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FOREWORD

One of the primary purposes of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, is the promotion of the exchange of information on criminal justice matters. Much of the Helsinki Institute activity is focused on the arrangement of European seminars and meetings, where leading experts from the different states can convene to discuss specific themes. It is an established policy of the Helsinki Institute to publish these proceedings and disseminate them as widely as possible.

There are other activities of the Helsinki Institute which, despite their potential interest for decision-makers and researchers, have not been published. For example, the United Nations appointed ad hoc experts to the Helsinki Institute provide valuable data on specific aspects of criminal justice, or on the criminal justice system of various countries. In addition, some of the work of the staff members of the Helsinki Institute results in papers delivered at various international meetings.

This publication gathers together papers presented by two ad hoc experts at the Helsinki Institute, Dr. William Clifford, former Chief of the United Nations Crime Prevention and Criminal Justice Branch, and former Director of the Australian Institute of Criminology, and Dr. Alexander Jakovlev, of the Institute of State and Law of the Academy of Sciences of the USSR.

The publication also includes two papers related to trends in criminal justice in Scandinavia. One paper is the Sellin-Glueck Award Lecture delivered by Director Inkeri Anttila at the Annual Meeting of The American Society of Criminology in 1983. The other paper is by Senior Researcher Matti Joutsen, and was delivered at the XXVIIth World Congress of the International Institute of Sociology in 1984.

Helsinki, 13 February 1985

Inkeri Anttila
Director

William Clifford

SOME CHARACTERISTICS OF THE APPLICATION OF THE CRIMINAL
JUSTICE SYSTEM IN JAPAN

The Japanese are a proverbially disciplined people. It is less generally known however that they are also a very emotional people - perhaps even more emotional than the Italians and the Greeks! In fact the Japanese have to have highly ritualised and highly structured relationships between themselves in order to keep their powerful emotions in control. Only if all conceivable situations are foreseen and peoples' behaviour prescribed in advance do the Japanese feel comfortable. They control their feelings by programming the contacts between and among people - in public but also to a great extent in private. This need, that the Japanese have to discipline their emotions with formality, was discerned by Jean Paul Sartre when he was visiting Japan about 15 years before he died. He discussed this characteristic with his Japanese interviewers on NHK (Japanese National Television) and none of them questioned this interflow between their inner feelings and their complicated social rituals.

To understand the way in which the law is perceived and enforced in Japan it is first necessary to understand this fundamental feature of Japanese lifestyles. These are a people who have learned to institutionalise their own weaknesses simply because they fear the destructiveness of unconstrained emotions. They try to anticipate future difficulties by providing for rules of conduct. They demand loyalty and unswerving obedience to the expectations of others in their families, their neighbourhoods, or in their factories and offices. Even when the Japanese become radical and feel alienated from their community, even when they repudiate the existing system and work for something different, it soon begins to look like the system they have left. They typically imitate its structure and, in effect, re-create the old dispensation in their new alternative societies. Thus, the notorious Sekigun or "Red Army" terrorist group which startled the world by massacring airline passengers at Lod Airport in Israel in 1971 repudiated the Japanese establishment and all that it stood for. Yet in providing for its own internal structure, it imposed even stricter and more severe constraints and standards of conduct on its members. All future contingencies had to be provided for, everyone must conform - under pain of execution. It insisted on absolute loyalty under all circumstances. So, the Japanese, whether in the establish-

ment or out of it, have a built-in sense of social solidarity - a conviction that it is proper for everyone to behave according to the reasonable expectations of others, i.e. in accordance with his role in life.

A second necessity for an understanding of the way the Japanese operate their criminal justice system is an explanation of the first. It is important to appreciate that the complicated and ritualised social structure is a product of long history and tradition. Throughout Japanese history there has been a long and virtually uninterrupted attachment to authority expressed through a succession of hierarchies, not only in the society outside but in the home. The older and younger in a family have distinct roles which are still reflected in the names by which they are called. Therefore, despite the influence of the permissive society which is evident in Japan as elsewhere, the acceptance of authority is almost second nature and respect is expected to be shown to superiors. So, modern Japanese language is so constructed that different expressions have to be used by inferiors speaking to superiors or by superiors speaking to inferiors - husbands to wives, wives to husbands, parents to children, children to parents. Two Japanese meeting for the first time, therefore, have first to find out where they stand in relation to each other before they can be sure that they are using the right language, not being rude or ridiculously polite. Then tied to this is the fact that there is a homogeneity about the Japanese which has continued over the centuries of their history and which is probably unique. Until the Occupation of Japan after the Second World War, this country had never been invaded, had never known a conqueror, had never had to integrate an alien race of people and had never been colonised. This has imbued the nation with an underlying sense of identity which it is not easy for foreigners to understand. It helps Japanese meeting abroad to quickly establish rapport - and in the country itself it imparts an instinctive cohesion which draws Japanese together, especially at a time of crisis when an extra effort is needed from everyone in the interest of all.

