes cannot fulfil the demands of crime prevention.

First, it should be noted that crime prevention is a multi-sectoral discipline.

This means that a tradition of cross-disciplinary work should be established. The groups of civil servants involved must get to know, in a broad sense, the working conditions of the other groups, and a basis of mutual respect must be established.

This process takes time, and until the necessary common platform is established, no co-ordinated action can be taken.

In the meantime the actual problem will be growing – and new problems may rise that are not dealt with in a proper manner.

Secondly, the problem-oriented approach to the task means that the partnership will come to an end when the actual or concrete problem has been solved.

If new problems should rise – and they will – one must start from the very beginning once again, by establishing a mutual platform. One consequence of this will be that efforts can not be initiated at an early stage.

Moreover, the work on crime prevention can not become ”professional”. The work will be characterized by its random nature and by the way solutions are developed on an *in casu* basis.

Regrettably, this has been shown several times in Denmark as well as in many other countries.

The SSP co-operation is a constant way of structuring crime prevention, a way that is continuously aware of new trends and that is thus capable of dealing with new phenomena before they grow to become problems. One could say that SSP is a ”problem preventive partnership”.

And it is precisely this that is the central point: crime problems should be prevented at an early stage, and one should not be forced to react to problems that have already emerged. Should problems emerge – and that will happen – they must be dealt with. Even so, the overriding aim when developing crime prevention efforts should be to prevent problems from emerging.

Crimes Related to the Computer Network. Threats and Opportunities: A Criminological Perspective

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I Introduction

Crimes of the "Net" are receiving high profile media coverage and increasing attention from the authorities. On the other hand, there is little evidence or scientific analysis on the role that the information technology plays in *the processes of making laws, of breaking laws, and of reacting toward the breaking of laws*. In most European countries, centralised computer crime statistics are scarcely available, despite the general adherence of much of Europe to the normative standards regarding computer crime provided by Recommendation No. R (89) 9 of the Council of Europe (Kaspersen, 1997). The Internet, a potentially huge area for research into criminal and deviant behaviour, is relatively new. For this reason, research is sparse. Nonetheless, the pioneers in cybercriminology have already appeared (Mann and Sutton, 1998).

This paper focuses both on the phenomenology and prevention of crimes committed in the computer network environment. The paper attempts to provide an evaluation of available data for the purposes of further research and policy formulation. This will be done in three major steps driven by the basic tenets of the opportunity theory (Cohen and Felson, 1979), according to which the level of crime is determined by the availability of suitable targets, the presence of motivated offenders, and the absence of capable guardians (Clark and Homel, 1997).

Accordingly, at the beginning of the paper, the Internet-related threats to and opportunities for the use of the computer network, both as the target and the tool of criminal activities, will be outlined. On the basis of available data some general observations concerning trends in information technology crime (IT-crime) and recent changes that have occurred in the "electronic underground' among the population of hackers will also be made.

Subsequently, the issue of the prevention of computer crime will be addressed. In compliance with the propositions of the opportunity theory, I will discuss not only technological means and strategies aimed at the reduction of opportunities to offending, but also factors that increase the risk of apprehension of a computer offender.

An initial intention in the drafting of this paper was to look at these issues primarily from the European perspective. However, this turned out to be difficult

to accomplish, in view of the relative scarcity of criminological studies on computer network related crime that have been carried out in the ”old world” countries. For this reason, the empirical findings presented below are not confined to Europe, but also come from research conducted in the United States and Australia – the world leaders in computer rates and computing power per 1000 population according to international statistics (Young, 1993).

It is trite to point out that computer crime could not be committed before computers were invented, apparently during the late 1940s. It is, however, more illuminating to note that the history of social control over unauthorised use of computers dates back to the late 1970s, and follows milestone achievements in the development of computer technology:

- Batch computing and timesharing during the 1960s;
- Distributed computing during the 1970s;
- Network personal computing during the 1980s;
- Co-operative computing during the 1990s; and we are now moving toward
- Global information utilities of the twenty-first century (Coldren, 1996).

As Hollinger (1997) indicates, the written record about crime and deviance committed by means of computers can be divided into at least four distinct periods: the period of the *discovery of computer abuse* (1946-1976), the *criminalization of computer crime* (1977-1987), the *demonization of hackers* (1988-1992), and the *censorship period* (1993-present). Although these periods may perfectly fit developments that had taken place in the United States, the evolution that they depict did not occurred at the same time and in a similar sequence in many other, less computer-dependent countries, with, perhaps, the one possible exception concerning the last stage in Hollinger’s outline.

During the mid-1990s, national restrictions on the freedom of speech on the nascent information infrastructures became commonplace among lawmakers not only in the United States, but around the globe: governments, claiming that they want to protect children, thwart terrorists and silence racists and hate-mongers, are rushing to eradicate freedom of expression on the Internet (Human Rights Watch, 1996). With an estimated 40 million users in 150 countries in 1995, the Internet has reached its critical mass, and the increasing internationalisation and commercialisation of this global computer network gave rise to a number of legal, social and commercial policy questions ranging from pricing and taxation to privacy, security and prosecution of cybercrimes.

1 Net-related threats

The first computer networks established during the late 1960s were developed in order to facilitate communication within a relatively small group of scientists who generally knew and trusted one another. Moreover and for the military reasons, the network protocols that make data transfer and communication possible were originally designed for openness and flexibility, not for security. During the ”Information Age”, the communications systems and computer networks of commercial, educational and government sectors are increasingly

intertwined. Just as any telephone in the world can access any other, any computer system can potentially connect up and share information with any other networked computer system. Since there are no underlying controls of access within networks such as the Internet, each individual computer system and network must maintain its own access control (Anderson, 1997).

Computer technology, while useful and even indispensable in many areas of human activity, is also vulnerable to various risks. These risks are believed to increase as society becomes more dependent on information processing and communication. For this reason, the governments of the societies which are most heavily dependent on information technology (IT) are most anxious about the potential for significant loss if their systems are disrupted.

> " … the Internet and other advances in information technology do not merely give criminals new means to commit traditional crimes like theft or fraud. They also allow criminals and other malicious actors to cause new types of harm that go well beyond the potential loss to the individual victims and can affect our national economy and, indeed, our national security" (Vatis, 1998).

Computer networks provide opportunities for the commission of an extensive range of illegal acts that pose serious threat to the public welfare, morality and the capability of the criminal justice authorities to protect society from crime. In addition to traditional crimes such as paedophilia and child pornography, money laundering, drug trafficking, embezzlements of bank deposits, fraud (credit card numbers), industrial and political espionage, a number of IT-specific malevolent attacks against the security of critical infrastructures such as telecommunication, banking or emergency services may be launched throughout computer networks across national borders.

In anticipation of these threats, the need for an international plan to investigate and prosecute trans-national crime related to computer networks was recognised by Justice and Interior Ministers from the group of P-8 countries (Reuters, 12 December 1997). A similar action has been initiated at the regional level by the European Commission. Its Action Plan on promoting safe use of the Internet aims at combatting harmful and illegal content on the Internet and its misuse through criminal activities directed against a wide range of legally protected interests such as:

- national security (instructions on bomb-making, illegal drug production, terrorist activities);
- protection of minors (abusive form of marketing, violence, pornography);
- protection of human dignity (incitement to racial hatred and racial discrimination);
- economic security (fraud, instructions on pirating credit cards);
- information security (malicious hacking);
- protection of privacy (unauthorised communication of personal data, electronic harassment;
- protection of reputation (libel, unlawful comparative advertising);
- intellectual property (unauthorised distribution of copyrighted works, e.g. software or music) (EU Commission, 1996).

In April 1997, members of the European Parliament proposed the enactment of legislation against certain cybercrimes (e.g., pornography, paedophilia and racist material) and introduced other measures such as establishing teams of cyber-police to monitor the "Net", requiring industry self-regulation, and concluding international agreements on cooperation in enforcement (IELR, June 1997).

Within the framework of the Council of Europe, a recently appointed Committee of Experts on Crime in Cyberspace (PC-CY) is seeking to identify and define new Internet crimes. One of the tasks of the Committee is to set standards of jurisdictional rights and criminal liabilities in respect of the transborder information flows on the Internet (http://ww.coe.fr /europa40/e/9710/internet.htm).

A rising awareness of threats related to the use of information technology within the business sector is reflected in a recent survey of 159 large Australian organisations, the representatives of which were asked to specify those forms of computer-related crime that they expect to have an increasing impact on their organisations over the next five years (Table 1).

Table 1. Computer crime vulnerabilities of the future.

Type of Computer Crime	Number of Respondents
Hacking or system intrusion	114
Misuse of telecommunication services	90
Greater use of encryption	76
Use of malicious code	54
Theft	53
Intellectual property offences	49
Fraud	46
Increase in potential for virtual crimes	30
Shift from conventional crimes	24
Use of false identities	23
Information warfare	21
Emergence of a "black" information market	17
E-cash theft and counterfeiting	14
Forgery	12
Virtual company crime	11
Electronic extortion	11
Emergence of organised crime group	9
Money laundering	6
Others	2

Source: Office of Strategic Crime Assessments and Victoria Police 1997 (after Smith, 1998)

In the computer technology field, the past is not a good predictor of the future. Even so, if we consider the above findings as symptomatic of the most unwelcome scenario of IT development for the business community, the forecast is simple: there will be a growing threat of attacks on computer systems via telecommunications networks, theft of telecommunication services and the use of computers to commit fraud and crimes of data manipulation.

However, if one poses another question, that of whether or not the current trends in computer crime justify such predictions, the answer is less definite. Although some common-sense arguments and a number of surveys support the view that ”cybercrime surge and pose a serious international threat”, there is also evidence which suggests that the ”Internet is a pretty safe place” and that there is no reason for alarm.

2 Categories of crimes related to the computer network

Computer networks such as the Internet or networks providing major on-line services can in theory be abused by a wide variety of criminals for their purposes. The wide range of offences in which networks play a part can be divided roughly into two broad categories:

a) crimes geared specifically to the network and the related data-processing systems (i.e., offences against computer and information security);
b) crimes for which computer networks provide a new opportunity for the commission of traditional offences (such as fraud, industrial espionage and child pornography).

Both of these categories fall within a broader class of ”IT crimes” or ”offences connected with information technology”, which encompasses any criminal offence in the investigation of which investigating authorities must obtain access to information being processes or transmitted in electronic data processing systems (Council of Europe, 1995).

2.1 Computer security offences

Computer and information security is commonly held to consist of three properties: confidentiality, integrity and availability, of which confidentiality relates to who gets to read information, integrity assures that data and programs are exchanged only in a specified and authorised manner, and availability assures that authorised users have continued access and resources (OECD, 1992).

Availability is the most important attribute in service-oriented business that depends on information. Malicious overloading of the system with ”spamming” or ”electronic mail-bombing” are among the most common attacks against the availability of computing resources. In the case of ”e-mail bombings”, an attacker floods the target system with nuisance electronic mail (e-mail), which causes the hard disk of the target system to reach its storage limits, and the system to stop processing. In effect, so-called ”denial of service” (DoS) occurs. DoS attacks can range from simple ”ping floods”, which prevent people from using networks by clogging them with useless packets, to carefully co-ordinated protocol attacks (such as the recent ”teardrop” attack). Among the most likely targets of DoS attacks are the Internet Service Providers (ISP). Recent statistics from a large ISP suggest that 80% of the attacks on it are denial of service and only 20% are penetrations. In addition, the majority of attacks seem to come from Europe – and half of those come from the Netherlands (Kabay, 1998).

Confidentiality and integrity specifically refer to the prevention of disclosure, alteration or deletion of the information contained in computer files. Integrity is particularly important for critical safety (e.g., air traffic control), and financial data used for activities such as electronic funds transfers and financial accounting. Confidentiality, in turn, constitutes an important attribute of medical and insurance records, research data, new product specifications and corporate investment strategies. Unauthorised access, however, is critical for all aspects of computer and information security. Once compromised, the system is then used for such infringements of confidentiality and integrity as unauthorised reading or copying of data, introduction of incorrect data, its alteration, additions, etc. These infringements may in turn constitute offences and result in criminal responsibility for their perpetrators (Diagram 1).

Diagram 1. Attacks against the security of computer systems as criminal offences.

