

Cosmopolitan Reflections in EU Criminal Policy and Punishment

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Introduction

Globalisation

- Global risks need global answers
- European cultural, economic, political and social landscape changed dramatically
- EU enlargement strategies
- Challenging the traditional role of the nation-state

➤ Shift in the area of criminal law and penal policy from the national to the European level

Criminological framework

- EU perspective underdeveloped
- Methodological nationalism
 - Still use old maps to orientate ourselves
 - Modern society being organized in territorially constricted nation-states
 - Filters out Europe's complex realities and space for interactions

“How far does it still make sense to think about criminal justice systems in terms of separable national jurisdictions at a time of global links at the level of crime threats and criminal justice responses?” David Nelken (2011)

Cosmopolitanism

- Prominent topic within social sciences and humanities
- No longer possible to see national societies isolated from the global context
 - Normative outlook
 - Individual as the central unit of moral concern
 - Equal worth of all human beings
 - Universal obligations across borders
 - Challenging the position of the nation-state
- Appreciation of difference: diversity is not the problem but rather the solution -> **“Unity in Diversity”**
 - » Grounded on shared universal norms to regulate its dealings with otherness

European Union

- Transnational (unfinished) project reflecting the juridification of cosmopolitan values of fundamental rights, supported by an institutional framework upholding these values
- Věra Jourová, Justice Commissioner (European Parliament hearings):

“I want to build trust across the judicial systems in the EU. We should be united in our diversity, but we also need to make sure that our different cultural and legal traditions are not an obstacle to freedom, justice or the Single Market.”

- Define a common European culture and simultaneously not negating national and regional particularities
- **Can reality fulfill this proclaimed cosmopolitan thinking?**

Mutual Recognition (MR)

- Cornerstone of judicial cooperation based on equivalence and trust
 - Justified by Member States aversion towards unifying their criminal law systems
 - Prior judicial cooperation and MR conventions by the Council of Europe
 - > limited ratification, appearance of a lack of trust between Member States
- No legal definition
- Decision taken by a judicial authority in one EU Member State is recognised and - where necessary - enforced by another EU Member States
 - » Presumption that fundamental rights are respected because EU Member States ratified the European Convention on Human Rights

Mutual Recognition Instruments

- **Framework Decisions**
 - European Arrest Warrant
 - 3 detention Directives: Transfer of Prisoners, Probation and Alternative Sanctions, European Supervision Order
- **Aims:**
 - Enhancing social rehabilitation and integration
 - Non-residents subject to criminal proceedings are not treated any differently from residents
 - Strengthen the MR principle
- **Through:**
 - Automatization and speed
 - Limited grounds to refuse requests
 - (Partial) abolishment of the dual criminality principle
 - Inconsistent justification versus reality

Framework Decisions: implications

- Mutual trust was taken for granted
- National judicial systems differentiate from one another in different areas:
 - Detrimental detention conditions
 - Crime definitions
 - Modalities in sentence execution
 - Early release possibilities
 - Alternative sanctions possibilities
- Cosmopolitanism accepts that political action is interest based but the pursuit of one's own interests has to be grounded and compatible with those of the larger community

➤ **Pivotal role for social rehabilitation and integration**

Social rehabilitation and integration but...

- Consent of the prisoner abandoned
 - » FD serve Member States interests
 - » Actual aim: relieve the (financial) burden of prisons
- Different interpretations or flagrant ignorance
- 58 inhuman or degrading treatment convictions (Article 3 ECHR) in 2013 -> undermining MR
 - No explicit provision for mandatory non-execution if the affected person can be subjected to fundamental human rights violations

➤ Gap between rhetoric and practical implementation

Conclusion

- Re-examine our theoretical and methodological approaches to punishment
- Power to punish by the nation-state is curtailed and shaped by initiatives at the intergovernmental EU level although the role of Member States remain indispensable in enforcing fundamental human rights obligations
- Dealing with *otherness* becomes a problem when individual and community interests are not fulfilled and when fundamental principles are not respected
- Mutual trust was assumed to be there

Conclusion (2)

- Consent of the person involved is no longer necessary
 - Influencing rehabilitation and integration perspectives
 - Potentially infringing fundamental human rights
 - The EU function as a cosmopolitan actor should not be overestimated
 - EU is lacking a coherent penological framework
 - Cosmopolitanism highlights different problems how to deal with otherness but offers new perspectives for criminological research
 - Countering methodological nationalism
 - Guide in further developing a normative outlook by including *otherness* -> enabling researchers to articulate novel discourses concerning rights, justice and legitimacy
- Increase the scope of our knowledge about crime and punishment

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