They were drawn together in this way in 1857 when the Americans, practising a kind of gunboat diplomacy, managed to persuade the authorities to open up the country to Western trade. The Japanese, a proud warrior people, were suddenly made to appear vulnerable to themselves in this confrontation with the industrialised and militarised Westerners. They could not match the armament or the mobility at sea and they did not like it! They played for time and then proceeded, in the years that followed, to learn everything they could from the West. They industrialised, absorbed Western culture without losing their own and they then began to totally rebuild Japan on Western lines. They introduced Western type courts, government, army, navy, police and prosecutors.

It is important to note, therefore, that there is really nothing in the Japanese Criminal Justice System which cannot be found in the West - from where it was borrowed. The differences are to be found in the way that it has been applied. Though the Japanese Criminal Code, drafted towards the end of the nineteenth century, was based on the French Code - and the principal adviser was a Frenchman - the code was adjusted in the drafting to accommodate a large part of the German Code; because, in those days of the authoritative Bismarck, the centralised, authoritative, German approach seemed to suit the prevailing Japanese conditions so much better. However, as originally applied to Japan, the Western pattern was further amended to provide continuity of the Japanese authoritarian and centralised hierarchies of power and position. Thus, in the new Constitution power did not rest with the people and the executive was made more powerful than the legislature. The bureaucracy was therefore far more independent and this had its effect on the administration of the law. Police might not only arrest but could determine responsibility and fine - at least for minor offences. In fact the police were used to impose the government's will, to see that its policies were being understood and implemented at the local levels and, of course, this continued throughout the Second World War. This police power was changed by the Occupation after the war - although it is more correct to say that the Japanese changed it all themselves under the "guidance" of the Occupation authorities. For indeed the conquered Japanese embraced enthusiastically the "democratisation" process and remained critical for years of the traditional authoritarianism which had led them into war and defeat. There are signs now of a re-thinking as some of the Japanese social cohesion is proving more efficient economically and more wholesome socially than the fierce competitiveness and individuality of the West. However, at the time of the Occupation the Constitution was re-written to give sovereignty to the people - and incidentally to explicitly renounce the right to make war. The new Constitution strengthened Parliament and curbed the police - decentralising them and fragmenting them into city and provincial forces. This did not last long, however, because the Occupation authorities themselves - and the Japanese government - quickly found that they could not efficiently administer a localised system of this kind. The people were not used to it: and gradually the older inter-provincial links were re-established. Though nowadays subject to a wide measure of local control, the Japanese Police Force is, to all intents and purposes, a national body.

Throughout history then - and right up to the present - the authorities, i.e. the police and prosecutors, have been more important than the Judiciary in Japan. The Occupation greatly strengthened the judiciary and provided constitutional safeguards for its independence; but, in the event, the judiciary has operated with considerable concern for

public policy. It has been cautious on issues which might embarrass the government. In a famous decision a few years ago it denied workers in essential industries the right to strike so as to paralyse the country. That, said the Supreme Court, was not what the constitutional right to strike really meant. Or again, the Supreme Court which is charged with the final word on what the constitution really means, has still not dealt with the constitutionality of the Japanese Self-Defence Forces. This is a vital defence question turning on that, by now famous, clause in the Japanese Constitution which explicitly renounces the right to make war. At the time this was included in the Constitution the Japanese people were still reeling from the atom bomb attack and abhorred all forms of aggression. As the first people to be subjected to an atomic attack they felt in a position to provide the world with an assurance that they would never again initiate aggression; but also they felt able to provide moral leadership in the direction of disarmament. It was a noble gesture. But the American General MacArthur, who had been originally responsible for having the famous clause drafted, found himself obliged to re-think the situation when he had the extra responsibility for commanding the United Nations' Forces in Korea - which were predominantly American - and large numbers of which had to be drawn from the Occupation forces in Japan. Suddenly his rear-guard installations in Japan were vulnerable to sabotage and it must be remembered that those were days when the political future of Japan itself was by no means secure. There were many dissident movements in Japan. Having taken off his U.S. guards and patrols therefore he needed to find local replacements. Some Japanese could not accept these military duties as being constitutional in the light of the avowal not to maintain military forces for war. MacArthur argued, however, that the constitutional outlawing of war could not be construed as the country denying itself the inalienable right to self-defence. The Japanese government accepted this and the "Self-Defence Forces" were born. Originally for passive guard duties, a small army, navy and air force came into being.

This move was promptly challenged by the Japanese government's opposition in the country. They appealed to the courts and the matter eventually reached the Supreme Court. That was at least 25 years ago. Yet even now - and at a time when the Japanese have decided, under pressure from America, to greatly increase the amount of national resources to be allocated to those Self-Defence Forces, the Supreme Court has not pronounced on their constitutionality.

It is difficult to explain this inordinate delay on a matter of such crucial importance - except as an appreciation by the Supreme Court of the Japanese government's delicate position, nationally and internationally. In other words the executive is still very powerful and its obliga-

tions are considerably treated by most of the people. In Japan, even the use by parliamentarians of parliamentary inside knowledge of planning intentions which allows them to borrow money to buy up the areas to be purchased and so get rich, is still generally tolerated.