Security attribute	Type of attack	Legal classification
Availability	Denial of service	Computer sabotage offence
Integrity	Deliberate introduction of a malicious programme into a system	Damage to computer data offence
Confidentiality	Break-in to the system, eavesdropping on data	Unauthorised access offence, unauthorised interception offence

In the network environment, the primary security goal is preventing attackers from taking control of the targeted system:

> ” (...) the most common type of attack seen on the Internet appears to be motivated by the objective to gain access to a superuser or root account on a Unix-based computer system. More specifically, the access sought is to a command interpreter or shell which has full access to the computer. In other words, the access sought is to a process that is operating (the shell) and not necessarily to the files” (Howard, 1997).

By taking control over the system or by compromising this system, the ultimate objective of an attacker can be accomplished. From this perspective, computer security extends to preventing crimes such as fraud, espionage, extortion, vandalism, and terrorism – not only the protection of availability, integrity and confidentiality of information itself.

This is also why some governments and expert groups are currently considering the criminalization of trafficking in wrongfully obtained computer passwords and other information about means of obtaining unauthorised access to computer systems or various information services (such as coded TV).

2.2 Digital forms of 'old' crime

From the law enforcement perspective, the Internet is simply a new medium used to commit traditional offences. The best example is fraud, which can take a number of new forms on the Internet, such as impersonation, theft of credit information from digital communications, fraudulent electronic banking, electronic gambling or lottery frauds, and e-mail pyramid sales frauds (Deloitte&Touche, 1997).

The on-line activity of fraudsters is as varied as in the physical world, and may also include telecommunication and telemarketing fraud, deceptive advertising, securities fraud and "carding". Many of these activities can be deemed to be Internet-assisted crimes. In other words, the Internet's capabilities as a medium for publishing and communication are misused for the commission of criminal acts. For example:

> "The Internet allows a fraudster to set out a site on the World Wide Web ("WWW") which claims to be the site of a reputable company or organisation. Victims are then induced to part with funds via credit card payments, or induced to reveal valuable information. At least one major international bank is known, confidentially, to have suffered from this although details of losses are not available" (Deloitte&Touche, 1997).

Fraudulent schemes on the Internet are monitored by the US National Consumers League. The top ten subjects of reports to its Internet Fraud Watch in 1997 have been related to rapidly developing "e-commerce" and included:

- Web Auctions – items bid for but never delivered by the sellers, value of items inflated, shills suspected of driving up bids, prices hiked after the highest bids have already been accepted;
- Internet Services – charges for services that were supposedly free, payment for online and Internet services that were never provided or falsely represented;
- General Merchandise – sales of everything from T-shirts to toys, calendars to collectibles, goods never delivered or that were not as advertised;
- Computer Equipment/Software – sales of computer products that were never delivered or misrepresented;
- Pyramids/MLMs – schemes in which any profits were made from recruiting others, not from sales of goods or services to the end-users;
- Business Opportunities/Franchises – empty promises of big profits with little or no work by investing in pre-packaged businesses or franchise operations;
- Work-at-Home Plans – materials and equipment sold with the false promise of payment for piece work performed at home;
- Credit Card Issuing – false promises of credit cards to people with bad credit histories on payment of up-front fees;
- Prizes/Sweepstakes – requests for up-front fees to claim winnings that were never awarded;
- Book Sales – genealogies, self-help improvement books, and other publications that were never delivered or misrepresented (http://www.fraud.org).

Nonetheless, the Internet security risks for consumers seem to be grossly overblown. According to Business Week reports, online fraud is insignificant compared to ordinary cheque fraud. The American Bankers Association estimates that cheque fraud costs banks $10 billion a year, while online fraud is running only about 0.05% of that ($5 million a year) (Busch).

”Carding” is the unauthorised use of a credit card of its legitimate holder in so-called ”card-not-present” transactions where the customer is not physically present at the merchant’s location and simply gives a credit card number over the telephone or the Internet. The police in Poland are currently investigating a case in which a group of young people, mostly university students, have ordered and obtained under false pretences from the United States ”carding” computer equipment and other goods worth US$ 122,000.

In the opinion of security experts, hacking a credit card number over the Internet requires sophisticated programming knowledge. For this reason it is much easier for an offender to steal a credit card number from a restaurant or gas station receipt than it is to hack it from the Internet. If asked about the risks of credit card transactions over the Internet, the reply of experts is usually that the risk of sending a credit card number unencrypted over the Internet is no greater than giving it over the telephone or the fax-machine (Busch).

However, there is a risk of ”identity theft” on a massive scale, which is tied to the concentration of a huge amount of sensitive personal information held on laptop computers or improperly secured servers. To cite only one example, in 1996 a laptop computer containing 314,000 credit card account numbers was stolen from the offices of Visa International in California.

> In 1997, Carlos Sadalgo Jr., 37, used a computer at the University of San Francisco to steal 100,000 name, log-ons, credit card numbers and other data from several Internet providers in San Diego. He encrypted the information on a CD-ROM and offered it for sale. FBI undercover agents convinced him they would pay $250,000 for the files. In January 1998, Sadalgo pleaded guilty and was sentenced to 30 months in prison (O’Harrow, 1998).

Computers have been used to steal funds transmitted electronically between banks since electronic funds transfer system were first developed (U.S. Department of Justice, 1984). Today, with over 2,500 banks currently operating web sites on the Internet which is also increasingly being used by banks as a delivery channel for banking and investment services, the security of the information systems of banks is crucial. However, even large banks are prone to the risk of security breakdown and electronic theft. For example, Russian hackers made almost 500 attempts to access computer networks of the Central Bank of Russia from 1994 through 1996, and stole 250 billion rubles ($4.7M) in 1995 (Itar-Tass, 1996).

> Vladimir Levin, 29, a Russian citizen and computer programmer, had gained unauthorised access to the Citibank’s computers at Parsipenny in New Jersey and had attempted a multi-million-dollar fraud with a laptop from St. Petersburg, in the Russian Federation. He was able to monitor transactions on the accounts of substantial customers and to insert unauthorised instructions to

make payment from those accounts to accounts opened by his accomplices in the Netherlands, Finland, Germany, the United States and Israel. Had the scheme been successful, sums in excess of $10,000,000 would have been obtained. Ultimately , the Citibank lost less than $400,000 in the scam. Levin was arrested during a trip to England and extradited to the U.S. in 1995. In February 1998, he was sentenced to three years in prison by a U.S. judge (Simon, 1998).

Computer networks are perceived to play an increasingly significant role in the new international dimension of organised crime. Money laundering and fraud are most frequently cited in this context (Adamoli et al., 1998). Whether the same holds true for pornography, including child pornography, has not yet been established. With an estimated annual business of $8 to $10 billion, pornography is regarded as being organised crime's third biggest money maker, after drugs and gambling (US Senate Report, 1996). There is clear evidence that Internet is widely used as a distribution channel for pornography and permits pedophiles to communicate freely with one another, to exchange photographs and information.

Pornography on the Internet is available in different formats. These range from pictures and short animated movies, to sound files and stories. Most of this kind of pornographic content is available through World Wide Web ("WWW") pages; but sometimes they are also distributed through an older communication process, Usenet newsgroups. The Internet also makes it possible to discuss sex, see live sex acts, and arrange sexual activities from computer screens. There are also sex-related discussions on the Internet Relay Chat ("IRC") channels where users in small groups or on private channels exchange messages and files. But as with the Web and the Usenet, only a small fraction of the IRC channels are dedicated to sex. There are more than 14,000 Usenet discussion groups all around the world, but only around 200 groups are sex related, some of these relating to socially valuable and legitimate discussions, concerning, eg., homosexuality or sexual abuse (Akdeniz, 1997).

The issue of child pornography on the Internet has been the subject of little criminological research. The only possibility of obtaining a general idea about the dimensions of this problem seems to be through the media reports on the cyberstring operations undertaken by the police against pedophiles and child pornographers:

In July 1995, the British police were involved in **Operation Starburst**, an international investigation of a pedophile ring which used the Internet to distribute graphic pictures of child pornography. Nine British men were arrested as a result of the operation, and other arrests were made throughout Europe, America, South Africa and the Far East. The operation identified 37 men world-wide. There have been many prosecutions following "Operation Starburst" in the UK (for a complete list of child pornography prosecutions in the UK see: ttp://www.leeds.ac.uk/law/pgs/yaman/watchmen. htm).

At the end of 1995, the FBI initiated its "Innocent Images" investigation as an outgrowth of the investigation into the disappearance of ten-year-old boy

from Maryland. Since 1995, the co-ordinated effort of US law enforcement and criminal justice agencies has resulted, inter alia, in 162 indictments, 161 arrests, and 184 convictions (Freeh, 1998)

In September 1997, the FBI's Operation Rip Cord identified more than 1,500 suspected child pornographers trading pictures of minors or soliciting child sex over the Internet. The 18-month sting operation has led to more than 120 arrests in the United States, Germany and the United Kingdom and to the prosecution of 31 people throughout the United States. Authorities uncovered more than 200,000 child porn images and seized over $137,000 in home computer equipment during the investigation. Investigators were so disgusted by the material coming across their screens that they once ripped a computer plug from the wall, giving the sting its name ("Internet sting identifies 1,500 suspected child pornographers", 30 September 1997, Web posted at: 9:47 a.m. EDT (1347 GMT).

In early September 1998, the British police co-ordinated **Operation Cathedral**, the biggest world-wide swoop on pedophiles operating on the Internet. About one hundred persons were arrested in Europe, Australia and the United States. In co-operation with 21 national police forces and Interpol, 32 addresses were raided in the United States, 18 in Germany, 16 in Italy, eight in Norway, and one or two in Austria, Belgium, Finland, France, Portugal and Sweden. The pedophile ring was originally targeted by the UK police, following a tip from the U.S. Customs Service (Reuters, London, Sept. 2, 1998).

U.S. Customs Service statistics show a rising number of arrests, indictments and convictions of people who keep or distribute child pornography. In 1996, U.S. Congress extended the liability of collectors and distributors of child pornography to those who use computers. This legislative change has probably had an impact on the following statistics (Table 2).

Table 2. U.S. Customs Service data on child pornography offenders.

Number of offenders	1995	1996	1997	1998*
Arrested	48	136	173	104
Indicted	34	134	158	104
Convicted	35	94	178	106

* October 1997 through March 1998. Source: U.S. Customs Service

Most traditional offences can be committed with the aid of computer network technology; if not in a form of a completed criminal act, then at least as instigation or aiding in its commission. Even the offence of rape does not constitute an exception. A man from Vermont who used a computer online service to try to hire someone to rape and sexually mutilate his wife was charged with two counts

of hiring someone to commit kidnapping and sexual assault (Reuters, 12 November 1996).

Although many similar "stories" are available over the "Net", they can hardly provide an appropriate basis for criminological generalisations.

II "The availability of suitable targets"

1 More opportunities for abuse

The opportunities for computer abuse arise from the computer technology itself, its growing availability and its widespread use for a rising number of applications:

- organisations are becoming more dependent on IT,
- more people have access to computers,
- with each succeeding generation, children are becoming computer literate at faster rates and at younger ages,
- more personal data and proprietary information is being stored on computers, wide area networks are growing rapidly, and especially the Internet continues to grow, and consequently, "with the connection of each new segment of the Internet, each new communications satellite launched, the land of criminal opportunity grows larger and more complex, the job of hacker-hunting more difficult" (Hay, Hayworth and Stowe, 1996).

All this may increase the potential for computer crime, especially those initiated by computer hacking. In fact, as some research demonstrates, a growing proportion of computer users are at risk of being invaded and harmed via the computer network (Table 3).

Table 3. The prevalence of computer-related victimisation among US organisations.

Year	1996	1997	1998
No. of respondents	N=428	N=563	N=520
Proportion of respondents experiencing some form of intrusion within the previous 12 months	42%	49%	64%

Source: CSI/FBI Computer Crime and Security Surveys.

2 Computer-related victimisation surveys

Over the past 15 years a number of computer security surveys have been conducted in the most economically developed countries, the bulk of them in the United States and the United Kingdom. The findings of these (victimisation-style) surveys allow the inferring of criminological observations, which would otherwise be impossible due to the lack of availability of sound criminal justice statistics on computer crime (Tenhunen, 1994). Survey data may, for instance, provide a measure of the actual rate of such computer crimes as unauthorised access, computer sabotage and damage to computer data and programs – three basic forms of computer abuse included in the so-called minimum list of the Council of Europe Experts Committee on Computer-related crime (Council of Europe, 1990), and criminalized in many countries of Europe (Kaspersen, 1997).

