

## The Paradoxical Nature of Crime Control in Post-Communist Europe

Agata Fijalkowski\*

**Abstract:** This article examines crime control in post-Communist states.

Comprising crime, risk, and security, the article argues that security is a notion comprised of paradoxes and complexities, much like the respective histories and experiences of the Central and East European (CEE) states. Whilst positive steps have been made since the collapse of Communism in 1989 and entry into the European Union on the part of eight CEE countries in 2004, and another two in 2007, research in this area shows a divergence in traditional and local concerns as concerns crime and security. Continuing to be shaped by Communist rule, the manner in which these assert themselves may be at odds with global patterns of thought, providing a critical portrait of post-Communist Europe. As observed by Ismail Kadare '[t]he only way you can get a grip on a place overcome by paranoia is by becoming a little paranoid yourself.'<sup>1</sup> This analysis demonstrates that much work is needed on the part of the European Union and CEE states to ensure that appropriate security strategies are implemented to strengthen democratic values and the rule of law. Ideally this process entails an appreciation of local values and cultural patterns.

---

\* Lecturer-in-Law, Lancaster University Law School, United Kingdom. A Short Term Research Grant awarded by the Deutscher Akademischer Austausch Dienst (DAAD) in 2005 made initial work on this article possible. I would like to thank colleagues in the Law and Society Association's Collaborative Research Network (CRN) on 'The Cultural Lives of Capital Punishment' for comments and support.

<sup>1</sup> I. Kadare, *The Successor*, trans. D. Bellos (New York 2005) p. .

## I. Introduction

Security is certainly a puzzle – the state’s guarantee to ensure law and order is an important promise to society, and one laden with controversy. Critical questions concerning the transformation of crime control models, the reasons underpinning particular decisions and their ensuing consequences, are not only alluring, but paramount. ‘The worldview has long since been overlaid by a desire for security that relies upon false promises by governments and wilful blindness to the facts of crime by individuals...it is a puzzle why the myth of personal safety is so powerful and enduring’.<sup>2</sup>

Recent scholarship in this area has explored the concept of security through various lenses, investigating, *inter alia*, questions regarding terminology;<sup>3</sup> security and governance;<sup>4</sup> and contemporary crime control.<sup>5</sup> Several scholars, notably Zedner, and Edwards and Hughes, acknowledge the need for comparative research, so that we may better appreciate how the concept of security operates in different local contexts, indicating peculiar

---

<sup>2</sup> L. Zedner, ‘The Concept of Security: an Agenda for Comparative Analysis’, 23 *Legal Studies* (2003), p. 157; also by the same author, ‘The Pursuit of Security’, in T. Hope and R. Sparks, eds., *Crime, Risk, and Insecurity* (London 2000) p. 203.

<sup>3</sup> See, for example, L. Zedner (2003), *loc. cit.*, pp. 153-176.

<sup>4</sup> See, for example, A. Edwards and G. Hughes, ‘Comparing the Governance of Safety in Europe: a Geo-Historical Analysis’, 9 *Theoretical Criminology* (2005) pp. 345-363 and S. Roché, ‘Prevention and Security: a New Governance Model for France through a Contract-Based Territorial Approach’, 47 *Canadian Journal of Criminology and Criminal Justice* (2005) pp. 407-426.

<sup>5</sup> See L. Zedner, ‘Policing Before and After the Police’, 46 *British Journal of Criminology* (2006) pp. 78-96; C. O’Reilly and G. Ellison, ‘Eye Spy Private Eye’: Re-conceptualizing High Policing

relations between the state, which specifically include its public and private arms, and the role of civil society. Bauman's claim that '[t]he trouble with the contemporary condition of our modern civilization [which] is that it stopped questioning itself', further stresses the importance of comparative research.<sup>6</sup>

This article investigates crime control in Central and Eastern Europe (CEE) in the Communist and post-Communist periods, in an effort to identify how current policies concerning crime, risk, and security, shaped in large part by the European Union (EU), especially in the human rights area, meet societal perceptions of security in CEE. Such an exploration is not only relevant to the CEE, but also in the wider context of Europe, as eight post-Communist states entered the EU<sup>7</sup> in 2004, and two more<sup>8</sup> in 1 January 2007. Despite the EU trying to assert a strong lead in shaping respective CEE crime control models, a current examination of security in Europe shows that Europe itself has entered an uncertain terrain, sending conflicting messages to CEE countries that reflect a warm welcome and, at the same time, an evident concern related to its borders. The resulting notion of Europe's 'fortress mentality' arose from tensions between the internal and external security policies of the EU, an area governed by a branch of the EU that has undergone serious reform.<sup>9</sup> As noted by Grabbe,

---

Theory', 46 *British Journal of Criminology* (2006) pp. 641-660; and A.-M. Singh, 'Private Security and Crime Control', 9 *Theoretical Criminology* (2005) pp. 153-174.

<sup>6</sup> Z. Bauman, *Globalization: The Human Consequences* (Cambridge 1998), p. 5.

<sup>7</sup> Estonia, Czech Republic, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia.

<sup>8</sup> Bulgaria and Romania.

<sup>9</sup> H. Grabbe, 'The Sharp Edges of Europe: Extending Schengen Eastwards', 76 *International Affairs* (2000), pp. 481-514.

'justice and home affairs is a policy area renowned for its obscurity and lack of transparency in public debate'.<sup>10</sup>

This puzzle of security is not complete without exploring the location and use of fear. Some 'transitologists' and other scholars of post-totalitarian and post-authoritarian societies claim that remnants of Communist rule have shaped and transformed themselves in ways that effect the setting up of democratic rule.<sup>11</sup> Nowhere is this clearer than the area of crime control.