It is, in fact, more usual, in Japan, for the law to be bent to fit the circumstances for anyone in trouble with the authorities. Prosecutors have discretion and might decide not to prosecute in fifty per cent or more of all the cases brought to them by the police. If an accommodation can be made between the victim and the offender - and thereby a person's reputation may be saved - then prosecutors will avoid going to court. In this, they are supported overwhelmingly by public opinion.

Providing the offence is not grave and a dismissal will in no way conflict with the spirit of the law, the prosecutors have the power to close the file before a court hearing. Victims offended, by such leniency being shown to offenders, have the right to appeal to a special Inquest in each province but such appeals are rare and this is an indication of the public distaste for going to the law when it can be prevented.

Of course, even before a criminal case reaches the prosecutor's office, the police have already had power to dismiss it. In minor cases and particularly where remorse has been expressed for the offending, the police have discretion to decide that no good purpose would be served by continuing the proceedings. Foreigners guilty of minor infringements of the law are frequently amused (but at the same time impressed) by the Japanese police insisting that they write out an apology.

The Japanese police who were originally organised on French and German lines may be authoritative in the Japanese tradition but they are also highly efficient in terms of modern police standards. Moreover, they work with more co-operation from the public than the police of any other industrialised country. In the Tokugawa period of Japanese history (1603 - 1867) the feudal authorities, i.e. the Shogunate in Edo (now Tokyo), found it necessary to place senior samurai warriors on certain street corners to prevent the younger and less responsible samurai from decimating the population by exercising too freely their warrior right to behead, with their long swords, anyone of the lower classes who did not show them proper respect. These young executioners, particularly when drunk, were likely to take offence quickly or even imagine slights as an excuse for practising their skill at severing a head with one stroke. They became such a menace and such a threat to peace and good order that the Shogun ordered military officers of a senior rank to be stationed at urban inter-sections to curb this enthusiasm for sword-play - and

to protect the public. So, moving into the modern period it was a normal transition, when a police force was established, for there to be local neighbourhood police stations. These "kobans" now provide local districts with teams of police officers, the numbers varying according to population and the type of district for which they are responsible. The officers will be assigned to a koban for perhaps three days at a time and they sleep at the koban between duty shifts. An added advantage for the police is that they travel less frequently between tours of duty and they have long periods of rest between their long spells at the koban. Needless to say this system also makes them extremely knowledgeable about their districts and the people who live there. They learn to know the neighbourhood and its residents and they take an interest in the lives of their people to an extent which might well be resented and resisted in some of the Western countries. The local police men will be known to residents and will make house calls once or twice a year to cement good relationships. Police may call when a TV licence or dog licence has to be renewed and they will help when someone has locked himself out or is worried about a child that has wandered away. Obviously the presence of a stranger in the area is quickly known to the police and, for their part, the local people depend on the local police station for information and official guidance to a degree that goes far beyond the usual citizen-police relationships in the West. Behind the system there are associations of neighbours which are designed to help each other. A new resident in the neighbourhood will find them calling on her with presents and she will reciprocate in a way which will create mutual obligations between them. The police cultivate these organisations for self-help and assist wherever possible.

The citizen-police relationship in Japan is emphasised by the way in which the police operate their central telephone switchboards at the police headquarters. These boards are substantially staffed with policemen and policewomen to accept citizen's calls for help, not only in case of crime or fire or accident but whenever help might be needed by a person with a private problem. The officers on the board are linked with a variety of specialist agencies so that, when they cannot deal with a problem themselves, they can give all the appropriate references. People are encouraged to telephone the police when they have a problem.

In this way, the police-citizen informational link in Japan is very close. This closeness is then enhanced by a nationwide network of crime prevention committees in every school, factory, large office-block etc. Older local people who have time to spare are frequently very active on these community committees and may accompany the police on their patrols in order to "advise" those who seem likely to get into trouble with the police. This is a system much used to minimise the problems of juvenile delinquency. Thus, where-

as in the West, as the police bureaucracies grow, they become more efficient at keeping public order (which does not require community co-operation) and less efficient at detecting and prosecuting crime (which does require community co-operation), the Japanese police can do both fairly efficiently and with no greater manpower per head of population. Largely due to the effectiveness of this citizen-police link in Japan the crime detection rate is near to 80 or 90 % whereas, in other Western countries, the police have difficulty maintaining a 40 or 50 % clear up rate and for many types of crime this rate is much less.