From the perspective of the last ten years, the extent of computer crimes appears to be expanding rapidly. A study conducted by the American Bar Association in 1987 found that of the 300 corporations and government agencies questioned, 72 (24 per cent) claimed to have been the victims of a computer-related abuse in the 12 months prior to the survey. A series of the UK Audit Commission's triennial Surveys of Computer Fraud and Abuse have demonstrated an even more dramatic rate of increase in computer crime (Table 4).

Table 4. The prevalence of computer-related victimisation among UK organisations.

Year	1990	1994	1998
No. of respondents	N=1,537	N=1,073	N=900
Percentage of respondents who suffered incidents of computer fraud and abuse within the 3-year period*/	12%	36%	48%

*/ The 1990 Survey has covered the 1987-1989 period, and the subsequent surveys, the 1990-1993 and 1994-1997 periods respectively. Source: The Audit Commission, 1994 and 1998.

As the above data may suggest, the extent of computer crime in Britain is doubling every three years. However, if we take into account the distribution of computer abuse by type in both UK and US surveys, the share of network-specific incidents in their total volume appears to be low. Hacking, for instance, the most classical example of network-specific abuse,[154] does not exceed 8 percent of the overall number of incidents disclosed by the British surveys (Table 5).

154 The Audit Commission defines hacking as a deliberate gaining of unauthorised access to a computer system, usually through the use of telecommunications facilities (The Audit Commission, 1994, p.16)

Table 5. Computer abuse by type in the 1994 and 1998 Audit Commission Surveys.

Type of incident	Volume		%	
	1994	1998	1994	1998
total no. of incidents, of which:	537	n/a	100	100
fraud	108	n/a	20	13
virus infections	261	n/a	48	48
theft of software/data	31	n/a	6	n/a
hacking	15	n/a	3	8
others*/	122	n/a	n/a	n/a

*/ "others" include: sabotage, invasion of privacy, illicit software, and private work.

The 1998 CSI/FBI survey has revealed a similar proportion of intrusions into the system by outsiders (8%). It also demonstrates that as in the UK virus infections account for the largest number of incidents (28 %) reported by the US respondents (Table 6).

Table 6. Computer security incidents by type in the 1998 CSI/FBI survey.

Type of incident	Volume	%
Theft of proprietary information	82	6
Sabotage of data/network	66	5
Telcom eavesdropping	45	3
System penetration by outsider	108	8
Insider abuse of net access	353	25
Financial fraud	68	5
Virus	380	28
Unauthorised insider access	203	15
Telcom fraud	75	5
Active wiretapping	5	0
Total	1385	100

*/ "others" include: sabotage, invasion of privacy, illicit software, and private work.

Perhaps the most important observation that can be made on the basis of the data contained in table 5 is the high proportion (at least 40%) of incidents caused by insiders, i.e., employees of the organisations surveyed.. The "white-collar" nature of much computer crime has long been recognised. As the American Bar Association Study of 1984 has shown, the majority of computer abuse (77%) was perpetrated by a corporation's own employees (Hollinger, 1991). A similar proportion obtained by Bloombecker during the late 1980s has lead this author to the conclusion that "despite the continued fascination of the media with mythical computer-genious-type criminals, the data suggest that employees, those with information about computer loopholes, and those with unusual needs will constitute the greatest computer security threats" (Bloombecker, 1990).

Whether the above assertion still holds true or not, is difficult to assess on the basis of the available data. If we take into account the findings of the 1994 Audit Commission Survey, the answer would clearly be affirmative: out of 285 known perpetrators, 242 (85 per cent) were insiders. The results of the more recent US surveys continue to support Bloombecker's contention, although to a lesser degree than the UK figures (Table 7).

Table 7. Insider v. outsider incidents according to a recent US survey.

Type of incident	Volume	%
Detected attempts to gain access to computer system by "outsider"	119	58
"Insiders" caught misusing organisation's computer system	129	63

Source: WarRoom Research, 1996, N=205

The US survey data indicate an increase not only in the prevalence but also in the incidence of computer intrusions. More than half (60%) of 320 Fortune 1000 companies have experienced over 30 system penetrations in 1997, while the same rate of intrusions was reported by only 17% of the respondents in 1996 (Table 8).

Table 8. Number of successful incidents of unauthorised access by outsiders detected by Fortune 1000 organisations.

No. of incidents	1996	1997
1 to 10	42%	2%
11 to 20	25%	13%
21 to 30	16%	25%
31 to 40	10%	52%
41 to 50	5%	6%
over 50	2%	2%

Source: WarRoom Research, 1998, N=320

The rising connectivity to the Internet may account to a considerable extent for the increase in he number of attacks. The number of organisations that cited their Internet connection as a frequent point of attack rose from 37% in 1996 to 47% in 1997 and 54% in 1998 (CSI/ FBI, 1998). Again, however, such findings do not fully correspond to the nature and distribution of reported incidents. As the data in table 5 suggest, it appears to be authorised users and employees instead of intruders who pose the main risk to the security of computer systems. Such an observation gains support also from the other surveys (Table 9).

Table 9. External v. internal attacks according to Ernst & Young security surveys.

Type of attack	1996	1997
Sample*/	N=1,320	N=4,226
External malicious attack	18%	42%
Internal malicious attack	29%	43%

Source:http://www.techweb.com/se/dircetlink.cgi/INK 1997090830045

*/ The 1996 Survey included only US participants. In the 1997 Survey, 3,599 IT managers working in 24 countries, including Brazil, Canada, France, Germany, and the Netherlands took part, in addition to 627 from the United States.

More than 75% of the American respondents surveyed by Ernst & Young in 1997 were found to believe that internal threats are far more common than outsider hacking. On the other hand, 84% of those surveyed world-wide said that hackers pose a threat to their organisations, and the number of reported external attacks has increased. The reasons for this increase, however, remain obscure. As the authors of the survey conclude, it may well be that the increases are tied to a greater number of Internet nodes, increased awareness, and increased monitoring.

In fact, as the recent Dutch study indicates, without adequate detection measures, only a small part of all incidents are detected. Even such a simple measure as regular checks of logfiles may increase the number of incidents reported with respect to the Internet site or the organisation's internal IT infrastructure (Table 10).

Table 10. Regular log-checks and the percentage of organisations reporting incidents.

Environment	Percentage of organisations reporting attacks (regardless of detection measures)	Percentage of organisations reporting attacks (organisations with regular log-checks)
Internet Site	32% over 18 months (n=99)	45% over 17 months (n=51)
Internal IT-infrastructure	29% over 19 months (n=98)	40% over 20 months (n=47)

Source: Caminada, et al., 1998.

The following obervation by Dutch researchers appears to be of particular relevance for further studies on the prevalence of computer abuse:

> It has been shown that "silent" attacks, where the perpetrator merely reads information without undertaking any further actions that might draw attention to the incident, were exclusively reported by organisations that have imple-

mented procedures for incident detection. Organisations that do not have regular security checks, on the other hand, were only reporting incidents with relatively high visibility, such as where the perpetrator undertakes actions such as Website hacking, attacks on other sites or modification of system binaries.

Indeed, in criminology the visibility of criminal behaviour has long been regarded as an obvious precondition for reporting, recording and prosecuting of crime (Hood and Sparks, 1970). Given the ”invisible” nature of many computer crimes, problems related to their measurement can successfully be solved with the assistance of technical means such as audit trials and other network-intrusion tools that give alarm and preserve electronic footprints left by intruders. On the other hand, the growing use of network-intrusion tools by computer users[155] might account for the rising number of reported incidents.

The Dutch survey indicates a rather small scale of the most typical forms of Internet-related security incidents that have been investigated by the researchers (Table 11).

Table 11. Prevalence of Internet-related incidents according to a Dutch survey (N=145) */.

Type of incident	Volume	%**/
Unauthorised access	17	11,7
Denial of service	4	2,7
Malicious code	9	6,2

Source: Caminada, et al., 1998. */ No. of responses received.

**/ Calculated by the present author

Despite the a relatively high methodological refinement of the Dutch study, its findings cannot provide a reliable measure of the prevalence of Internet-related security incidents in the other European countries. It is widely acknowledged in criminology that the level of crime tends to vary in relation to the number of opportunities for its commission. In this connection, considerable differences must be noted among the European countries in both opportunities to commit cybercrime, and, to even a greater degree, to become victim of such crime.

155 According to estimates, US companies bought $65 million worth of network-intrusion tools in 1997 (TechWebNews).

3 Risk of victimisation by network-related crime

The level of computer crime appears to be strongly related to the availability of computers. Unlike many other, more traditional crime, here the same object can be both a target and a tool of crime. In case of network-related offending this interdependence is even more accentuated. At least two machines must be involved in the commission of an offence. Therefore, it is reasonable to expect that the number of computers connected to the Internet may have a significant impact on the prevalence and incidence of network-related crime both nationally and globally.

This hypothesis, inter alia, implies that the countries with higher rates of Internet hosts also score higher ranks of network-related crime and security breaches. Unfortunately, due to the lack of appropriate data this hypothesis could not be tested. Nevertheless, and against the background of the data provided in Table 12, one may take for granted that the Nordic countries do experience more digital crime than, for example, Belarus or Albania. Whether a similar relationship occurs, for instance, between the German-speaking countries and the Mediterranean is not so clear. It is still more difficult to assess where – in Stockholm, Paris or Warsaw – the risk of victimisation by computer espionage or on-line fraud is the highest.

Table 12. Number of Internet hosts per 100,000 inhabitants. (July, 1998)

Country	Rate	Country	Rate
Finland	8460	Spain	624
Iceland	7889	Italy	580
Norway	6847	Portugal	488
Sweden	4285	Latvia	393
Denmark	3792	Greece	360
Netherlands	3100	Slovakia	342
Switzerland	3008	Poland	283
UK	2116	Lithuania	199
Belgium	1788	Bulgaria	108
Austria	1644	Russian	96
Luxembourg	1613	Romania	82
Germany	1562	Yugoslavia	62
Estonia	1428	Turkey	58
Ireland	1297	Ukraine	38
Slovenia	1054	Bos.&Her.	11
Hungary	899	Belarus	9
France	742	Albania	4
Czech Rep.	686		

Sources: Ripe NCC: European Hostcount; UN Population and Statistics Division.
Calculations by the present author.

Future research will certainly address various epidemiological aspects of computer-related crime. These analyses should to a greater extent take stock of the fact that such variables as availability of computers or the growth of the Internet must be controlled by researchers. Otherwise, the Internet-related dangers can easily be exaggerated:

> The statistics that do exist on computer crime are questionable and often twisted or misrepresented to argue one side of the issue or the other – much like statistics in general. After all, security management is big business, so some experts, analysts and consultants may be guilty of using scare tactics to keep and build a client base (Hayne, Hayworth, and Stoewe, 1996)

As a recent study on security incidents on the Internet indicates, the number of security breaches in relation to the number of Internet hosts has decreased rather than increased from 1989 to 1995:

> A total of 4,567 incidents over this seven-year period were reconstructed from the CERT®/CC records. This included 268 false alarms (5.9%), and 4,299 actual incidents (94.1%). Most of the CERT®/CC incidents (89.3%) were unauthorized access incidents, which were further classified on the basis of their degree of success in obtaining access: root break-in (27.7%), account break-in (24.1%), and access attempts (37.6%). Relative to the growth in Internet hosts, each of these access categories was found to be decreasing over the period of this research: root-level break-ins at a rate around 19% less than the increase in Internet hosts, account-level break-ins at a rate around 11% less, and access attempts at a rate around 17% less. (Howard, 1997).

Howard's research showed that the state of Internet security is not as bad as some authors have suggested. The growth of Internet incidents in absolute terms was nearly at the same pace as the growth of the Internet. According to estimates from this research, a typical Internet host is involved in *no more* than around *one incident every 45 years*. However, some sites and hosts are more attractive to attack and may be involved in many incidents each year.

Despite the number of possible reservations that can be voiced against this study, even its critics, such as Dorothy Denning, agree with Howard that Internet is probably safer than it was previously thought. In other words, if the trends identified by Howard are valid, and the growth of the Internet outpaces rather than lags behind the rising number of security incidents, the risk of becoming a victim of hacking is, on the average, decreasing over time. The most recent CERT/CC statistics support this point (Table 13).