The first part of this article considers crime control under former Communist rule. Crime control was an important part of a repressive criminal justice system and the criminal law was utilised as an instrumental tool.<sup>12</sup> Punishment was an important component of maintaining law and order and repressive measures were used against specific targets (namely political opposition) and symbolically (such as in the case of the crime of vagrancy or speculation).<sup>13</sup> The use of harsh and repressive punishment under Communist rule reveals that security operated as an illusion on two levels: the promise of law and order on the part of the state and the unique picture of crime projected both as a fear and non-existent feature of the state.<sup>14</sup> As articulated by Kadare, '[T]he brain of a tyrant often worked according to what might be called the "architecture

---

<sup>10</sup> H. Grabbe, *loc. cit.*, p. 503.

<sup>11</sup> See, for example, R.A. May and A.K. Milton, eds., *(Un)Civil Societies: Human Rights and Democratic Transitions in Eastern Europe and Latin America* (Lanham 2005).

<sup>12</sup> See S. Frankowski, 'Post-Communist Europe', in P. Hodgkinson and A. Rutherford eds., *Capital Punishment: Global Issues and Prospects* (Winchester 1996) p. 217.

<sup>13</sup> See M. Łoś, *Communist Ideology, Law and Crime: A Comparative View of the USSR and Poland* (New York 1988) pp. 26-56.

<sup>14</sup> See M. Łoś, 'Crime in Transition: The Post-Communist State, Markets and Crime', 40 *Crime, Law and Social Change* (2003) pp. 145-169.

of terror”. Terror was constructed backwards, like dreams, which is to say, starting from the end.<sup>15</sup>

The analysis serves as a starting point in assessing progress of CEE states following enlargement, considered in the second section. The examination demonstrates that while the CEE traditionally, and rightly, sees itself as part of Europe,<sup>16</sup> respective domestic policies reveal a divergence that unmasks a particular shift in governance and crime control, which has a paradoxical flavour.

The final section addresses how the ‘punitive’ nature of CEE societies may hold the key to the particular approach and perspective on security. Case studies focus the capital punishment as a component of the ‘punitive’ state. The extent to which present transformations of the CEE state and questioning its current place in the area of crime control in Europe has on the ‘politics of (in)security’<sup>17</sup> raises key questions concerning the nature of democracy in the CEE and further, broader consequences for Europe. This examination of the post-Communist period once again confirms the complex nature of CEE histories. Indeed, ‘postcommunism is a multi-faceted, heterogeneous phenomenon shot through with paradoxes while at the same time revealing the underlying paradigmatic shifts, not only in theory but also in reality, of our times.’<sup>18</sup>

---

<sup>15</sup> I. Kadare, *op. cit.*, p. 154.

<sup>16</sup> See, for example, T. Judt, *Postwar: a History of Europe since 1945* (London 2005).

<sup>17</sup> See I. Loader and R. Sparks, ‘Contemporary Landscapes of Crime, Order, and Control: Governance, Risk, and Globalisation’, in M. Maguire, R. Morgan, and R. Reiner., eds., *The Oxford Handbook of Criminology*, 3<sup>rd</sup> edn. (Oxford 2002) p. 84.

<sup>18</sup> R. Sakwa, *Postcommunism* (Buckingham, UK 1999) p. 7.

## 2. Crime Control under Communism (1945-1989)

According to Fatić, a moral and cultural order is comprised of certain values, which allows us to perceive the law as a normative framework within which a network of legitimate mutual expectations between members of society are established – this, in turn, breathes life into the notion of 'social capital trust'.<sup>19</sup> In the CEE, for nearly forty years the 'state was central to the Soviet communism and, therefore, any research on what followed that system has to account for the transformation of the old state's structures and mentality'.<sup>20</sup>

Łoś aptly notes that the Soviet state's domain once entailed public spaces that are now viewed as private spaces or property. This includes the area of criminal justice. The type of crime control model that was established under Communist rule was based on Marxist-Leninist ideology. For a brief but significant time this ideology was dictated by Stalinist thought (1944-1953).<sup>21</sup> This was characterised by a regime that mirrored the 'cult of personality' that shaped Soviet Communist rule.<sup>22</sup> Even before the Second World War ended, the region's criminal law policies were created by provisional governments set up in the region, which passed decrees that were for the most part ordained by the Soviet government in Moscow.<sup>23</sup> This meant that criminal laws were geared to

---

<sup>19</sup> A. Fatić, *Crime and Social Control on 'Central'-Eastern Europe* (Aldershot 1997) p. 7.

<sup>20</sup> M. Łoś (2003), *loc. cit.*, p. 147.

<sup>21</sup> See G. Hodos, *Show Trials: Stalinist Purges in Eastern Europe, 1948-1954* (New York 1987). See also K.M. Piekarska, 'Naruszanie zasady jawności w "sądach tajnych"' (Violation of the Principle of Open Proceedings in the "Secret Courts"), 27 *Studia Iuridica* (1995) pp. 25-41.

<sup>22</sup> M. Łoś, *op. cit.*, and G. Hodos, *op. cit.* See also K.M Piekarska, *loc.cit.* For understanding the 'cult of personality' see R. Medvedev, *Let History Judge: the Origins and Consequences of Stalinism* (New York 1971).

<sup>23</sup> The provisions of the Polish Military Criminal Code from 28 September 1944 concerning state security, which were carried over from the 1932 code, were also applied to civilians after the war. The provisions foresaw 11 crimes which called for the death penalty, which were targeted at

target the elimination of political opposition as viewed by Soviet officials, which included a wide range of professions and members of the *intelligentsia*. Decrees that identified as criminal collaboration with ‘fascists’ masked the underlying motive on the part of Soviet leaders to dispose of members of the underground, especially those who led successful operations during the war. Secret trials, as well as show trials, defined the repressive nature of the regime. The essence of these trials relied on evidence obtained through interrogation methods that present-day would clearly violate principles set out in Articles 5 (personal liberty) and 6 (fair trial) of the European Convention on Human Rights. Although the ‘dark period’ nominally ended with Stalin’s death aspects survived that would drive this repressive apparatus until its demise in 1989.<sup>24</sup> The role of security services, across CEE, played a paramount role in supporting a regime of tyranny and terror throughout Communist rule. The core of this philosophy is aptly summed up by the police network that was created in Yugoslavia, for example, that aimed to ‘strike terror into the hearts of those who do not like this sort of Yugoslavia’.<sup>25</sup>

Thus, several meanings could be attached to notions of security, crime, and risk, as seen from the perspective of the state and citizen. It is useful to think of the state institutions traditionally connected with crime control (police, courts, prisons, for example) to have, over the decades, ‘become infused with, and

---

potential political opponents. Without changing the Polish criminal code, but introducing new types of crimes to the text, the draconian manner in which the authorities wished to turn the code into a repressive tool was revealed. See A. Fijalkowski, ‘The Abolition of the Death Penalty in Central and Eastern Europe’, 9 *Tilburg Foreign Law Review* (2001) pp. 62-83.