The correctional services of Japan are also both efficient and effective and suffer from less of the violence, brutality and the need for frequent judicial enquiries that has become almost typical of the West. Their escape and recidivist rates compare very favourably with those of any country around the world. And though they have had a few problems lately as the gangster proportion of the total prison population has increased, they run very smoothly. Most of the prisons in Japan have been built on the same lines as Western prisons - both maximum and minimum security institutions being available with a variety of outside work camps and hostels from which offenders can go out to work. However, the Japanese prisons are frequently factories, not merely doing government work or labouriously performing tasks which modern technology does much better but participating in the country's drive for exports or supplying specialist goods to the home market. One brand of bread on regular sale at the super-markets is baked freshly every day in the prisons and distributed swiftly around the country. Prisoners are typically fully employed and, with their earnings, are near to being self-supporting - if items like overheads and salaries are omitted. Thus, although some of the prisons are built faithfully on Western blueprints, they have diverged in their operations. The prison at Nagasaki was even built with a Western fireplace because that was in the architect's plan originally intended for a British prison: but what goes on inside the Nagasaki prison is different to that which goes on in its Western counterparts. Everyone is fully employed, conflicts between guards and prisoners are rare, escapes are few and mutual respect is traditional. The prison service in Japan, which comes under the Ministry of Justice, is staffed by career officers who are given special training. But the Director-General of the Correctional Bureau of the Ministry of Justice is always drawn from the Ministry's ranks of legally admitted public prosecutors.

The Japanese have also relied very heavily on their communities to provide a nation-wide system of non-institutionalised corrections. For example, probation throughout the country is organised with a very small core of full time paid and trained probation officers - and no less than 60 000 volunteer probation officers - many of them retired

people or housewives who are paid expenses but no salaries for what they do. On the other hand their appointments by the Minister as volunteer probation officers gives them a standing in the community that they might not have otherwise. Prison after-care, hostels for the release of offenders and special homes for juveniles make full use of local volunteers and local community groups to help the offenders (or potential offenders) to avoid the trouble that seems likely if they do not get help to re-integrate. However, it should be noted that with the possible exception of the members of gangs (who are likely to return to their own special sub-groups where they are already accepted), the essential co-operation and understanding of the community in Japan for the re-integration of an offender will depend very largely upon his remorse. Communities find it difficult to work with those who are resentful, unashamed of their wrongdoing and who feel themselves to have been the victims of society. To get acceptance therefore there has to be repentance and a firm purpose of amendment.

Public prosecutors and judges in Japan are trained together and they take the same qualifying law examination. When successful they can then decide whether to be judges or public prosecutors. In practice therefore, there tends to be a great deal of routine co-operation between the two services: but judges are sometimes dissatisfied with the extent to which the public prosecutors seek to make up their minds for them. For example, it is the public prosecutors who decide, first of all, whether a case should go to court or not. If they decide to prosecute it usually means that the evidence is overwhelming and therefore, not surprisingly, the conviction rate is close on 98 %. If the public prosecutor decides to take a case to court he can also make a recommendation to the judge as to the penalty that should be awarded. Though technically the judges are independent - and at any level above the lowest courts the judges sit in panels, the members of which can always make up their own minds - they still feel constrained if they have been exposed to judicial systems abroad. Some of the younger judges, in particular, do not like having all the cases sorted out and sieved as it were before they reach the courts so that the court decision in the light of the evidence is almost a foregone conclusion. So, some judges object to being a rubber stamp for cases which the prosecutors have already "tried". Of course the judges need not comply but it is undeniable that their judicial careers might be affected if they consistently find themselves in conflict with the prosecutors. Japan, after all, is a country of consensus - and conflicts of this kind arise only in the trials of political radicals where, of course, the defence seeks to evoke a court drama and rather different principles inevitably apply to the resolution of the cases.

However, in Japan it should be noted that, even if an accused pleads guilty, the court continues with the case. It does not, as so often happens elsewhere, proceed from the plea to the sentence. There is no American type plea-bargaining because the prosecutor will have determined the charge in the light of the evidence. It is true that the prosecutor may decide upon the charge after discussing the case with the offender and the victim (and any legal counsel they may have) and after weighing the evidence. The prosecutor may also seek to obtain a confession, but he is not obliged to proceed except in very rare cases of public concern. The difference here may be illustrated by an article which appeared in the New York Times whilst this account of the Japanese system was being written. This article described in some detail the work of New York's 334 Assistant District-Attornies and it gave an account of the plea bargaining they enter into routinely in accordance with established principles. In one case a young white girl with no previous criminal record was charged with purse-snatching and appeared weeping and remorseful with her parents before the Assistant District-Attorney. He knew that they wanted him to dismiss the felony case but he could not do this without at least a plea of guilty to a misdemeanour - which of course would automatically mean a conviction recorded. Now, this could hardly happen in Japan. There, such a case would very likely be dismissed - just in order to avoid, for the girl and her family, the stigma of a criminal record. Providing that she made full restitution and was truly remorseful, the prosecutor would find, in most such circumstances, that it would be more conducive to the public interest for the girl to get another chance - without the burden of a public record - than that she should be formally arraigned, convicted and given a minimal sentence.

As already explained, victims are not overlooked. Usually they are consulted and may have to be compensated by the offender. They are not robbed of their grievance and in a way they feel after the discussion with the prosecutor that they have helped to determine what should happen to the offender. However, if they do not agree with the prosecutor or think that he is being too lenient they are provided with redress. The fact that this is so little used in Japan speaks volumes for the success of the system. Hardly ever is a prosecutor ordered to look at a case again because of such complaints.