While CERT/CC statistics show a small reduction in the number of security incidents, both Howard's analysis for the years 1989-1995 as well as the CERT/CC 1996 and 1997 annual reports indicate disturbing changes in the type and scope of attacks that might, in turn, be symptomatic of deeper structural changes taking place in the "electronic underworld" or the population of hackers.

Table 13. CERT®/CC Statistics 1988-1998.

Incidents Reported	
1988	6
1989	132
1990	252
1991	406
1992	773
1993	1,334
1994	2,340
1995	2,412
1996	2,573
1997	2,134
1-2Q 1998	1,290
1999	
Total	13,652

Source: http:// www.cert.org/

III "The presence of motivated offenders"

1 Hacker subcultures and the assessment of experts

A traditional hacker's culture had an anti-establishment orientation, but was mostly harmless. It was based on the belief that information should be free, uncensored and shared. However, a core principle of the original hacker ethics – "Look, don't touch" – was not observed by the entire hacker community even in the early days. Only "good" or recreational hackers who enjoy the challenge of breaking into a computer network were seen to follow this rule – as opposed to "bad" or malicious hackers who use technology to damage data or steal sensitive information (Duff and Gardiner, 1996).

As has been rightly pointed out, the public image of the "typical" hacker has been transformed from that of a harmless computer enthusiast to that of a malicious techno-criminal as a result of the changing role of technology in society (Rosteck, 1994). The reactions of the authorities to the computer underworld have shown a dependence on old ideas. "Hacking becomes 'breaking and entering'; role-playing games become 'conspiracies'; exploration becomes 'espionage.' The dated terms obliterate the difference between the 'bad' hackers and the 'good' hackers" (Mungo and Clough, 1990, p.226).

Although criminological studies are rare, there is a theory that the hacker community is currently splitting into a number of distinct cultural groups. The top level of the "underworld" hierarchy consists of those who form the elite and who develop their own tools. Ordinary hackers who employ commonly used attack tools often take on specific profiles (e.g., crackers, phrackers, script kiddies, DOS kiddies, etc.) depending on their target or on the attack techniques

that they use. Hackers known as ”darksiders” are involved in predatory and malicious behaviour. They use hacking techniques for financial gain or destruction. Two of the most dangerous types of malicious hackers are information brokers and meta-hackers. ”Information brokers commission and pay hackers to steal information, then resell the information to foreign governments or business rivals of the target organisations. Meta-hackers are sophisticated hackers who monitor other hackers without being noticed, and then exploit the vulnerabilities identified by these hackers they are monitoring.” (Hayward, 1997).

The exact size of the hacker population is not known. The available estimates which have been made by computer security experts seem to be based only on impressions and vague extrapolations rather than on hard facts. Nevertheless, they are often quite illuminating. According to UK security experts, for example, some 95% of the overall population of hackers are ”good”, and only 5% are ”bad” hackers:

> Outsiders hacking into company IT systems fall into one of two categories. (..) 95% of cases are hackers infiltrating a system merely to show how clever they are to create havoc. These incidents are serious enough for the organisations affected to be heavily inconvenienced, and they can lose money through wasted business time. But even worse are the 5% of attacks where hackers set out to crack passwords in order to alter, steal or erase data. Such acts threaten the livelihood of companies and even the lives of people (UK: Security, 1998).

Ira Winkler, a leading US expert from the National Computer Security Association, provides even more precise estimates and deeper insight into the problem:

> Probably less then 1 percent of computer hacking is actually perpetrated for criminal purposes (Winkler, 1997, p. 88);

> Hackers exploit computers through vulnerabilities that are unknowingly built into the operating systems or programs running on the machines. There are very few people walking around today capable of finding new vulnerabilities. Those few who can are the true computer geniuses (...). There are probably less than 200 of them in the world. These geniuses are the ones who tell other hackers about the vulnerabilities. There are perhaps 1,000 hackers who can take that knowledge and develop a tool to exploit it. When that tool is posted on the Internet for the general hacker community, it becomes available to everyone. According to my estimates, there are between 35,000 and 50,000 hackers who fall into the ”clueless” ranks. These people would be lost without the knowledge and the tools produced by their more competent brethren. As a matter of fact, there have been numerous cases – several of which I have personally observed- involving hackers who broke into a computer system using a very sophisticated attack, then did not know the basic commands to manipulate the system (Winkler, 1997, p.86).

Taking into account the new ranks of hackers emerging in China, which now has more than 1 million Internet users and the first hacker’s case before court[156], the above estimates may swiftly appear to be underestimated. On the other hand,

some basic observations made by computer security practitioners are in line with those made by ”good hackers” and researchers.

> ”The ratio of real hackers to pretenders is so small now, it has diluted,” said Matt Hinze, former moderator of an Email newsletter called the Happy Hacker Digest. ”Scripts are pre-packaged ways to find weaknesses in computer systems. They’ve been around for years, but the growth of the Internet has led to higher demand for such tools, especially among a younger crowd dazzled by recent films such as ”The Net” and ”Hackers”. They are known as ”script kiddies,” people who want to call themselves hackers but who don’t necessarily want to spend a lot of time glued to a computer. Others theorized that the hackers simply used a ”packet sniffer,” a program that grabs data off of a network – that can include sensitive stuff like credit card numbers or passwords – and saves it as a file. Nobody can say for sure how large the hacking community has become or how much of it is made up of script kiddies. But no one doubts that the number of script kiddies is growing, to the annoyance of experienced hackers and security experts alike.” (Gornstein, 1997)

As Howard pointed out, his analysis of serious Internet incidents was able to demonstrate the progressive sophistication of intruders techniques [from simple user commands, scripts and password cracking, through the use of tools such as sniffers (1993) and toolkits (1994), and finally to intricate techniques that fool the basic operation of the Internet Protocol (1995)], which made the intruders more difficult to locate and identify. A recently published observational study of two Internet newsgroups trading in information and products that facilitate, among others, hacking of encrypted satellite television services, has led its authors to the conclusion that the Internet can be a particularly powerful medium for criminal recruitment and the dissemination of criminal techniques (Mann and Sutton, 1998).

Going one step further, it would be possible to conclude that the Internet has proven to be an ideal learning environment, where hacking behaviour *is learned in interaction with other persons in a process of communication* taking place on a scale and through channels that can hardly have been imagined even by Edwin Sutherland.

2 Differential associations on the Internet

One can simply take advantage of the vested capabilities of Internet search engines such as Altavista in order to find and count signs of the popular hacker culture across World Wide Web sites located in various national domains (Table 14).

156 ‘China makes first computer hacker arrest’ (Reuters, 14 September 1998).

Table 14. Hits using the Altavista search service on the Internet WWW resulting from a search for signs of popular hacker culture.

Country	no. of hits of the word ”hacking”	rate per 1000 hosts	no. of hits of the word ”warez”	rate per 1000 hosts
Austria	424	3,1	70	**0,5**
Belgium	522	2,8	242	**1,3**
Czech Rep.	179	2,5	467	**6,6**
Finland	900	2	468	**1**
Germany	2369	1,8	7830	**6**
Hungary	168	1,9	166	**1,8**
Italy	707	2,1	334	**1**
The Netherlands	1818	3,7	1416	**2,9**
Norway	445	1,4	212	**0,7**
Poland	162	1,4	495	**4,5**
Slovakia	96	5,2	119	**6,5**
Slovenia	80	3,9	98	**4,8**
Sweden	3654	9,6	4785	**12,6**
Switzerland	455	2	350	**1,5**

In hacker’s jargon, the searched term ”warez” denotes a copy of pirated software. This term has been found by the present author to be a particularly discriminating sign of the Internet underground culture of so-called ”warez kiddies”, also for linguistic reasons.

Even a cursory glance at the column of figures in bold in Table 14, a column that could be taken to represent a rough approximation of the prevalence of popular hacker culture on a national basis, suggests considerable differences between individual domains. Whether these differences are reliable or not, and what it is that they in fact measure, is beyond the scope of the present consideration. The primary goal of this exercise was to show the popular hacker culturally is expanding internationally, and how relatively independent it is of one’s native language and national culture. Therefore, no attempt is made to draw generalisations from the relatively high ”warez” rates obtained from the Central and Eastern European domains. As a matter of fact, hundreds of hacker’s pages offering a wide array of manifestos, guides, tools and links to other ”underground” WWW sites around the world have been set up in Czech Republic, Hungary and Poland in a relatively short period of time. Their content providers, usually very young people, seem to be strongly devoted to the idea of the free flow of information and are quite proud of the part that they are playing in this international experience. In this context, it would be easy to subscribe to the following opinion:

> There may be differences in the personality profiles of American hackers and European hackers, although there are no definitive studies of this matter; rumour has it that European hackers tend to be more politically motivated than American hackers (Kabay, 1998).

However, a better explanation of this ”internationalisation of hacking” can be found within the framework of differential association theory with its fundamental thesis about the learned nature of deviant behaviour and the concept of normative conflict at the roots of the criminalization process. In addition, the popular hacker culture is so diverse and ostensibly anarchic that any attempts at its politicisation could be ridiculous in view, for instance, of recent reports coming from the Czech Republic where the Czert group of Czech and Slovak hackers have repeatedly, over a two year period, hacked high profile Web sites of the Czech Army, a bank, the local UNICEF office, and various ministries:

> Some of the latest hacks have boldly taunted the police captain who has the primary responsibility for catching the hackers. The latest hack, 16 May 1998, featured a picture purported to be that of the police captain ... it was indeed the picture of the pleasant and compassionate looking ”sea captain” kind of a guy featured on packages of ”Captain Igloo” frozen fish sticks. ttp://www.intellitech-media.cz/sa/cee-hack-archive/

Obviously, the above example was not randomly chosen since it perfectly corresponds to the subject of the following section.

IV The absence of capable guardians

1 What hampers prosecution of IT-related crime?

One of the most concise description of computer crime has been formulated by a law enforcement official: it is mostly hidden criminality where there is a small probability of detection, a high reluctance to report, and inadequate security (Tenhunen, 1994). Indeed, all of these features are well documented by research on computer security crime.

Experts on information security estimate that about 20 million hacks occur a year world-wide (Lange, 1997). The chances of their being detected are small. According to a 1996 study by the Computer Emergency Response Team (CERT), network administrators fail to detect about 80 percent of network hacking. The FBI’s National Computer Crimes Squad estimates that between 85 and 97 percent of computer intrusions are not detected. In a test sponsored by the US Department of Defence, the results were startling. Attempts were made to attack a total of 8932 systems participating in the test. 7860 of those systems were successfully penetrated. The management of only 390 of those 7860 systems detected the attacks, and only 19 of the managers reported the attacks (Icove et al, 1997).

The invisibility of computer crime, which has commonly been recognised as its most characteristic feature (UN Manual, 1994, p.5), is probably not the most significant factor that hampers prosecution of system hacking and related crime.

As was recognized already some years ago, the victims of such crimes, in particular in the financial sector, are reluctant to report the crime (Council of Europe, 1990, p.99).

This reluctance, as shown by the recent research, is not confined to the banking sector, but constitutes in fact a much more widespread attitude, quite evenly distributed among all kinds of organisations, including business organisations.

"Negative publicity" as a reason for not reporting computer intrusions to law enforcement was most frequently cited by 428 respondents to CSI/FBI Computer Crime and Security Surveys, where the financial sector accounted for 20% of the sample (Table 15).

Table 15. The reasons organisations did not report intrusions to law enforcement.

Reason	Year		
	1996	1997	1998
Negative publicity	75%	65%	83%
Competitors would use to advantage	72%	55%	74%
Unaware that could report	53%	53%	46%
Civil remedy seemed best	60%	48%	51%

Source: 1998 CSI/FBI Computer Crime and Security Survey

Another study, conducted by WarRoom Research LLC, provides a more detailed analysis of victim's motives for non-reporting security incidents to the police (Table 16).

Table 16. Motives of non-reporting computer intrusions to law enforcement.