<sup>24</sup> Soviet leaders were keen to keep files on each other; a practice perfected by Stalin, these files would later serve as blackmail or elimination of colleagues.

<sup>25</sup> T. Judt, *op. cit.*, p. 173.

shaped by, some specific ways of thinking and acting in relation to crime and its control'.<sup>26</sup> Indeed, one of the main objectives behind the wave of repression, i.e., show trials, was to 'mobilise public opinion', according to which courts would 'educate citizens in devotion and loyalty toward the [People's] Republic', which had its roots in the teachings of Stalin's top jurist and architect of the show trial, Andrei Vyshinsky.<sup>27</sup> But the true meaning is masked: in fact the citizen is not asked to believe in the information, but merely to repeat it. In other words, this was 'training in repetition'.<sup>28</sup> 'The media's role was to school and mobilize the population'.<sup>29</sup> Further, the fact that the trials were clearly based on falsified testimonies might hint that they were meant to seek justice, when in fact they demonstrated the power of the Soviet system in showing the public with whom the blame lie, and with whom the reward for loyalty and subservience rested.<sup>30</sup> A 'multiplicity of strategies, techniques, and rationalities'<sup>31</sup> characterise the state with no seeming 'sovereign actor able to steer or regulate'.<sup>32</sup> The Communist regime had to maintain that crime would 'wither' away as the society drew closer towards Communism, yet it had to, at the same time, take on a stronger role, which meant that vigilance had to be maintained for opposition to Marxist-Leninist ideals could be identified within society. This paradoxical role would

---

<sup>26</sup> I. Loader and R. Sparks, *loc. cit.*, p. 84.

<sup>27</sup> See his *The Law of the Soviet State*, trans. H. W. Babb (New York, Macmillan, 1961)

<sup>28</sup> T. Judt, *op. cit.* p. 188.

<sup>29</sup> J.L. Curry, 'Eastern Europe's Postcommunist Media', in R.A. May and A.K. Milton, eds., *(Un)civil Societies: Human Rights and Democratic Transitions in Eastern Europe and Latin America* (Lanham, MD, USA 2005) p. 140.

<sup>30</sup> J.L. Curry, *loc. cit.*, p. 187.

<sup>31</sup> I. Loader and R. Sparks, *op. cit.*, p. 87.

<sup>32</sup> R. Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability* (Buckingham 1997) p. 57.



imply that the distinction between state and civil society becomes blurred.<sup>33</sup> The overlap between the two was fear. 'Fear often drives those who foster fear'.<sup>34</sup>

## 2.1 Crime control and fear

Indeed, at the heart of the crime control model that was imposed on CEE states was fear. 'Fear was the first principle buttressing Soviet-style control. A key to communist societies' stability was the well-internalised fear of the party-state and its seemingly omnipresent security forces'.<sup>35</sup> In this constellation, the 'multiple relations of power traverse, characterize, and constitute the social body; they are indissociable from a discourse of truth...'<sup>36</sup> Judt notes that Eastern European politics and government became equated with corruption and indiscriminate suppression, 'practiced by and for the benefit of a venal clique, itself rent by suspicion and fear'.<sup>37</sup>

From the citizens' perspective, crime took on a paradoxical meaning. Łoś describes how the imprisonment of a parent owing to membership in the opposition movement could be seen as heroic among peers and the outside.<sup>38</sup> What was viewed as criminal was the state making certain acts, such as political opposition, criminal. At another level, a significant factor contributing to the

---

<sup>33</sup> R. Rhodes, *loc.cit.*, p. 57.

<sup>34</sup> M. Łoś, 'Post-communist Fear of Crime and the Commercialization of Security', 6 *Theoretical Criminology* (2002), p. 169.

<sup>35</sup> M. Łoś (2002), *loc. cit.*, p. 169

<sup>36</sup> M. Foucault, *Society Must be Defended*, trans. D. Macey (London 2003) p. 24. See also M. Łoś (2002), *loc. cit.*, as well as M. Foucault, 'Governmentality', in G. Burchill, C. Gordon, and P. Miller, eds., *The Foucault Effect: Studies in Governmentality* (Hemel Hempstead, UK 1991) and key works in governmentality, such as D. Garland, 'Governmentality and the Problem of Crime: Foucault, Criminology, Sociology', 1 *Theoretical Criminology* (1997) pp. 173-214.

<sup>37</sup> T Judt, *op. cit.*, p. 194.

<sup>38</sup> M. Łoś, *op. cit.*, pp. 52-53.

paradoxical meaning concerns the role of informal networks that allowed individuals access to certain goods and services that were not delivered by the state. Some scholars term this as 'dirty togetherness',<sup>39</sup> a complicity in participating in illegal acts that undoubtedly reverberates on how the individual perceives crime and security. These 'perverse forms of loyalty based on a matrix of different, more or less connected, partnerships aiming at making use of all formal and official structures in order to take them over for private goals'.<sup>40</sup>

Because of these different vantage points, society had to adopt a means of coping. In other words, certain attitudes and mentalities had to be adopted to help adapt to circumstances that did not allow individuals the scope to voice their concerns about crime. Łoś identifies these as 'control' and 'taboo' mentalities.<sup>41</sup> The former relates to the Communist regime's control formula, which centred on 'specific technologies that sought to restrain agency, contain population movement and communication and produce captive populations through state monopolies over employment, trade unions and social organisations'.<sup>42</sup> The 'taboo mentality' emerges '[i]n the absence of clear rules, institutional guarantees or a rationality-based political culture, [propelling] each individual almost instinctively [to mark] for him or herself the taboo areas to avoid'.<sup>43</sup>

Bourke's work on fear may provide a further explanation. In differentiating between fear and anxiety, Bourke aptly highlights the boundaries between an 'immediate, objective threat' (fear) and an 'anticipated, subjective threat'

---

<sup>39</sup> See A. Podgórecki, *Polish Society* (London 1994) p. 115.