In the Japanese system, sentences are not so harsh by comparison with the sentencing in the West. Japan still has the death penalty but it is rarely used. Amnesty International has recently challenged Japan because, when it does execute a condemned person, it does so secretly and with little warning - presumably so as to discourage public demonstrations or protest on behalf of the condemned person. But the reality is that, in Japan, the death

penalty is rarely used. Prison sentences are typically suspended so that a four or five year sentence, for even a serious crime like rape, may be suspended as long as the offender continues to be of good behaviour.

On the other hand, the authorities get tough when they have to deal, in the national interest, with things like terrorism, drug trafficking or negligence on the roads. In such campaigns there are media programmes to inform and mobilise the public and, when threats like this to the national interest become evident, the people are fully behind the police and the prosecutors in their severity.

It will be apparent that the Japanese authorities do not go far in the operation of their criminal justice system without providing for public co-operation and trying to carry the community with them - whether they are exercising a lenient discretion or imposing severe penalties for grave offences in the eyes of the nation. Minor adjustments of the criminal law can be effected without too much delay; but major re-alignments like the review of the Penal Law or the redrafting of the Prisons Law take years of deliberation at all levels of society with the media co-operating in their various discussion programmes and even in housewife instruction programmes. This concern to ensure public support may have been made more conspicuous by the Japanese concern, after the Second World War, to democratise; but the homogeneity of the Japanese people, conferred on them by their particular history, provides a sense of social cohesion which surfaces quickly when there is what seems to be a national problem. And it should not be forgotten that, throughout its history, though decisions might have always been taken at the higher levels, they always had village or neighbourhood systems for ensuring the co-operation of the local communities.

Whilst the results of this Japanese approach to the administration of criminal justice cannot be fully dealt with here, it is important to note that the Japanese towns remain amongst the safest in the world, not only for their citizens but for foreigners, that Japan is the only industrialised and urbanised country which for nearly twenty years, from the late fifties into the late seventies, had a falling crime rate, not only as calculated on total cases dealt with by the police but in terms of the incidence of violent and serious personal and property crimes - and that Japan has one of the lowest hard drug-abuse problems. That does not mean, of course, that this great country of 113 million people, crowded cheek-by-jowl into some of the most densely populated areas of the world, does not have any crime problems. Some of them go to the heart of the nation's culture and deeply disturb all Japanese. Corruption has been mentioned. This is not only at the political level. Very recently a considerable number of the Japanese police themselves were charged with corruption i.e. taking

bribes from the organised crime-controlled entertainment industry to warn of police raids in advance. However there appears to be a kind of symbiotic relationship between the police and the prosecutors on the one hand and the "yakuza" or gangster community in the country which has its own traditional roots and which operates fairly openly a kind of alternatively criminal society in Japan - with its own codes of conduct and trading links with neighbouring gangs of "yakuza" and with other criminal organisations across the world. These gangs provide status and a sense of belonging to many who could not have made it in the world outside but, like the Mafia in the U.S.A., they try to provide their own children with the funds necessary for a perfectly respectable professional place in the world outside - sending them to the best schools and universities. The "yakuza" control not only large segments of the entertainment world catering for tourists, provincial visitors and business men or farmers looking for excitement, but also the drug trade much of which is in amphetamines or stimulant drugs (the abusers of which are, amongst others, large numbers of bored housewives). Of course the gangsters are also in the loan-sharking business, earning exorbitant profits and using "strong-arm" methods to collect. They are interested in various forms of protection rackets and, until the law has changed recently, they were making millions of yen by forcing companies to buy them off rather than have them disrupt the annual general meetings of the companies by legitimate shareholders. In every large centre the "yakuza" operate fairly openly and they have been known to do a few jobs for the politicians! Japan is probably the only country in the world where the people on a tourist bus can be driven around a residential centre and have the residence of the local gang chief pointed out to them. At a recent funeral of a "yakuza" leader (death from natural causes), very large numbers of gangsters from all over Japan gathered and walked in procession in the streets.

There would appear to be, in all cities, a kind of tacit understanding between the gangsters and the authorities. If they keep within certain limits of illegality i.e. within the limits of illegality which people can tolerate, then the authorities will not be unduly suppressive. If they go too far then there will be a combined police, prosecutor, public reaction and the suppression will make life unlivable for the gangsters. So, recently, as the gangsters have got into the much abhorred drug trade, so they have been systematically prosecuted and larger numbers of them are finding their way into the prisons. The gangster percentage of the total prison population in Japan has risen considerably since the early 1970's. On the other hand the authorities appear to be in no great hurry to protect from the gangsters those who have chosen the criminal way of life and who have benefitted from their contacts with the gangsters in the past. They watch carefully for the exploitation of the public, however, in the entertainment areas

and they are watchful of the yakuza in its importation of foreign girls for the clubs or bars and in its tendency to take advantage of the thousands of students living apart from their families in Tokyo who depend very much on part-time work. Individual "yakuza" and individual police officers and prosecutors know each other, of course, having been in contact so many times. They manage in normal times to find a kind of modus vivendi which, if not exactly unique across the world, has some very Japanese characteristics.