Motives declared by respondents	Volume	Proportion
didn't get into system	4	4.4%
didn't want to get person in trouble	2	2.2%
didn't know it was a crime	1	1.1%
didn't want law enforcement in system	13	14.3%
take over system, loose productivity	13	14.3%
access to sensitive information	11	12.1%
don't think they would be interested	0	0.0%
don't think they would solve it	2	2.2%
rime becomes public	19	20.9%
loss of client confidence	18	19.8%
loss of competitive status	8	8.8%
opted for civil remedy	0	0.0%
other (specified)	0	0.0%
total	155	100.0%

Source: WarRoom Research, 1996

The reason so few attacks were reported was mainly because organisations frequently fear that their employees, clients, and stockholders will lose faith in them if they admit that their computers have been attacked. In addition, compa-

nies where security had been breached were reluctant to go public because they immediately become targets of hackers who, knowing someone else had found a way in, also try to break through their security. In the WarRoom research, an effort was also made to explore the circumstances that determine the readiness of potential victims to report computer intrusion to law enforcement (Table 17).

Table 17. Circumstances under which respondents would be willing to report computer intrusions to law enforcement.

Circumstances	Volume	Proportion
anytime detected	33	6.8%
could report anonymously	146	30.2%
only if everyone else reported	105	21.7%
only if mandatory by law	181	37.4%
other (specified)	19	3.9%
total	484	100.0%

Source: WarRoom Research, 1996

As the responses indicate, the respondents regard possible co-operation with law enforcement as the last resort. Their unwillingness to engage the police in investigation of the crime seems to be rightly explained by Tseng:

> For financial organizations, cost-effective preventive measures are the best proactive approaches. However, if forced to react, their priorities are clearly in the following order: 1) recover their (or their customers') losses, 2) see the criminal punished, 3) fix the current procedures. This mis-match between law enforcement and financial institutions means that banks and other victims of financial crime will turn increasingly towards private investigations and civil litigation (Tseng, 1995).

This observation gains empirical support from the WarRoom Research survey: out of 194 respondents asked whose assistance they would choose in the event of intruder attack on their systems, about two-third (64.4%) pointed to a security firm and only one-fifth (21.6%) to law enforcement.

Consequently, only a small fraction of detected computer intrusions are reported to the police. According to the 1996 WarRoom study, of the companies that detected systems break-in only about 12 percent actually reported the crime. In the CSI/FBI surveys the reporting rate of computer intrusions to law enforcement was somewhat higher, and amounted to 16% in 1996 and 17% in 1997 and 1998. In the 1994 UK Audit Commission Survey, a similar proportion (18%) of the overall number (N=319) of perpetrators of computer abuse were found to be prosecuted. Only 2 per cent of 115 respondents surveyed in Poland in 1994 had notified the police of a computer abuse to which they had fallen victim (Adamski, 1994). In a recent Dutch Internet Security Incidents Survey, the intruders were prosecuted in only two (6.6%) out of the total of 30 incidents which had been reported (Caminada at.al., 1998).

Against the background of the above empirical findings, two observations can be made. First, the reporting rates of computer crime, although rather low, do not generally deviate from the reporting rates for some common crimes such as pickpocketing, fraud or attempted residential burglary (del Frate et al., 1993). Secondly, as in conventional crime, the seriousness of computer intrusions, as perceived by their victims, might have a significant impact on the probability of reporting of crime. Therefore, it is quite reasonable to expect that with growing economic losses to the victims, an increasing number of computer crimes will be reported to police. The case involving Citicorp Bank is almost self-evident in this respect. On the other hand, in spite of the increased media coverage given to computer crime, there is no clear indication of a strong negative social attitude towards this type of crime.

The relatively small number of cases which have been brought before the courts in the United Kingdom under the 1990 Computer Misuse Act, and the light sentences imposed on those few offenders who were sentenced under this Act during the first 5 years of its operation, might reflect this generally permissive social attitude towards computer crime (Battcock, 1995). Other reasons could be the technical nature of the crime, which many people, including those who represent criminal justice, do not understand, or they lack the necessary skills to investigate, prosecute and adjudicate such crime.

2 Reducing opportunities for computer crime

Information technology crime, by definition, should basically be prevented by technical means, and in fact is. An entire new industry relating to information security has developed in recent years in order to provide safeguards against various form of illegality involving telecommunications and information systems (Grabosky, 1998). What still remains to be a problem is the low security awareness and poor access control of information systems within organisations that use computers and that are connected to the Internet.

A survey carried out by Dan Farmer, a respectable Internet security expert, shows that over 60% of 1700 inspected sensitive Websites, such as banks, credit unions, newspapers and government agencies, could be broken into or even destroyed (Farmer, 1996).

According to the Business Information Security Survey ‘98, developed in the UK by the National Computing Centre, only 39% of companies have some form of security policy, and less than half were aware of the Computer Misuse Act of 1990 (ttp://www.ncc.co.uk/). The 1998 Ernst & Young Global Information Security Survey, which made it possible to look at the security issue from the international perspective, has produced similar results. Although 84% of the 3,599 respondents from Africa/Middle East, Asia, Europe and South America believe hackers pose a threat to their organisations, the measures that they currently use in order to provide Internet security may not be sufficient to prevent intrusion:

> Leading counter measures reported by respondents are password authentication, at 76%, and firewalls, at 65%. Of those who report that their systems

were broken into, only 54.8% had a firewall installed. Nearly 60% (58.25%) rely on password authentication – which on its own, without encryption and other stronger techniques, may not be the most reliable method for effective protection – while 17.8% use data encryption (Global, 1998).

Cryptographic technologies are nowadays widely recognised as an essential tool for security and trust in electronic communication. Two important applications of cryptography are digital signatures and encryption. Digital signatures can help to prove the origin of data (*authentication*) and verify whether data has been altered (*integrity*). Encryption can help keeping data and communication *confidential* (EU Commission, 1997). All these services are indispensable in the Internet-based *electronic commerce* which is expected to drive economic growth for many years to come (Emerging Digital Economy, 1998).

Widespread availability of encyption can also prevent crime. The damage caused by electronic crime (industrial espionage, credit card fraud, toll fraud on cellular telephones, piracy on pay TV), which in Europe alone is estimated in billions of ECUs, could have been reduced with the aid of cryptography (European Commission, 1998).

Presently, however, the use of encryption applications and products is limited. Among respondents to the 1998 Ernst & Young Global Information Security Survey, for instance, it ranges between 4 to 7 percent:

> The numbers are lower for newer, more secure technologies. Only 6.92% use secure email, 4.66% digital certificates, 4.21% digital signatures, and 3.59% secure messaging. Approximately 62% of respondents to this question reported using more than one of these technologies.

As was shown in the Howard study, the most serious computer security incidents are based on a three-phase attack. First, the hacker gains access to an account on the target system. Secondly, he or she exploits vulnerabilities in order to gain privileged (root) access to that system. Thirdly, the intruder use this privileged access to attack other systems across the network (Howard, 1997).

There is, however, wide agreement among computer security experts that with the aid of three basic security measures such as password authentication, firewalls, and data encryption, the risks of computer intrusions can effectively be mitigated without excessive costs (Adamski, 1997). Above all, computer crime is not committed by technology but by people and it is reasonable to expect that increased attention to the basic controls could substantially reduce the incidence of computer abuse.

High-end technology offers fool-proof solutions which are able to ensure the total safety of information systems.

> Retinal imaging, voice printing, hand geometry readers, and other biometrics technologies permit authentication of individuals with a precision not previously considered possible. In the future, PIN numbers are likely to be replaced by biometrics authentication and identification devices (Grabowsky, 1998).

Although these are not cheap devices today, they will probably become widely available in the near future along with technological advances.

3 Increasing the risk of apprehension

Cyber crimes are extremely difficult for law enforcement to trace. This is not only because hackers can cover their tracks. The logical structure of the Internet itself, with its numerous pathways through which the ”packets” of data travel until they are reassembled at the destination, makes it difficult to trace hackers.

The most proficient intruders develop their own *underground network* of compromised systems which enable them to ”leapfrog” through the net from one system to another before attempting to attack the target system (Anderson, 1994). Only highly skilled and strongly motivated investigators are capable of tracking them down as well as gathering and preserving evidence in a manner that makes it possible to present it to prosecutorial authorities and be considered by the courts. The need for adequate training of police officers, appropriately equipped and organised in special teams, is self-evident in this context.

But even the best trained police forces may be unable to deal with an increasing number of reported crimes. In some European countries, police hot-lines are sometimes overloaded by the huge number of calls from the victims of computer intrusions who are asking the police for help.

> As companies begin to defend themselves against the computer criminals, they are being told that dialling 999 to call the police will not do them any good.
>
> In a speech to a Confederation of British Industry (CBI) seminar in September 1997, Graham Saltmarsh of the South East Regional Crime Squad said the police cannot help companies beat the digital criminals. ”Funding constraints will reduce the ability of police forces to support industry,” he said. He recommended that companies ”develop their own capabilities in investigation and intelligence gathering” (BBC news, 1998).

Although the above recommendation can not be accepted on legal grounds, the trend toward ”privatisation” of cyber-policing is visible not only in the United States and Australia but also in Europe. This tendency covers various forms of co-operation between law enforcement authorities and a number of subjects who represent private firms or individuals. Besides more traditional and strictly regulated forms of co-operation between telecommunication operators and the police, there are also examples of more informal and even innovative relations in this area. In some countries, the Internet Service Providers (ISP) and regional branches of Computer Emergency Response Teams (CERT) already have well-established relations with law enforcement. New laws adopted in Germany and Sweden, for example, require ISPs and electronic bulletin board operators to conduct periodic checks of the content of messages posted to their boards and to remove messages that violate the law. In less technologically developed countries where Internet-related regulations are not already in force, attempts at self-regulation often take place. A recent example from Poland is the initiative taken by the main Polish Internet access provider, TPSA, to monitor and supply the police, if necessary, with billing lists of all the connections made through its free-line by Internet users. Just after this free-line had been put into operation it became

the most frequently used point of departure for Internet attacks. Its number, based on complaints of injured persons, amounted to 70 in August 1998 alone.

The most curious type of collaboration between private individuals and law enforcement aimed at suppression of cybercrime is being performed by some groups of American hackers such as the "Enforcers," who allegedly give the FBI a hand in fighting pedophiles.

> When a child porn trafficker responds, the Enforcer finds out his or her target's host address, then makes use of any number of programs that can knock him off the channel. Members also track pedophiles to their hosts, then contact the systems administrators to lodge a complaint (Pernenberg, 1998).

Special squads of cyberpolice operate in the United Kingdom, Belgium, Norway and Germany. The first German force to combat Internet crime has been established in Munich, and according to information provided on their Web page, in 1996 a team of its five officers had investigated 100 cases of child pornography world-wide, patrolling the Internet, searching for child pornography and trying to follow and penetrate groups of pedophiles.

Since the Internet is an open network – a global public place accessible to everyone – some of its disadvantages for police work (e.g. anonymity, lack of witnesses, impersonation and disguising) can also be regarded as its advantages. As an explanatory memorandum to the bill for an amendment of the Dutch Criminal Procedure Code states:

> A clear distinction must be drawn between browsing a network which is accessible to the public and doing investigative research on a network, whereby the citizen's (constitutional) rights may be infringed. There can be no objection to the first instance where a police officer signs a subscription contract with a provider in order to obtain a connection to the Internet. In addition, police authorities, like all other citizens, are fully entitled to explore the digital world for available information. This does not necessarily require suspicion of an offence. In addition, police authorities are under no obligation to identify themselves as investigating authorities. In the same way as a police officer, whether in uniform or not, may patrol and look around in the street, so an investigating officer may look around on the Internet from behind his computer. No specific legal grounds are required to that end, provided that the activity can be interpreted as the performance of police duty (see art. 2 Police Act 1993). (Ministry of Justice, Directorate of Legislation, January 1998)

A matter of particular concern to law enforcement agencies is the anonymous and borderless nature of cyberspace and the possibility of committing crime from the offender's own desk, far away from the target. The reverse, however, is also true. Police officers, in no less comfortable conditions, may take advantage of the Internet for the efficient investigation of offenders.

> Jefferson County, Ky., police Lt. Bill Baker broke a major kiddie-porn ring in England even though he never left Kentucky. An E-mailed tip from a source in Switzerland led Baker to an Internet site in Birmingham, England. After about three months of investigation that involved downloading 60 pages of file names related to child porn and 400 images, Baker called on Interpol, New

Scotland Yard and police in Birmingham, who arrested the distributor (Sussman, 1995).