<sup>40</sup> A. Podgórecki, *op. cit.*

<sup>41</sup> M. Łoś, *op. cit.*

<sup>42</sup> M. Łoś, *op. cit.*, p. 171.

(anxiety).<sup>44</sup> Bourke discusses how the uncertainty of anxiety can be addressed by naming an enemy (i.e. 'them') a process which transforms anxiety into fear. Thus, debates about crime can be a reflection of change more generally (collapse of Communism, introduction of free markets) which can be used to control subordinate groups, as was done under Communist rule and maintaining control over potential political opposition. 'When modern individuals become plagued by anxiety (rather than fear) states, they prove less dependent upon associative groups and more prepared to adopt individualistic solutions'.<sup>45</sup> Social networks, therefore, play an integral role in maintaining cohesion in the face of the enemy – 'us v. them'.<sup>46</sup>

## **2.2 Paradoxical expectations concerning law and order**

Despite seeing the regime as lacking legitimacy, the expectation that the state would maintain law and order was very much alive. Pavarini provides an analysis of this paradox, arguing that '[i]nstitutional and public efforts to provide safeguards against criminality are perceived as being unable to meet the social demand for security; again, whether this is actually the case is another matter'.<sup>47</sup> For example, a community such as Polish society traditionally could be defined as expecting the state to play a strong role in combating crime, in other words, 'punitive', a factor that dates back to pre-war period. Polish 'cultural life' with

---

<sup>43</sup> M. Łoś, *op. cit.*, p. 171.

<sup>44</sup> J. Bourke, *Fear: A Cultural History* (London 2005) p. 189.

<sup>45</sup> J. Bourke, *op. cit.*, p. 191.

<sup>46</sup> See T.G. Ash, *The Polish Revolution: Solidarity* (London 1984).

<sup>47</sup> M. Pavarini, 'Controlling Social Panic: Questions and Answers about Security in Italy at the End of the Millennium', in R. Bergalli and C. Sumner, eds., *Social Control and Political Order: European Perspectives at the End of the Century* (London 1997) p. 79.

respect to punishment is one that is very much shaped by sensibilities and mentalities.<sup>48</sup> In this respect, Polish history seems to reflect the Hobbesian model of the state; a social contract between individuals who surrender certain liberties, personal assets and rights to a 'sovereign' who, in turn, guarantees their personal safety. This paradox is aptly described by Kadare, who writes:

Everyone realised that the material piling up inside them was contradictory and incoherent, to such a degree that even the most persistent analysis ended up making the same gesture of despair as everyone else and declaring, with arms thrown wide: The only way you can get a grip on a place overcome by paranoia is by becoming a little paranoid yourself.<sup>49</sup>

Former dissident and president of former Czechoslovakia Vaclav Havel understood this process very well.<sup>50</sup> Resistance against various modes of repression in its tumultuous history has kept CEE societies, respective cultures, languages, and traditions alive under various conditions of oppression. These strategies of resistance were both concrete and symbolic and very much an important part of the strategy for survival during long periods of imposed rule.<sup>51</sup>

Alongside this a state of anxiety exists, which the state, in its totalitarian and post-totalitarian form, recognises and exploits. 'A lot of tension accumulates around the quest for safety. And where there is a tension, political capital will surely be spotted by bright investors and expedient stockbrokers'.<sup>52</sup> In sum,

---

<sup>48</sup> A. Fijalkowski, 'Capital Punishment in Poland: an Aspect of the 'Cultural Life' of the Death Penalty Discourse', in A. Sarat and C. Boulanger, eds., *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford 2005) pp. 147-168.

<sup>49</sup> I. Kadare, *op. cit.*, p. 20.

<sup>50</sup> V. Havel, 'Reflections on a Paradoxical Life', 37 *The New York Review of Books* 14 June 1990.

<sup>51</sup> Concerning the Polish experience, the first partition on the part of Russia took place in 1795 and resulted in the country's disappearance off of the map until 1918; followed eleven years later by German and Soviet occupation from 1939 until 1944; and, finally, Communist rule which lasted from 1945 until 1989.

<sup>52</sup> Z. Bauman, *Globalisation: The Human Consequences* (Cambridge 1998) p. 117.

crime control under Communist rule was characterised by terror and repression that had its roots in the Stalinist period, which continued to exist under various guises until its collapse. Society had to adapt ways to cope with these measures aimed at disciplining,<sup>53</sup> yet at the same time held on to expectations that law and order would be maintained by the state.

The effects of the totalitarian regime – ‘one which is omnipotent, omnipresent, and which has no space for private freedom’,<sup>54</sup> which presents itself as perfect, not flawless, contributes to its mystical nature: it does not need to be clear about power, compounded in the sense of uncertainty in dealing with the unknown. Łoś argues that the way in which crime was reported deprived people of the tools to talk about their fears; instead crime remained a private issue.<sup>55</sup> Indeed, no space was created for criticism; likewise, no space was created for the private citizen. In consequence, a fear of personal safety was created. This personal safety could be extended to the fear of personal liberty that came with the introduction of democratic reforms. This factor has been used in media reporting and populist campaigns, as seen in the next section, which considers the paradoxical relationship in the post-Communist period, namely the effect of existing remnants of Communist rule on post-Communist crime control models. Alongside this EU enlargement has had its own peculiar effect as well.