Juvenile delinquency in Japan has always been a problem - even when the general crime rate was falling; but, as in so many other countries, it would seem that the majority of such juvenile wrongdoers manage to grow out of it. Some don't, of course, and go on to become either professional offenders or members of the gangs that will give them a prestigious role in society - or both. With the intense competition for university places (i.e. good university places because most Japanese get tertiary education) those who do not do so well sometimes look for the prestige they cannot get by study - in violence and disorderly behaviour - frequently enticing the better students to join them for the adventure. So school violence has become a serious Japanese problem which not only the police, but also parents, community groups and teachers are trying to deal with. At the commencement ceremonies for the opening of the school year in 1983 no less than three thousand senior and junior high schools had to have police standing by - and, even then, there were attacks on the teachers' cars in the car parks. Teachers are assaulted at school or on the way to school for a variety of reasons and attacks on other students are commonplace. Though the problem has some very specific Japanese roots in the school and examination system it should not be overlooked that there is also an imitation effect which the modern global media promotes. School violence has become a problem in many countries since its prominence in the U.S.A. was given publicity. And the Japanese are great imitators - especially of the U.S.A., be it in baseball, discos, or MacDonal'd's. Anything that the U.S.A. has got, Japan likes to have. This is a simplification of course but the influence of reference groups and role images across the world cannot be discounted. The way that these instigators of school violence dress, seems to demonstrate their desired solidarity with their counterparts in the U.S.A.

Another group giving trouble in Japan - and which is partly generated by local factors and international identity - is the "hot-rodders" who terrorise the road users with their cars. Here the situation has progressed beyond anything that can be written off as high spirits. People in taxis have been attacked with iron bars, windscreens smashed and bodywork damaged extensively. Drivers have been forced off the road and pedestrians run over and killed. This actually

is an extension of the Japanese version of motor cycle gangs which plagued the roads for many years. The young people are now more affluent and can afford cars with which to disrupt normal driving and feel the power of speed.

The threat of corruption, the disorderliness of youth when it cannot compete successfully, the world of the gangsters, the new computer crimes, the occasional bombings for political purposes, and the bizarre way in which people with no previous criminal history will run amok with a sword or axe in the busy shopping centres are some of the forms of criminal behaviour confronting the police, the prosecutors and the people of Japan. Recently, for no apparent reason, a man threw a molotov cocktail bomb into a crowded bus standing at the terminal in Shinjuku during the rush hour - and dozens were burnt to death in the conflagration. Jealousy, mental disorder or some deep seated grievance may be to blame; but killing for the hell of it is not a problem peculiarly Japanese.

It would be surprising indeed if a country of such a size and of such complexity did not have its crime problems. Relatively speaking, however, these are minor problems because of the underlying social solidarity and the strength of the informal controls. They are problems which hardly compare with those being currently experienced by other industrialised countries with their unsafe streets and occasional communal riots. Yet there is less magic about this than there might at first seem to be. True, there are features distinctly Japanese, but it cannot be denied that the Japanese have demonstrated an ability to make their Western-type criminal justice system work better than it ever did in the countries from which they borrowed it!!

William Clifford

SOME CHARACTERISTICS OF THE APPLICATION OF THE CRIMINAL JUSTICE SYSTEM IN SINGAPORE

The word "Singapore" is the anglicised version of a Sanskrit word "Singapura" which means the Lion City. This was for a very long time a jungle in terms of lawlessness and geography alike. The Chinese writer Wang Ta-Yuan wrote about Singapore in 1330 AD (or thereabouts) calling it "Temasek" or the Sea Town. He described it as an infertile, pirate-infested island. Now it is one of the safest places in the world, a flourishing metropolis with an economic growth rate second only to Japan's, and with an uncompromising attitude to the importation of Western development stripped of Western decadence.

Until the end of the Second World War, Singapore had been under almost continuous foreign control or tutelage. It was invaded successively by the Chola kings of India, by the Siamese rulers and was finally conquered by the Javanese monarch Majapalit towards the end of the 14th century. They all wanted it because of its strategic position as a trading post. However, for a long time it lost this trading eminence to nearby Malacca and was allowed to deteriorate into jungle and swamp infested only by mosquitoes and pirates until Raffles persuaded the British East India Company to take it over as a rival trading base to Malacca. and gradually Singapore once again became a world's cross-roads. The British were there until conquered by the Japanese who were, of course, again conquered a few years later by the British. But in the new climate of self-determination which developed across the world after the Second World War, a Malaysian movement for "Merdeka" arose. "Merdeka" is the Malaysian word for independence: and after frustrating a determined attempt by foreign-backed Communist guerillas to take over Malaya and Singapore, the British finally granted full independence in 1963 to a new Federation of Malaysia - a union of Malaya, Sabah, Sarawak and Singapore. However, the states did not fully agree, so that, on August 9th 1965, Singapore became independent under Prime Minister Lee Kuan Yew who had worked for years for the independence of the region. A graduate of the London School of Economics, Lee was distrusted by many seasoned politicians of the time as being much too far to the left in his political thinking. He had decided, however, that Singapore had its own destiny - a destiny that should not be decided for it by any great power, Western or Asian, East or West.