Network-related crime is able to affect several jurisdictions simultaneously and interactively: systems may be accessed in one country, the data manipulated in another and the consequences felt in a third country (UN Manual, 1994). This causes problems which arise from the basic exchange of data between police forces, liberalisation of extradition laws and admission of evidence procured from other jurisdictions.

However, harmonisation of laws at the international level is a highly time-consuming task. The Justice and Interior Ministers from the group of P-8 countries, in the communique from their first meeting on 11 December 1997, outlined steps for improving the international battle against cybercrime:

- Making sure law enforcement agencies have a sufficient number of trained and equipped personal to fight cybercrime;
- Creation of 24-hour contacts to quickly track cybercriminals;
- Developing faster ways to trace attacks on computer networks and identify hackers;
- Criminal prosecution in the country a suspect flees to, if extradition is impossible;
- Steps to preserve information on computer networks to help prevent tampering;
- Reviewing legal systems in the nations to make sure there are appropriate criminal statutes for computer crimes and to ease investigation of such crimes;
- Co-operation with the computer industry in order to develop new methods of detecting and preventing computer crimes;
- Increasing use of new technologies, such as video-links, in order to obtain testimony from witnesses in other countries;
- Development and employment of compatible forensic standards for retrieving and authenticating electronic data for use in criminal investigations and prosecutions (Reuters, 12 December 1997).

As can be seen from the above examples, the ”good old days” of the Internet as uncontrolled and mostly uncontrollable cyberspace have already gone, and the lack of capable controllers no longer seems to be a problem.

Final remarks

Due to the popularity of the Internet, hacking, or breaking into somebody else’s computers, is presently more popular and automated than ever. On the basis of the present knowledge it is not easy to determine what the size of this phenomenon is, and whether the incidents of computer crime are vastly underestimated or not.

Although it might be naive to think that there will not be serious criminal involvement in cyberspace in the near future, to date there is no convincing

evidence of exploitation of the Internet by terrorist or predatory oriented cyber-gangs. The reports about their existence turned out to be a pure fantasy (Hayward, 1997a,b).

The growth of malevolent hacking is one of the social facts that seems to be self-evident on common-sense grounds, but at the same time it is not so evident against the background of the present research. As the foregoing analysis of available research findings suggests, the present world-wide experience is that the prevalence of computer crime is growing. This tendency is proved by the victimisation-like computer security surveys, but even to a greater extent by the opinion surveys by consulting firms carried out on samples of IT managers. Therefore, the rate of increase in system hacking and related crime is difficult to establish. In addition, the lack of an appropriate taxonomy of computer security incidents reported by respondents to these surveys makes any attempts at evaluating the seriousness of computer intrusions hardly possible.

At the aggregate level, computer crime poses a serious problem for the most industrialised and post-industrial societies, and for that reason it has been criminalized in many such societies primarily during the 1980s.

In purely statistical terms, the growth of computer crime probably differs among individual countries and appears to be steeper in those jurisdictions where the initial level of information technology development was lower than in the more technologically advanced societies. Nevertheless, in the former group of countries hacking and other types of IT crime are only incidentally regarded by the national legislation as offences (Schjolberg, 1996).

It could not be questioned that the new technology is predominantly used for good, i.e., in a socially acceptable way, and not as a tool of crime or other socially detrimental activities. Therefore, one should not be surprised with the main finding of Howard's study, which is that with the exception of denial-of-service attacks, security incidents had generally declined relative to the size of the Internet. In more practical terms, this means that the average user of the Internet is probably more secure than before and less susceptible to becoming a victim of network intrusion.

The risk assessment analysis presented by Howard can be recommended both for decision-makers and researchers. For the latter group, Howard's study might provide a methodologically sound starting point for further research aimed at risk assessment analysis of the most likely targets of attack as well as on the epidemiology of cybercrime. As concerns those who decide what sort of policy should be implemented in view of developments taking place over the Internet, the conclusion of Howard's study is like a barrel of oil poured over troubled water.

It is worth mentioning in this context that control over the use of modern information technology may lead to a Catch-22 situation, in which security products employed in order to reduce the risk of intrusion and improve the safety of information may cause the situation to apparently worsen and lead to 'counterproductive' effects. Such apparent negative results can be noted after the security monitoring of the system begins. The measure of system security has been the number of break-ins or attempts identified. If none are identified, there is no problem. Under this laissez-faire standard, a product that effectively identifies unwanted visitors becomes a part of the problem, not a solution.

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Crimes Related to the Computer Network. Threats and Opportunities: A Criminological Perspective

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1 Introduction

Finland is one of the most developed countries in the entire world in respect of the use of information technology in everyday life, and the number of personal computers and Internet connections in relation to the population is very high. In this respect, there is quite favourable soil for, on the one hand, committing computer-related and net-related crimes, and, on the other hand, becoming a victim of such crime.

Since the early 1980s, Finland has participated in international co-operation on EDP-crimes, computer crimes, computer-related crimes, information technology crimes, and, finally, cyber-crimes or crimes in cyber-space. The changes in the names of this type of crime are very charasteristic of the huge change and expansion of the entire phenomenon and concept of the crime in question over the last twenty years.

Finland has been represented in the working groups and committees of the OECD and the Council of Europe; currently Finland is represented in the Committee of Experts on Crime in Cyber-space (PC-CY). Finland has also taken part in the work of the International Association of Penal Law, the United Nations, and the International Criminal Police Organisation Interpol, and Finland has contributed to the COMCRIME project of the European Commission. It may also be mentioned that the International Association of Prosecutors will have IT-crimes as the main theme of its next annual conference in Beijing 1999, and there are full reasons for believing that Finland will take an active part also in this work.

The existing Finnish legislation on information technology crimes[157] is very much based on Recommendation No. R(89)9 of the Council of Europe on computer-related crime. The Finnish Penal Code has already for many years been

157 This is the term I prefer, and I will later use the abbreviation "IT-crime". According to my view, the term covers computer-related crimes in the strict sense of the concept, and new cyber-crimes as well.

undergoing a total reform. The first phase of the reform entered into force in the beginning of 1991,[158] and includes, among others, a few provisions on those IT-crimes which can be called *data crimes*.[159] – The second phase entered into force on 1 September 1995,[160] and also includes some provisions on IT-crimes, this time primarily *information crimes*.[161]

Some amendments to the Penal Code have been made since then. The provisions on means of payment fraud have been reformed, and are now applicable also to the crimes committed for example in electronic commerce through the Internet or other networks. A third and quite large part of the total reform of the Penal Code has already been ratified and will enter into force at the beginning on 1999.[162] This includes, among others, provisions on dissemination and possession of pornographic and violent presentations. These provisions also apply to crimes committed over computer in networks. – The proposal to criminalize preparing and disseminating computer viruses and other malicious codes has been given to Parliament in December 1997. The provision will perhaps enter into force at the beginning of 1999.

I will later briefly describe the provisions mentioned above. It is not an exaggeration to say that the substantive Finnish legislation on IT-crimes is very up-to-date and widely covers action in the IT-environment which can be considered reprehensible.

The situation is not as good with the procedural legislation. The provisions in Recommendation No. R(95)13 of the Council of Europe concerning problems of criminal procedural law connected with information technology have not yet been implemented in Finnish criminal procedural law, including the legislation on criminal pre-investigation. Modern information technology has made it very easy to commit crimes that cross international borders, and this sets and will continue to set high standards for international co-operation and domestic procedural legislation. As a prosecutor I am quite concerned about these questions, and, in my view, the lack of efficient procedural provisions can considerably frustrate the existence of good substantive criminal provisions. In this sense I have strong faith in the PC-CY of the Council of Europe which discusses, with great expertise, precisely these matters and will produce a text for a Convention. Even if the States do not necessarily – at least immediately – sign and ratify the future Convention, it will give good guidelines for domestic procedural legislation.

158 Act 769/24 August, 1990.
159 Fraud, means of payment fraud, forgery, damage to property, unauthorised use, industrial espionage.
160 Act 630/21 April, 1995.
161 Computer break-in, message interception, interference, data protection offence, criminal mischief, copyright offence, intellectual property offence.
162 Act 563/24 July, 1998.

2 Finnish Legislation on IT-crimes

2.1 Existing provisions

The current provision on *unauthorised use*[163] does not explicitly mention a computer or a data processing system as an object of the offence, but in the official justification given for the provision[164] the question has been discussed. According to the provision, hacking can now be deemed liable to punishment on the basis of the criminalization of unauthorised use, if the offender after penetrating a computer system has in fact used the system. If the offender only penetrates a system without going further, the provision on computer break-in will be applicable.

A person is guilty of *industrial espionage*[165] if he or she, for example, without authorization obtains information about a trade secret of another by entering into a closed space prohibited to unauthorised persons or into a information system protected from unauthorised persons. Other possible acts of industrial espionage include acquiring or copying documents or other official records, or some other comparable act, for instance copying or printing audio, video, or EDP-recordings.

A person can be sentenced for *forgery*[166] if he or she prepares a false document or other piece of evidence or falsifies such a document or piece of evidence in order for it to be used as misleading evidence, or uses a falsified piece of evidence as such evidence. The piece of evidence is defined as a document and its facsimile, a mark, stamp, license plate, audio or video recording, a recording produced by a plotter, calculator or other comparable technical device, and a recording that is suitable for data processing.

A person who unjustifiably destroys, defaces, conceals or hides data recorded on an data device or other recording is to be sentenced for *damage to property*.[167] The concept of ”recorded data” refers to the information given in the data as well as the marks or symbols interpreting the contents of information; and ”other recording” refers to the contents of the recording as well as the marks or symbols of which the recording consists. An offence called *criminal mischief*[168] is involved when a person, for example, unlawfully interrupts the operation of production, supply or communications channels, so that serious danger is caused to the power supply, general health care, defence, the working of the judiciary or another corresponding important social function. Criminal mischief can thus, in some situations, be considered as a special case of computer sabotage offences.

According to the provision on *data processing fraud*[169] this offence is committed when anyone who with the intention of obtaining unlawful financial benefit or of harming another person, falsifies the end result of data processing either by entering false data into a computer or by otherwise interfering with automatic data processing.

There are also special provisions, reformed some time ago, on so-called *means of payment fraud*,[170] according to which a person who e.g. uses a means of payment without the permission of the lawful possessor of the means of payment, or in excess of his or her rights that are based on such permission, or otherwise

without lawful right, is guilty of means of payment fraud. Punishable preparation of means of payment fraud is involved when a person, for the commission of means of payment fraud, prepares, imports, procures, receives, or possesses a means of payment form, or device or supplies specially suitable for the preparation of such forms, or a recording or program specially suitable for the payments traffic in data networks. A means of payment is defined as a bank card, payment card, credit card, cheque, or other means or recording which can be used for making payments, withdrawals or transfers, or the use of which is a necessary condition for these performances. A means of payment form is defined as a printed form that is to filled in to constitute a means of payment and that is not freely accessible to the public, or a card or outline of a card specially suitable for preparing a means of payment.

According to the provision on *message interception*[163] anyone who unlawfully opens a letter or other closed communication addressed to another, or, by breaking a protection, obtains information on the contents of an electronic or other technically recorded message which is protected from outsiders, or obtains information on the contents of a call, telegram, transmission of text, images or data, or another comparable telemessage or on the transmission or reception of such message, is guilty of the offence. This provision thus protects also electronic mail both during and after the transmission.

A person is guilty of *interference of communications*,[164] when he or she, by tampering with the operation of a device used in postal, telecommunications or radio traffic, by mischievously transmitting interferes messages over radio or telecommunications channels or in other comparable manner, unlawfully hinders or interferes with postal, telecommunications, or radio traffic.

According to the first paragraph of the provision on *computer break-in*[165] a person who by using an unauthorised access code or by otherwise breaking a protection unlawfully penetrates into a data processing system where data are processed, stored or transmitted electronically or in a corresponding technical manner, or into a separately protected part of such a system, shall be sentenced for computer break-in. This provision is secondary and will not be applied if the act is classified as industrial espionage by penetrating into a computer system, damage, unauthorised use, fraud, message interception or other comparable act.