---

<sup>53</sup> M. Foucault, *Discipline and Punish: the Birth of the Prison* (London 1991)

<sup>54</sup> M. Foucault, *op. cit.*, and A. Fijalkowski, *loc. cit.* (2005).

<sup>55</sup> M. Łoś (2002), *op. cit.*

### 3. Post-Communist period (1989 – present)

Previous research has demonstrated that the collapse of the Communist regime has left particular bonds of resistance meaningless and replaced them with new threats, manifested in the rising crime rates, which necessitate new strategies and ways of coping.<sup>56</sup> These new strategies rely on old and well-used methods which on the part of Polish society involves retaining the label of ‘them’ as concerns the state apparatus.

#### 3.1 European identity and crime control

This label has been used to identify pro-European policies.<sup>57</sup> European identity itself is a notion fraught with confusion. As concerns its identity in the criminal law area, research has revealed a cosmopolitanism that attaches itself to the identity of ‘others’ and the moral suffering the ‘others’ experience at the hands of states that do not reflect the European ‘civilisation’.<sup>58</sup> This highly debated process towards ‘civilising’ argues that there are macro-sociological processes at work that eventually result in a refinement and humanisation of penal measures that are more in line with values shared by the European community.<sup>59</sup> Post-Communist states have openly declared their affinity with ‘Europe’, some states

---

<sup>56</sup> See A. Fijalkowski (2005), *loc. cit.*

<sup>57</sup> This is apparent among right-wing political parties in CEE, such as the Polish Law and Justice (*Prawo i Sprawiedliwość*) or Self-Defence (*Samoobrona*) parties mentioned below.

<sup>58</sup> See E. Girling, ‘European Identity and the Mission against the Death Penalty in the United States’ in A. Sarat and C. Boulanger, eds., *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford 2005) pp. 112-128.

<sup>59</sup> See A. Sarat and C. Boulanger, ‘Putting Culture into the Picture: Toward a Comparative Analysis of State Killing’, in A. Sarat and C. Boulanger, eds., *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford 2005) pp. 1-45.

proclaiming so in constitutional preambles, such as Lithuania, for example.<sup>60</sup> Yet a seemingly serious mismatch – at least in the area of crime control - exists between CEE and European values. A closer examination is warranted, with the starting point being culture.<sup>61</sup>

Garland's work examines the manner in which shared values and norms have affected forms of punishment in Europe and how the area of crime control has been shaped by changing sensibilities and mentalities over time.<sup>62</sup> The origins of these catalysts for change usually rest with external factors. In this vein, both the EU and CEE are affected by values and norms reflected in European and international law. When the EU welcomed the post-Communist states into 'Europe', it opened up formal discussions with the candidate countries, drawing attention to the Copenhagen criteria of 1991, which sets out the criteria for joining, namely by respecting the rule of law and democracy. The EU's momentum as concerns the 'promotion' of human rights took place in the 1990s, and in 2001 the European Commission indicated that the 'European Union is well placed to promote democracy and human rights...all fifteen member states of the Union are democracies espousing the same Treaty-based principles in their internal and external policies.'<sup>63</sup> A common ground between member states, enough to constitute a European identity, seemingly exists. Yet,

---

<sup>60</sup> See J. Priban, 'Reconstituting Paradise Lost: temporality, civility and ethnicity in postcommunist constitution-making', 38 *Law & Society Review* (2004) pp. 407-431.

<sup>61</sup> See S. Karstedt, 'Comparing Cultures, Comparing Crime: Challenges, Prospects and Problems for a Global Criminology', 36 *Crime, Law and Social Change* (2001) pp. 285-308.

<sup>62</sup> D. Garland, *Punishment and Modern Society: a Study in Social Theory* (Oxford 1991).

<sup>63</sup> European Commission, 'Communication from the Commission to the Council and the European Parliament: the European Union's Role in Promoting Human Rights and Democratization in Third Countries', COM (2001) 252 final, Brussels, 8 May 2001.

as Girling aptly observes, at least in the area of crime control European identity – if we can identify it as such – has defined itself in response to developments that have occurred in the United States and its use of the death penalty.<sup>64</sup> These European standards are outlined by the Council of Europe norms, which, after the collapse of Communism, required candidate countries to ratify key legal instruments, in addition to the European Convention on Human Rights, abolishing the death penalty, namely Protocol No. 6 of the European Convention on Human Rights and Optional Protocol No. 2 of the International Covenant of Civil and Political Rights. First, however, Member States had to ensure that these relevant instruments were ratified between themselves. The newly selected candidate countries were perplexed, as the majority of its populations strongly supported the use of capital punishment. It created a rift between the ‘East’ and ‘West’, once again perplexing, as CEE has felt its place is in the ‘West’, because it shares common democratic values.

This is not the first time that CEE countries have felt excluded from Western Europe. Although the question of geography is relevant, it needs to be understood alongside the ‘double exclusion: from their own history thanks to the Soviet presence, and from the consciousness of the West.’<sup>65</sup> Soviet rule established a divide between East and West. Entry into the European Union, as noted above, creates a barrier as well, to the surprise of the CEE countries. Judt captures the sentiment well when he argues ‘East European writings about West Europe in the early fifties [reveals] a reiterated tone of injury and bewildered

---

<sup>64</sup> E. Girling, *loc. cit.*



surprise: of 'disappointed love'.<sup>66</sup> With European enlargement, there was no question that CEE countries would seek membership. The 'wonders' that the West could grant CEE was entangled in the concern about what the East would do to the West.<sup>67</sup> Cultural inclusiveness, it is argued, was met by technical exclusiveness.<sup>68</sup> The latter, separating EU Member States from CEE states, is rooted in Communist practices, and also needs to be appreciated alongside peculiar cultural values.

Lerch and Schweltnus discuss the problems that arise when 'double standards' come into question – in other words, the inconsistent application of rules'.<sup>69</sup> This practice does not necessarily lead to the loss of legitimacy, but if the double standards remain unjustified the result might be different. How successful the Council of Europe has been in convincing CEE states about adopting this correct crime control model is questionable.