At the time of independence, Singapore was still threatened internally by subversion, gang warfare, revenge killings, extortion and widespread graft. Externally, it had powerful enemies of vested interests anxious to see it fail so that they could take it over. After all, it was no more than a city-state which, even now, twenty years later, numbers only about 2.7 million people - about 75 % of whom are Chinese, 15 % Malay and 8 % Indian. It was a small and very vulnerable part of a rapidly changing region. Internally it was wracked by dissention, political radicalism, organised crime and corruption extensive enough to undermine the will of the people to make it a new and viable national concern. Propagating an identity was one of the problems for the new government because Singapore had always been a melting pot which failed to melt its constituent races. Each ethnic group provided solidarity for its members and exercised considerable control. The previous administrations had been content to do little more than hold the ring for the free inter-play of interests, business and political, within the city. To some extent Singapore had been a centre for Malaysia rather than an entity of its own.

The mixture of people in Singapore had been an intermingling of those brought into the city for work by the British or attracted there in considerable numbers because of the employment prospects and business opportunities. Many came just because it was a crowded, lively, exciting place to live compared with many of the surrounding areas. There were always ships coming and going, new faces on the streets and improvements to the local amenities. For the entertainment trade or as an administrative centre it was an attractive place to be. The Chinese came originally as coolies for labouring work but many gradually moved into business and became rich. The Malays were the overflow of people from the neighbouring provinces of Malaya. The Indians were generally imported by the British for the government offices, the armed forces and police duties: they were followed by many of their relatives and some simply drifted into Singapore of their own accord in search of employment or business openings. In government, the Indians were thought to be more trustworthy than the Chinese and the Malays and the British were more accustomed to working with them in India. This was how it began; but the proportions of these population groups are changing today. The Singaporeans are importing more and more foreign labour to help service the flourishing economy. Under Lee Kuan Yew's vigorous leadership, Singapore has outstripped most of its neighbours in economic development. It has improved its peoples' living standards almost beyond recognition and has constructed an impressive infrastructure for future growth and expansion. More pertinent to the present discussion is the fact that

Singapore has managed to bring its formerly intractable crime problems under firm control. These are not problems

which have disappeared completely, of course. The very cross-roads nature of the city make it attractive to criminals operating internationally as well as to the commercial interests of the world. Singapore cannot insulate itself from the crime problems of the rest of the world. It can deal with its own problems but its life-blood is its tourism and trade so that it has to keep an open door and its controls on entry of persons and property cannot be so tight as to discourage the use of Singapore.

There is a national service for all young people in Singapore, but when they are drafted the young men and women can choose to serve in the army - or the police. This has not only helped Singapore with some of its delinquency problems amongst the unemployed or feckless but it has given to Singapore a huge police force, or at least a regular police force reinforced on a regular basis with vast additional manpower. This increased force has been used to campaign against crime and insecurity.

First a determined effort was made to bring under control the triads or secret Chinese societies which for centuries had been a mixture of political underground, protective friendly society and organised crime. Beginning as ethnic solidarity movements that could be depended on in times of need, these triad societies had got more and more into the business of profiteering by crime. For years they had terrorised the people and demanded money from them, not hesitating to torture or kill when their demands were not met. It was better to belong to them than to be victimised by them and the situation had got worse as these organisations grew in size and permeated every corner and activity of the city. Not only were there bloody battles on the streets and in the residential quarters between these gangs - and, of course, any number of vengeance killings - but they had battered onto the earnings of quite ordinary people in diverse ways, making their lives a misery. They terrorised the populace and managed to extort high proportions of their earnings, thus substantially reducing the standards of living for many in the city. When people moved into new government apartment areas out of the slums, the gangsters were there and the new tenants were expected to pay for the extra protection they would need in the new district against dangerous elements - or they might be required to order excessively priced furniture or equipment from the gangster organisation. If they held out - if they did not take the hints that they were given - then the new tenants would be subjected to continuous harassment, their windows broken, their essential services interrupted or bad rumours about them spread amongst the neighbours. They might even be personally attacked and eventually killed if they persisted in their refusal to pay all these "extras".

Over the past twenty years that atmosphere of danger and insecurity has been dispelled and gangs, if they still

exist, find it extraordinary difficult to operate. People cannot be frightened by threats of violence and a protection racket can no longer be sustained - because the police, with the aid of the youth doing national service, patrol these housing areas so regularly and are available to the citizens so immediately to deal with any problems that it has become distinctly hazardous for the gangsters to operate. Some of the leaders, when caught and convicted of murder, were quickly executed. Moreover, the Singapore legislature, though proud of the Common Law inherited from the British, has been prepared to approve government proposals to shift the burden of proof in criminal cases from the prosecution (where it usually rests in Britain) to the defence. This has swung the balance of advantage in criminal procedures from the defence which has always had the benefit of the doubt to the prosecution in such cases in which the culprit might otherwise escape justice on little more than a technicality. In Singapore they have shown themselves to be more concerned that the guilty do not escape than that the innocent be protected in all and every circumstance. There are safeguards for the accused, of course, but he is not finding it easy in Singapore these days to turn the law against itself. The idea is to make it abundantly clear that the official hand falls heavily on wrongdoers.