2.2 Future provisions

As mentioned before, the new provisions on *dissemination of illegal information*[166] will enter into force at the beginning of 1999. A person who offers for sale or for hire, distributes, or to that end manufactures or imports pictures or visual recordings depicting children, violence or bestiality in an obscene way, shall be sentenced for *distribution of obscene pictures*. A person shall be sentenced for *possession of obscene pictures of children, if he or* she has in his

163 Penal Code, chapter 38, section 3 (578/21 April, 1995).

or her possession a photograph, video tape, film or other visual recording, true to reality, depicting a child having sexual intercourse or in a comparable sexual act, or depicting a child in another obviously obscene way. *Obscene marketing* is in question when a person for gain markets an obscene picture, visual recording or object which is conducive to causing public offence, by giving it to a person under 15 years of age, putting it in a public display, delivering it unsolicited to another, or openly offering it for sale or promoting it by advertisement, brochure or poster or by other means causing public offence. – There is no legal definition of a child in these provisions. It has been said in the official justification for the provisions[167] that child pornography is involved if the picture shows a person who is not yet sexually mature.

In December 1997 the Government gave to Parliament a proposal for a new provision on *data processing endangerment*.[168] According to the proposal this would be punishable when somebody, in order to harm data processing or the operation of computer or telecommunications systems, (1) creates, makes available or distributes a computer program or series of program instructions which is constructed to endanger data processing or the operation of computer or telecommunications systems, or to damage data or programs contained in such a system, or (2) makes available or distributes instructions to create such a program or series of program instructions. In other words, the aim of the proposed provision is to criminalize the preparation and distribution of computer viruses and other comparable programs. – The proposal has been before Parliament already for quite some time, but this is not due to the difficulty of the proposal. The only reason for the delay is the pressure of work in the Law Committee of the Parliament.

2.3 The applicability of the provisions to the internet and other networks

When Recommendation No. R(89)9 of the Council of Europe was being drafted some ten years ago, the Internet differed essentially from the present. For this reason, the substantive criminal legislation on IT-crimes, which in Finland as well as in many other countries is based on the Recommendation, does not pay very much attention to the threats and possibilities caused by the Internet. In any case the crimes which can be committed by the use of the Internet of or otherwise over the Internet are, in fact, the same crimes: the basic structure of the crime does not change even if the environment changes. Thus, at least in Finland, the applicability of the provisions described above does not cause major difficulties in respect of substantive criminal legislation. The situation is very different when

164 Penal Code, chapter 38, section 5 (578/21 April, 1995).
165 Penal Code, chapter 38, section 8 (578/21 April, 1995).
166 Penal Code, chapter 17, sections 18-20 (563/24 July, 1998).
167 HE 6/1997.
168 HE 233/1977.

we turn to examine criminal procedural legislation. As mentioned before, a lot of work has to be done on this area.

The provisions on computer break-in, unauthorised use, data processing fraud, IT-forgery, industrial espionage and damage to property cover, to a large extent, also offences such as hacking committed by means of the Internet and smaller local, metropolitan or wide area networks (LANs, MANs or WANs). The new provisions on means of payment fraud are specially planned to be applicable also to transactions in networks.

In respect of content-related crimes, the provisions cover actions connected with the obscene and violent contents of the information. Disribution of computer viruses and other harmful programs will be covered by the proposed provision. The provision on data processing endangerment will provide protection for instance against so-called macro viruses which spread with attached files of electronic mail messages and represent today the most common type of ”malware”.

3 Conclusions

IT-crimes quite often remain unreported and undetected. No studies on the reasons for this phenomenon have been conducted in Finland, but obviously at least the fear of ruining the reputation of the victim, the fear of heavy expenses, and a lack of confidence in the capabilities of the investigating, prosecuting and adjudicating authorities have influenced the attitudes of victims.

The last-mentioned reason is unfortunately a very real one in Finland, and probably in many other countries, as well. At the moment it can be said that only the police have sufficient know-how for dealing with IT-crimes. During 1999, the Office of the Prosecutor General will start up a training schedule on IT-crimes for prosecutors, but no such training for judges has yet been even planned. In my view, this present lack of the expertise will mean a real threat to the success of the fight against IT-crimes. If such basic elements as, e.g., the functioning of different operating systems or file systems are totally incomprehensible for the law enforcement authorities, there are no grounds to expect proper and reasonable decisions from the courts.

It is impossible to say what the exact number of investigated IT-crimes is, because the police does not compile separate statistics on IT-crimes. The IT-crime Unit of the National Bureau of Investigation (the Central Criminal Police) has been involved in the investigation of 200-300 cases each year, either as the responsible investigator or as an expert in investigations conducted by the local police authorities. This number continues to increase. The number of investigations being conducted only by the local police authorities is unknown.

Most of the IT-crimes that have been prosecuted have been copyright offences and different types of hackings, mostly defined as unauthorised use. There seems to be a clear need for some new criminalisations especially with respect to the Internet; for instance actions called ”spamming”[169] and ”spoofing”[170] become more and more common in the net environment and can be quite harmful. The present provisions on interference and forgery do not cover these specifically

net-related actions, at least in full. Also trafficking in passwords is a phenomenon which could be a subject of a new criminalisation.

In the international fora considerable attention has been paid to content-related crimes, especially child pornography. In addition to that, also the criminalisation of other forms of content-related actions should be discussed, e.g. questions of racial hatred and international terrorism. As such, these phenomena are not very problematic from the Finnish point of view because the applicability of the criminal provisions in this area is usually not bound to the tools or the environment of the crime. Nonetheless, in a globall perspective, these content-related actions may cause a lot of damage. However, prior to criminalisations the responsibility of the Internet service providers and also the users should be underlined.

Today it is quite impossible to imagine in what kind of a IT-environment we will live, say, ten years from now. That is why it is impossible to create permanent solutions in the criminal legislation, and it can be maintained that the legislation will always be more or less behind the real development. In order to keep this gap as narrow as possible, close and continuous cooperation between the law enforcement and legislative authorities is required, as well as active following of the technical development. Because of the transnational nature of IT-crimes, international cooperation is also very significant. Without the wide harmonisation of criminal substantive and procedural legislations it will be quite impossible to obtain any satisfactory results in the fight against the IT-crimes in general and net-related IT-crimes in particular.

169 Spamming, bombing and flaming refer to the sending of data to a particular person in such a form, size or frequency that it may deprive the addressee of all or part of his or her communication facilities, i.e. of his or her ability to send or to receive messages (Patijn, A. and Kaspersen, H: Spamming and Transparency of Communication Networks, PC-CY [98] 14).

170 Spoofing refers to the falsification of traffic data in a telecommunication network open to the public, with the intent to prevent the establishment of the source or the path of the communication. (Patijn and Kaspersen, PC-CY [98] 14).

Crimes Related to the Computer Network. Threats and Opportunities: A Criminological Perspective

Commentary by
Prof. Dr Henrik W.K. Kaspersen

To start with, I owe an apology to the author as well as to the readers of my paper. I am a lawyer and not a criminologist. Consequently, my appreciation of Mr Adamski's paper may not do full justice to its content or to its author but this will not keep me from expressing my opinion. I have read Mr Adamski's paper with great interest and found interesting references to other articles and publications. The author should be complemented for his collection of statistical sources of computer crime as published in different national fora. Most of these sources are very recent and provide all kinds of interesting information. Also Mr Adamski's scientific courage to tackle a complicated and extremely difficult topic such as computer crime should be praised. In 1990 I mtself was in the situation of conducting a major victimization survey on computer crime in the Netherlands[171], of which the results still seem valid today, and some of the findings are also largely reflected in Mr Adamski's paper.

According to the introductory paragraph Mr Adamski's paper intends to be ambitious and according to its aims and scope, cover a broad area. As his central theme, Mr Adamski has adopted the phenomenology as well as the prevention of crimes in the computer environment. In addition, the paper provides an evaluation of available data on behalf of further research and the development of (prevention) policies. Although the paper does not claim to provide final solutions for the supposed problem of computer crime – the main object seems to be to provide some material for *further* studies – the question arises what exactly the merits of the paper are. The expectations raised by the language in its introductory section seem not to have been fully met. Instead of bringing clarity to the concept or phenomenology of computer crime, the paper seems to create more confusion instead. In its analysis of computer crime or computer-related crime, it leaves a number of important questions unanswered, even if it makes possible deeper insight in what moves the perpetrators of computer crime. Therefore, the proposals concerning the prevention of computer crime necessarily lack specificity and are not particularly innovating. However, the author is not to blame for this. As mentioned in his paper and as known from other sources, very little reliable data are available on computer crime. Victims are not necessarily aware of having been a victim of computer crime. Even if they are, in most

171 F.H. Charbon, H.W.K. Kaspersen, Computer crime in the Netherlands, Den Haag 1990.

cases they do not report to the police. And even when they do, the police in most cases will not find start an investigation and if they do there is only a small chance that they identify a perpetrator who in some cases will be tried before a court. Despite these multiple *top-of-the-iceberg* syndrome, I would like to make some observations on the methodology as well as on the content of the paper. These will be divided into three main topics: the phenomenology of computer crime, the analysis of the person and motives of the perpetrator of computer crime, and the crime-enhancing factors.

A phenomenology of a type of crime requires a set of definitions. Donn Parker[172]- to whose work a mandatory reference should be made in any paper on computer crime – made a distinction between computer crimes (at the time he used the term "abuse" because of the absence of applicable criminal law provisions) where the computer and its content are the object, the instrument, the environment of the abuse or where the computer has been used as a symbol. Apart from the latter category, which has lost its meaning today, very little seems to have been changed, not even by the emergence of global electronic communication networks: Parker's remaining categories are all still valid. In the field of criminal law, very few attempts are undertaken to find a proper definition for computer crime, except perhaps by the OECD[173]. Its 'definition', however, was already abandoned in the work on the Recommendation of the Council of Europe of 1989, where it was admitted that a computer-related crime, as it was called then, could in fact be any criminal conduct related in the broadest sense with electronic data processing. Studies on computer crime or computer-related crime use definitions depending on their purposes: for legislative purposes, criminological or forensical purposes, for purposes of the analysis of security threats or conditions for insurance etc. As an example, in my own study on criminalisation of computer abuse[174] I proposed as the definition of computer crime a narrow concept, that of conduct involving unauthorised or otherwise illegal interfering with electronic data processing (computer crime in a narrow sense). This group of crime looks at the *modus operandi* of the perpetrator and is largely covered by Parker's first category *object of the crime.* Other forms will include the remaining Parker categories *instrument* or *environment of the crime.* Parker's categorisation was mainly aimed at the *modus operandi* of the crimes and the technical skills of its perpetrators. Of course, this categorisation does not go along with the classical categories of crime. Computer-related crime may encompass many of those traditional crimes, such as property crimes, violations of private life and all kind of content-related crimes against public order, public moral and private interests. In particular with regard to the latter categories there is much more resemblance with the classical crimes. Therefore, it should be clear from the outset what the purpose of the study is, before one starts to define all kind of categories and subcategories. One should also deal with the question of whether

172 Donn B. Parker, Susan Nycum S. Stephen Oüra, Computer Abuse, Washington 1973, 30-32. See also Donn B. Parker, Fighting Computer Crime, New York 1983.
173 OECD, Computer-related Crime, Paris 1985.
174 Henrik W.K. Kaspersen, Strafbaarstelling van Computermisbruik, Deventer 1990.

the different types of crime that are being analysed in fact possess adequate corresponding qualities in order to justify such treatment.

In his introduction Mr Adamski enters into a discussion on the development of a categorisation of computer crimes, which he eventually undertakes in section 2 of the chapter. Several elements are presented here as arguments, without a clear relation with one another, or it is otherwise unclear why they are present in this paragraph. Firstly, the development of IT is mentioned as a potential factor for new types of harm. As such it may be that this is not untrue, but the examples given in the next paragraph are not very pertinent and not very striking in support of this thesis, and they do not provide further means for analysis, e.g. to what extent they contribute to those developments. In my opinion, one should in particular distinguish between crimes closely related to new technological developments and examples related to new applications and services. Mobile telephone fraud – by manipulation of SIM-cards – is an example of the first category, illegal electronic betting may be an example of the latter. The emergence of the Internet brought some new forms of abuse, but the major problem is rather the scale of crimes, the ease by which they can committed and the poor possibilities of finding the responsible perpetrator, which in turn are due to a number of other factors, such as the globalisation of communications, divergences between national law, the lack of adequate legal instruments at the national level and on mutual legal assistance, lack of expertise among the police units and, last but not least, a low priority in investigation. Quite a number of these factors and their interrelation are not considered in the paper.