### **3.2 Post-communist states and crime control**

Concerning the punitive nature of CEE societies, in the area of punishment the majority of the CEE population has supported the death penalty for over a decade, with the lowest percentage of supporters in 1989, at 52 per cent, rising to 77 per cent in 1996. For 2000, 58 per cent of respondents polled 'definitely' supported the death penalty and 19 per cent responded with a 'rather yes'; only 8

---

<sup>65</sup> T. Judt, *op. cit.*, p. 202.

<sup>66</sup> T. Judt, *op. cit.*

<sup>67</sup> T. Judt, *op. cit.*, p. 719.

<sup>68</sup> T. Judt, *op. cit.*, p. 718.

per cent surveyed responded with a 'definitely no'. Polls taken by the Brussels-based Central European Research Group (CEORG) revealed that 73.6 per cent of Poles support the death penalty, alongside 59.8 per cent of Hungarians and 56.1 per cent of Czechs (CEORG 2002).<sup>70</sup> Without doubt, strong support for capital punishment is reflected in the Central and East European region.

In Poland, for example, public views coincide with polls taken as far back as 1996, when respondents supported stricter laws under the former criminal code.<sup>71</sup> Sentiments favouring stricter laws coincide with the increasing fear of becoming a victim of a crime, which has been revealed in recent surveys. In 2000, for example, in another poll conducted by CBOS, two-thirds of Polish society expressed such fears.<sup>72</sup> These fears are prompted by the fact that criminal patterns have changed since the collapse of Communism. While criminal statistics are notoriously difficult to evaluate, especially under the former regime, studies demonstrate that the number of offences reported has doubled in the ten-year period following the collapse of Communism.<sup>73</sup> Further, it is important to point out that the CEE does not share the EU's view that using the death penalty to fight crime is ineffective.<sup>74</sup> Deterrence is a notion that is very much alive in the CEE region.

---

<sup>69</sup> M. Lerch and G. Schweltnus, 'Normative by Nature? The Role of Coherence in Justifying the EU's External Human Rights Policy', 13 *Journal of European Public Policy* (2006) pp. 304-321.

<sup>70</sup> The study of capital punishment is revealing, in that no other form of punishment evokes such moral outrage. See A. Sarat and C. Boulanger, *loc. cit.*

<sup>71</sup> For reports on surveys carried out in 2000 by the Centrum Badania Opinii Społecznej (Public Opinion Research Centre), Warsaw, Poland (2000) see <http://www.cbos.pl/EN/Reports/r2000.shtml>

<sup>72</sup> Centrum Badania Opinii Sp Społecznej (Public Opinion Research Centre), *loc. cit.*

<sup>73</sup> M. Łoś (2002), *loc. cit.*, pp. 180-181.

<sup>74</sup> See M. Lerch and G. Schweltnus, *loc. cit.*, p. 311.

This possibly has been even further embraced since the collapse of Communism. People are still clearly fearful of becoming a victim. Personal safety was perceived differently under the former regime. The reporting of crime and criminal statistics were strictly controlled by the regime, which meant that only certain crimes were reported, and mostly where crimes were solved and state control reinforced.<sup>75</sup> Latvia, for example, resisted the Council of Europe's urgency by clearly indicating that the increasing crime rates had to be combated by retaining the death penalty for a temporary period. Albania has argued similarly.

In its 2005 report in feelings of insecurity and fears of crime, the European Crime Prevention Network compared Western European states with CEE countries,<sup>76</sup> it was revealed that fears of personal safety were higher in CEE countries as opposed to Western European states, including industrialised countries. Between 1992 and 2000, CEE states generally showed an increase between 10-16 per cent of fears of personal safety.

### **3.2.1 Role of the media**

Clearly the rise in crime has been accompanied by open reporting. Curry notes that its current nature is characterised by a swift discarding of old structures, and with the arrival *en masse* of new journalists which the 'media's messages were

---

<sup>75</sup> M. Łoś (2002), *loc. cit.*, pp. 168-169.

<sup>76</sup> A Review of Scientifically Evaluated Good Practices for Reducing Feelings of Insecurity or Fear of Crime in the EU Member States, European Crime Prevention Network, European Commission, 2005.

often far more negative than anything Eastern Europeans had seen'<sup>77</sup> In most news reports, crime coverage is uncensored and, in addition, the criminal justice apparatus is 'exposed' in its failures. While the media tends to focus on the sensational cases of failure, the public is left with a negative, general impression of a system that is characterised by chaos and corruption. The public perception that crime is increasing is reinforced this way. Crime control is an issue that is publicly discussed and part of political rhetoric.<sup>78</sup> As the feelings of insecurity increase coincide with calls for stricter crime control, populist government campaigns increase their popularity. In certain countries this also involves a stronger role of the church in public life.

Returning to the Polish experience, one of the key institutions which supported Poles in their struggle for independence during the Partition and Communist rule has been the Catholic Church. For a society that is predominantly Catholic, the religious theme is not an accident, nor is the strong sense of statehood. Misztal ventures, '[T]he partition of Poland in the eighteenth century gave the country an essential identity as "the Christ among nations: crucified and recrucified by foreign oppression", and through this established prism of victimhood many Poles still interpret their national fate'.<sup>79</sup> The Church was 'pushed on to the fringes of political life',<sup>80</sup> during both the pre-war and post-war periods. The Church had leaders of charismatic and outstanding personality who were called upon by the government to exercise restraint during times of

---

<sup>77</sup> J.L. Curry, *loc. cit.*, p. 160.

<sup>78</sup> M. Łoś (2002), *loc. cit.*, pp. 166-167.

<sup>79</sup> B. Misztal, *Theories of Social Remembering* (Maidenhead, UK 2003), p. 16.