In principle, one can not disagree with Adamski's dichotomy of computer crime, even if it it is not made clear for what purposes this dichotomy is useful. From a criminological point of view such a distinction may be useful because there are two groups of perpetrators, different objects, different technical skills are required, different motives or incentives are at stake or the crimes have different impacts. From a legal point of view I can only refer to the categorisation of crimes adopted by the PC-CY committee[175] in order to establish the areas for detailed binding regulation and other areas. With regard to substantive criminal lawa distinction is made between so-called c.i.a. offences, computer-related offences and content-related offences. The first group represents the target: interference with IT-systems and its data content, the second group the unauthorised usage of IT-functionality or applications, and the third group the other usage, which may even include authorised usage. In the first category, the protected related interests are the integrity, availability and confidentiality of automated data processing; in the second category the lawful interests related to the particular IT-application. The third category may represent any interest.

In Parker's days computer networks were still emerging. Today they are quite common and indispensable. Mr Adamski emphasises the importance and risks of networks, to which one can only agree. In my opinion, however, the emergence of global information networks does not substantially change the nature of the

175 The relevant documents are not yet available for publication.

crime, even though networks provide other and better opportunities to commit computer crimes. This may be different with regard to crime related to the traditional telephone network, a target to telephone *phreakers* and other exotic abusers of telecommunication facilities. The technical convergence between computing and telecommunication has caused changes to the forms and targets of telecommunication criminality. It would be interesting to know whether and to what extent also the groups of perpetrators of the converging types of crime have themselves ”converged”.

In some international fora, such as the G-8, the concept of computer crime is broadened to *high-tech crime*, in order to be sure that this notion includes a wide range of criminal behaviour, against or by means of traditional computer systems as well as complex satellite communication systems. In the European Union[176] computer crime is even considered a part of *organised crime* because of the expectation that organised crime will use the opportunities offered by the Internet to set up a safe system for criminal communications. One could expect some guidance from the author onhow to deal with these new trends and their background.

Nevertheless Mr Adamski’s study contains quite a number of elements which could serve as instruments for an analysis of the crime problem. In my opinion, however, they do not result in a methodologically justified analysis that allows further (criminological) research or the establishment of crime prevention policies in the broadest sense possible. The statistical material found in different countries, at different times and from different sorts of studies and sources, seems hardly to make possible any comparison and establishment of hard facts for the simple reason that it is not clear what the underlying definitions are and how they were interpreted when these statistics were composed. The author copies – and thereby adopts – the use of different wording, notions and definitions without any effort to establish common or comparable elements. In the paper statistics can be found on *computer crime vulnerabilities*, *computer crime incidents*, *computer security incidents*, *malicious attacks*, *etc.* which could include crimes, attempts at crimes, etc. but probably also non-criminal conduct. Comparison without reference to the national criminal legislation by which this conduct has been penalised is hardly possible.

One can agree with the author that the summing up of the crimes he gives in paragraph 2.2. of digital forms of old crimes is not a good basis for criminological generalisations and, perhaps, the representation of this data does not even provide a basis for any analysis. They could have been excluded from the research from the beginning. But since the author deals rather extensively with this crimes, one may assume that he had something particular in mind. The more the commission of ‘old crimes’ in an electronic environment is less technology relevant or dependent, the better will they will fit within classical criminological approaches which will undoubtedly provide for effective tools for analysis and prevention. Why not propose on behalf of future analysis a categorisation along the lines of

176 See e.g. Ulrich Sieber’s study on Computer Crime, commissioned by DG XIII and released in April 1998.

the classical categorisation? E.g., why not say that the distribution of child pornography material is not done by ”computer criminals” but by traditional criminals who by chance avail themselves of new, advanced communication facilities? One could, for example, study whether the existence of the WWW, IRCs and e-mail induces a higher rate of criminality in relation to abuse of minors or whether there is only a shift from traditional media to electronic media, whether the crime are more visible, whether there is greater societal awareness, or any combination of these factors.

The role of the Internet is also important with regard to the core computer crime offences. The paper could have analysed whether there is any provable relation between the rate of Internet-subscribers in a country and the risk of being a victim of a particular computer crime or if a higher rate of Internet-subscribers in a particular country also leads to a higher number of (reported) computer crime, or if other factors are relevant. The paper suggests dealing with several categories of computer crime, but in fact, the study appears to limit itself in the end to the crime of *hacking*, indeed a popular activity if one can belief the scarce statistics. Some systems seem to be extremely attractive to hackers. E.g. the NASA claims over 250.000 attacks yearly of which a small part manages to enter (a part of) the system. Whether this activity is criminal depends from the way the related provision in the law is drafted (many legislations require the breaking of security or do not penalise attempts at illegal access). It should be mentioned that a very large portion of these attacks is undertaken by the same hacker because he makes use of a hacking device which systematically ”tries” the validity of passwords.

In relation to *hacking* one would like to know why there is a distinction between ”innocent” hacking and hacking with malicious intent? Hacking offences do not take into account the intent with which a hacker accesses a computer system without authorisation: any successful illegal access causes some form of damage, because at least the confidentiality of particular data is violated and because the security measures are compromised. ”Responsible” hackers do avail themselves of the necessary expertise to restrict the damage caused to a minimum, others (e.g. the ”whiz-kids”) are not in a situation to realize the effects of their acts, as has been shown in a number of cases such as the Morris case in the US, and recently in a case where a young hacker knocked out a telephone switch, as a result of which all communications with the local airport were cut off for a couple of hours. Indeed, one should take into account that hacking has the nature of a *pre-stage* offence that may include all kind of criminal behaviour. Therefore, the paper should not lay the emphasis on hacking but on the underlying criminal intent.

At one point in the paper Dutch computer hackers were alleged to be responsible for nearly fifty percent of the total number of attacks at a particular USA-computer system. This fact could have been verified by studying information from the Dutch hacker scene, which is quite open-minded. Even after the criminalisation of hacking by the Dutch Computer Crime Bill in 1993, Dutch hackers continued to organise *hacking days* where they exchange experience, tools and other information and where Dutch law enforcement authorities try to keep updated as well. The Dutch hacker undergroud is not the only ‘organisation’

still in existence. Also in Germany as well as in many other countries the hacker culture is being kept alive. In addition, many first generation hackers have become serious computer experts, active in the security industry and the provider world. One would have wanted to learn more from the paper about these groups and their history.

On the international level law enforcement authorities share the view that the globalisation of communications requires adequate instruments for international criminal offence operation in the field of criminal investigations to computer-related crime. In this respect, the work of the Lyon group of the G8 seeks to develop principles and rules for international co-operation concerning mutual legal assistance. The Council of Europe PC-CY is prepares a draft Internet Convention. The European Action Plan on the safe use of the Internet is of a quite different order. Traditional criminal acts should be reported to the police. Further the plan relies very much on self-regulation of ISPs (internet service provider) and the information industry. ISPs are supposed to develop a system of watchdogs that report criminal activities at the content level to ISPs. If the responsible person refuses to remove the material from the net, a report to the police can be made. In the case of harmful content, the European Commission realises very well that regulation in an open environment such as the Internet is neither technically nor legally feasible. Therefore, a system of self-regulation is proposed together with the enhancement of user involvement in order to create the circumstances under which individual users can avail themselves of the means to filter certain forms of content.

To conclude I have some remarks to make on a number of text fragments:

- In his introduction Mr Adamski follows Hollingers and others in saying that the period from 1993 can be qualified as the censorship period, even in countries other than the US. In my opinion today, except perhaps in some exotic non-democratic countries such as China, Iran or even Singapore, the recent developments, both in the US and in other parts of the world such as Europe, point away from censorship of information distributed through computer networks. In the US the Supreme Court in 1997 rejected the Communication Decency Act as being unconstitutionally vague. In the EU an Action Plan on the safe use of the Internet was developed in order to prevent private and public censorship. It promotes self-regulation of the industry and user empowerment in order to provide the public with tools to select the information that they want to receive. Further in the EU, a draft proposal on Electronic Commerce[177]includes a clear non-liability provision for intermediaries such as Internet-providers. Most legislators are amending their law in order to have these apply to the electronic environment in an equivalent manner as they do already apply to the paper or traditional media environment. All together, it is not censorship that is at stake but rather the problem of how and by what means the consequences of the misuse of the facilities of the Internet can be fought. If the period of time from 1993 to the present should be characterized

177 Art. 12-15, proposal for a European Parliament and Council Directive on certain legal aspects of Electronic Commerce in the Internal Market, provisional final version, dated 18 November 1998.

by a particular name or notion, it would be better to use a positive notion such as the ”information explosion period”, because in no earlier historical period has information been made available so easily and quickly. However, from a criminological standpoint one may argue in favour of a notion such as the ”period of lost control”. The occurrence of the Internet coupled millions of inadequately secured private systems, by means of an unsecured communication protocol. As a consequence the Internet is a hide-out for some irresponsible people who not only can commit all kind of new crime variants but also have a good opportunity to evade their responsibility, because their identity cannot be revealed or because they operate from jurisdictions in which they are protected.

- The Council of Europe did not intend to invent a new categorization of computer crime in its Recommendation of 1995 when it defined IT-offences as any crime of which evidence can be found with a computer system or computer network, solely for the purposes of this Recommendation on the needs for specific coercive powers and relating requirements in order to enable investigations to and securing of electronic evidence.
- The security notions of integrity, confidentiality and availability in order to categorise computer crimes does not originate with the OECD but with the Dutch government committee which proposed the Dutch Computer Crime Bill.[178] The approach was referred to and copied in the Explanatory Memorandum to the 1989 Recommendation of the Council of Europe on Criminal Substantive Law.
- For quite some time, U.S. federal law (s. 1030 USC 19) has penalised trafficking in computer passwords.

178 Informatietechniek en Strafrecht, Den Haag 1987.

ANNEX 1
Programme

VI European Colloquium on Crime and Criminal Policy
Helsinki 10-12 December 1998

THURSDAY, 10 DECEMBER

Chair:
Ms Anna Alvazzi del Frate (UNICRI)

09.30-12.30

Introductory remarks:
Dr Matti Joutsen (HEUNI)

Combatting Corruption
Main Report:
Prof. Petrus van Duyne (University of Brabant, The Netherlands):
Corruption: Acts and Attitudes

Commentaries:
Dr Sabrina Adamoli (TRANSCRIME – University of Trento, Italy)
Dr Miklós Lévay (University of Miskolc, Hungary)
Prof. Ahti Laitinen (University of Turku, Finland)

14.00-17.00

Women in the Criminal Justice System
Main Report:
Dr Katarina Tomasevski (in absentia) (Raoul Wallenberg Institute
for Human Rights, Sweden):
Women in Criminal Justice

Commentaries:
Dr Juan Medina (Rutgers University, USA/Spain)
Prof. Frances Heidensohn (Goldsmith University of London, United Kingdom)

FRIDAY, 11 DECEMBER

Chair:
Mr Slawomir Redo (CICP)

09.30-12.30

Indicators of Crime and of the Performance of the Criminal Justice System
Main Report:
Dr Rosemary Barberet (Instituto Andaluz de Criminologia, Spain)
Indicators of Crime and of the Performance of the Criminal Justice Systems

Commentaries:
Dr Elmar Weitekamp (University of Tübingen, Germany)
Dr Anna Markina (National Institute of Public Safety, Estonia)
Mr Kauko Aromaa (National Research Institute of Legal Policy, Finland)
Mr Gordon Barclay (Home Office, United Kingdom)

SATURDAY, 12 DECEMBER

Chair:
Mr Irvin Waller (International Centre for the Prevention of Crime)

09.30-12.30

Public/Private Partnerships in Crime Prevention
Dr Dragan Petrovec (University of Ljubljana, Slovenia):
The Slovenian Case
Mr Karsten Ive (Crime Prevention Council, Denmark):
The Danish Case
Dr Pawel Mlicki (Police Institute, The Netherlands/Poland):
Crime Prevention in Central and Eastern Europe: A Psychological Approach

14.00-17.00

Crimes Related to the Computer Network
Main Report:
Dr Andrzej Adamski (University of Torun, Poland):
Crimes Related to the Computer Network, Threats and Opportunities: Criminological Perspective

Commentaries:
Mr Antti Pihlajamäki (Turku City Prosecutor's Office, Finland)
Prof. Henrik Kaspersen (Vrije Universiteit Amsterdam, The Netherlands)
Concluding remarks

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