<sup>80</sup> N. Davies, *God's Playground: a History of Poland, Vol. II* (Oxford 1991), p. 404.

political discontent.<sup>81</sup> Poles could attend unofficial sermons which would reiterate that 'Poles are slaves in their own country' and which wield much influence over the kinds of values that the majority of Polish society holds close.<sup>82</sup> The Communist government may have operated as a one-Party state, but it both feared and envied the prestige and popularity of the clergy.<sup>83</sup> In public opinion surveys concerning public attitudes towards key organisations in Poland conducted in 1981, 95 per cent of respondents expressed their trust in the Solidarity opposition movement, 94 per cent in the Church, 50 per cent in the police, and only seven per cent in the Communist Party.<sup>84</sup> Kurczewski notes that the political deficiency of the Communist era was filled by the Church.<sup>85</sup> And while Poland has had a tradition of democratic thought, 'it has been the Church that helped the Polish people to survive as a nation, to nurture their democratic ethos and to continue their struggle for liberation and self-rule'.<sup>86</sup> This identity has roots in conservative values firmly entrenched in a traditionally conservative nation. Interestingly, researchers into crime generally focused on challenging the rules of the socialist economy rather than those of the Church and tradition.<sup>87</sup>

Concerning Łoś's observation about society's search for space to discuss fears, the Polish Catholic radio station, Radio Marja (Maria), seems to have successfully filled this lacunae; its success is owing to the societal disillusion with

---

<sup>81</sup> N. Davies, *op. cit.*, p. 614.

<sup>82</sup> N. Davies, *op. cit.*, p. 614.

<sup>83</sup> N. Davies, *op. cit.*, p. 613.

<sup>84</sup> See M. Łoś, *op. cit.*, p. 37.

<sup>85</sup> As observed by J. Kurczewski, 'The Old System and the Revolution', in *Sisyphus: Sociological Studies, Vol. III: Crisis and Conflicts: the Case of Poland 1980-81*, (1982), as quoted in See M. Łoś, *op. cit.*, p. 216.

<sup>86</sup> As observed by J. Kurczewski, *loc. cit.*, as quoted in M. Łoś, *op. cit.*, p. 295.

capitalism and EU enlargement. The radio station's popularity, reaching two to three million listeners, is evident when one considers the last local elections, held in 2005. The parties supported by the station, *Liga Polskich Rodzin* (League of Polish Families) and *Samoobrona* ('Self Defence'), together gained 33 per cent of the votes, overtaking the ruling socialists. The station also is renowned for its xenophobic and nationalist overtones.

### 3.2.2 Political campaigns and their implications

Concerning political implications, as Mayor of Warsaw, the present Polish president ran a successful campaign that supported a tougher stance on crime and the re-instatement of capital punishment. The PiS (*Prawo i Sprawiedliwość*) (Law and Justice) party, strengthened by the President and his brother's rise to post as Prime Minister, has managed to present its tough approach on crime as a reflection of the norms and values shared by Polish society. Certainly recent poll suggests so – as the party's popularity is on the rise, secured by a reliance on campaigns in more rural areas of the country, as well as galvanising support from listeners of Radio Marja (Maria), which has risen to a the 'status of a sort of court correspondent',<sup>88</sup> has fortified these positions.<sup>89</sup>

---

<sup>87</sup> This is especially true of research into crimes committed by women. See M. Łoś, *op. cit.*, p. 248.

<sup>88</sup> See Sarah Elsig, 'Piety and Xenophobia on Poland's Short Wave' 28 May 2004, (see [cafebabel.com: the European Magazine at http://www.cafebabel.com/en/article.asp?T=T&Id=1854](http://www.cafebabel.com/en/article.asp?T=T&Id=1854) (last visited 14 March 2007)). See also, N.Watt, 'Anti-semitism live', *Guardian Unlimited* 5 June 2006 (see <http://www.guardian.co.uk/elsewhere/journalist/story/0,,1790870,00.html> (last visited 14 March 2007)).

A return to conservative values clearly is the key to the current government's policies. Prime Minister Kaczyński's position is that the state 'shall protect the foundations of social life, so that Polish families can endure (...) marriage is a union between a man and a woman,' He also supports a stronger role of the Church in public life, arguing that '[t]o smite the institution of the Church is like smiting the foundations of Polish national life,' a point reiterated by the President. 'The Church is the depository of the only commonly known and observed system of values. In this respect, Poland is almost a uniform country.'<sup>90</sup> The commonly shared values extend to crime control, a point re-visited recently with the capital sentence imposed by Iraqi courts against Saddam Hussein. The Polish President has been a strong advocate of re-introducing the sentence. 'Countries that give up this penalty award an unimaginable advantage to the criminal over his victim, the advantage of life over death'.<sup>91</sup> This is advocated by other CEE countries, such as the Ukraine, which supports Iraq's sovereignty of the question. The Council of Europe has responded that 'death penalty has no place in the criminal justice system of any modern, civilised country'.<sup>92</sup> Some commentators, such as Smith, observe that '[w]hat the Council of Europe did was to exercise the coercive powers they had over these young, fragile, emerging

---

<sup>89</sup> These shifts in the character governance in Poland is not a new development. For example, the first Polish president, Lech Wałęsa stylised himself very much as the pre-war President Josef Piłsudski, an authoritarian leader who led a campaign of sanitation. These efforts, alongside conservative values, are what characterise the current regime and are the key to its popularity.

<sup>90</sup> See 'Government Starts Work', *Warsaw Voice* 2 August 2006 (see <http://www.warsawvoice.pl/view/11969> ).

<sup>91</sup> C.S. Smith, 'In Europe, It's East v. West on the Death Penalty', *New York Times* 19 November 2006.

<sup>92</sup> 'EU rebukes President Kaczynski on death sentence statement', *The Warsaw Voice*, 29 August 2006. See also Nicholas Watt, 'Polish PM softens rightwing stance after EU protests', *The Guardian* 31 August 2006, p. 24.

democracies who all want to join the big club of the Council of Europe with a view to joining the economic club of the EU in the future'.<sup>93</sup> The results of widespread perception of a security crisis include both social disruptions and considerable changes to the value and role of the society in the concerning the feelings of trust in the law and the legal institutions of control.<sup>94</sup>

#### **4. Future of democracy**

The sentiments expressed by CEE countries reflect views on crime, risk, and security. They indicate a direction in response to the dynamics of crime in a time of considerable social change. This is not only concentrated in the CEE region, indeed, a similar debate is ongoing across Europe and 'a number of Anglophone [...] governments [that] have increasingly sought to bring the general public and its penal sentiments within their framework for policy development'.<sup>95</sup>

There seem to be good reasons to doubt existing arrangements in criminal policy and institutions of social control that require reform.<sup>96</sup> The European Crime Prevention Network's report shows that fears of crime are localised among people who in actual fact are at low risk of being a victim of crime. Whilst practical measures can be instituted, the question remains that concerns a fear of crime and insecurity that is rooted in extended experience of the failure of the

---

<sup>93</sup> C.S. Smith, *loc. cit.*

<sup>94</sup> A. Fatić, *op. cit.* p. 2. See also his *Punishment and Restorative Crime Handling: a Social Theory of Trust* (Aldershot 1995).

<sup>95</sup> See J. Pratt and M. Clark, 'Penal Populism in New Zealand', *Punishment and Society*, 7 (2005), p. 303. See D. Garland, *op. cit.*

<sup>96</sup> See, for example, D. Garland, *op. cit.*



state and its public order and criminal justice institutions to respond adequately to providing protection and basic security.

The rise in criminality is often seen as a sign of disregarding significant social relationships, and that especially severe and intrusive forms of crime control are a sign of the incompetence of social institutions to counteract this process effectively. This factor has been addressed with respect to Latin America, where crime has risen at an alarming pace, and the implementation of measures, such as the appearance of more police has resulted in conflicting results, from reducing public anxiety to an increased sense of fear.<sup>97</sup> Likewise, it has been shown that support for authoritarian regimes can stem from feelings of insecurity and vulnerability.<sup>98</sup> The decay in social relationships and trust is assumed to constitute the specifically social dimensions of criminality. If this is correct, than the 'social tissue' in post-Communist Europe is extremely threatened.<sup>99</sup> The efforts of the Council of Europe can, perhaps, exert an influence on changing attitudes with respect to crime control, but this will be severely hindered if existing practices deriving under the former regime continue to have a considerable influence on attitudes and perceptions of law and order. Civil society plays a key role in this process, yet some commentators, such as

---

<sup>97</sup> M.S. Bergman, 'Crime and Security in Latin America: The Challenges for New Scholarship', 41 *Latin American Research Review* (2006) pp. 213-227. See also O.J. Pérez, 'Democratic Legitimacy and Public Insecurity: Crime and Democracy in El Salvador and Guatemala', 118 *Political Science Quarterly* (2003-4) pp. 627-645.

<sup>98</sup> O.J. Pérez, *loc. cit.*

<sup>99</sup> A. Fatić, *op. cit.*, p. 2.

Zybertowicz, see the once-important *intelligentsia* failing its responsibility in the democratic process in the CEE region.<sup>100</sup>

The increase in crime has a 'destructive potential [. . .], as it leads to high publicity and has the ability to generate negative and often romanticised deviant stereotypes that call for imitation and following.'<sup>101</sup> By generating an intense fear in society, the erosion of trust in the ability of the criminal justice system to offer adequate protection is compromised. This sort of discourse of political legitimisation that has been adopted by the media and politicians is reflected in many countries for the introduction or reintroduction of the death penalty, for increased use of life imprisonment, or other repressive measures against criminality. This discourse has potentially further volatile consequences when one considers that certain areas of knowledge are kept away from CEE societies for fear of eroding 'Europeanisation'.<sup>102</sup> This selective process of forgetting and remembering hinders the entrenchment of democratic values. By examining this one aspect of crime, risk, and security, it becomes evident that the challenge for the EU and CEE governments to implement measures that strengthen the sense of security through deepening and strengthening democratic values, via judicial reform for example, are meaningless unless the courts are provided with the 'basic contextual knowledge [with respect to the Communist regime's] mode of operation'.<sup>103</sup> Dissolution with democracy can lead to alternative modes of

---

<sup>100</sup> A. Zybertowicz, 'Hidden Actors, Overlooked Dimensions and Blind Intellectuals: Nine Paradoxes that Account for Institutionally Entrenched Ignorance', draft paper for Building Civil Society and Democracy East of the Elbe (2002), on file with author.

<sup>101</sup> A. Fatić, *supra* n. 18, p. 2.

<sup>102</sup> A. Zybertowicz, 'The Art of Forgetting: the Communist Police-State as a Non-Reality', draft paper (2006), on file with author.

<sup>103</sup> A. Zybertowicz, *loc. cit.*

governance that can result in bringing into law seemingly popular sentiments concerning law and order.<sup>104</sup> If successful these national movements seem most likely to determine the final shape and force of the democratic process.

## **5. Concluding remarks**

This article examined crime, risk, and security in CEE during Communist and post-Communist rule. It considered the nature of Communist rule, shaped by repressive measures and the use of terror, which affected the way in which CEE societies perceive law and order. In the post-Communist period the EU, particularly through the Council of Europe, has played a significant role in calling upon CEE states to strengthen democracy and the rule of law. However, in the area of crime control, there is a marked divergence in traditional and local concerns as concerns crime and security, the extent to which they continue to be shaped by Communist rule, the manner in which these assert themselves in media reporting and political campaigns, that are at odds with global patterns of thought. Whilst this demonstrates a trend appearing across several regions, it nonetheless provides a critical portrait of post-Communist Europe that has serious consequences for the entrenchment of democratic values and appreciation of peculiar cultural values – which, if they are deserving of change – warrant thoughtful strategies that draw on the particular experiences of the region.

---

<sup>104</sup> See J. Pratt and M. Clark, *loc. cit.*