The result of all this has been that many of the Chinese gangs from Singapore have emigrated to places like Amsterdam and London where they can operate with rather less molestation. Lee Kuan Yew goes on television to exhort his people to remember that the city has no natural resources - that they have only their human resources, i.e. themselves. They themselves have to earn their own living - and this, in turn, is dependent on efficient production, trade and tourism. Cheating is discouraged, politeness and friendliness encouraged: and the people of Singapore are clearly afraid of the effects on their city of some of the moral degradation likely to be imported with the technology and capital from the West. As early as 1971 the Prime Minister told his people:

"We are a hard working people. But if we let our younger generation go soft, or worse, get soft-headed then there will be rapid decline. We must inculcate the values of their culture so that they will not imitate the foolish, reckless and dangerous things so many young people in the West are now doing."

So, pornography is stopped by the customs, young men with long hair are deliberately left waiting at the end of a queue - or served last in the shops and government offices, such as the post office or the licensing offices. There is also a very special and comprehensive programme for drug addicts which is described more fully below.

Lee Kuan Yew still detains some of his political opposition but these are now fewer than before and his party has such overwhelming support in the city that he is releasing all but a hard core of determined enemies of the Constitution. The vote for him and his party has been of landslide proportions for several general elections now. But much of the support is due to the personal charisma of the Prime Minister himself and he has no illusions now about the need for him to find a worthy successor. Lee Kuan Yew is the great-grandson of a Hakka Chinese who came to Singapore as a coolie and built a fortune in trading. He espouses single minded labour as the key to gaining and holding success for society. In 1982 he was given the Freedom of the City of London and in his speech on that occasion, he expressed concern about the continuing disintegration of the family. He urged a return to the three generation family. In Singapore the schools give courses in religious values and Confucian ethics. Of course the people of Singapore had been more anglicised than the Chinese of Hong Kong. Many Chinese in Singapore today do not speak Chinese. They only speak English. Therefore, Mandarin, the Chinese spoken on mainland China, is now taught in all schools to help bring back the indigenous culture.

The criminal justice system of Singapore reflects this sense of national discipline which the Prime Minister has been at pains to cultivate. As already mentioned there is a large police force which is now beginning to introduce the Japanese principle of neighbourhood police boxes or stations - and they have introduced Japanese police to Singapore to make it work. Despite the amendments of the law against the interests of the accused, the courts are still scrupulously fair. However, they can now, by legislation, require an accused pleading not guilty to explain to the court why the account of his activities, which he is now providing, is different from that which he gave to the police when he was questioned. There is a good probation service in Singapore and the prisons are effectively organised, not only for custody but for production. In this again the Singaporeans have imitated the Japanese models rather than the models available to them from the United Kingdom. In Singapore, therefore, one finds a Common Law system of Justice, amended to local requirements to avoid an offender taking advantage of technicalities in the law - and now being progressively Japanised for greater efficiency in controlling crime.

Singapore's economic success, combined with its protection of older values, has impressed its Asian neighbours. It is extremely significant that Malaysia has begun to follow some of the Singapore leadership in the way it has brought industry in to the prisons and copied Japanese policing methods. Even Australia has been willing to learn from

Singapore in dealing with prison industry - and has legislation now, in the State of Victoria, which owes much to the experience gathered from Singapore.

To deal adequately with the prison industry in Singapore it is necessary to couple it with the remarkable Singapore attack on the drug problem. Drug problems are not new in Singapore: this is one of the Asian areas where, in the early nineteenth century, British traders under the banner of "free trade" sold Indian opium to the people at great profits. Opium dens were familiar features of the Singapore scene - and can be seen even now, though they are frequented by only a few old people and might have disappeared altogether except for the tourist trade. After the Second World War the addiction to opium was already dying out and had no appeal for the educated young. The trafficking in opium was already illegal. This situation changed radically however when in the early 1970's drug abuse began to rise and those affected were now the young people. In 1970 there had been only a few hundred cases of drug abuse but by the middle of the decade it had risen to several thousands of cases and seemed to be rising further each year. The country became alarmed as Singapore seemed to be something of a target for the drug traffickers. Again the Prime Minister made this a personal issue, going on television and reminding his people once again that their only resources were human and the country just could not allow them to be wasted in this way. He warned that for the good of the nation he intended to take firm action.

The government already had a Department of Narcotics. Now it legislated to allow the courts to place any proved addict at the disposal of the Director of Narcotics for a period from six months to two years. The time he would be committed to the Director of Narcotics for treatment would depend upon the rate of his recovery from addiction. To bring this new legislation into effective operation, the large Singapore Police Force was deployed on a city-wide sweep with the code-name "Operation Ferret". All police officers were told to bring before the courts every known and suspected addict. On arrest the addicted (or suspected addicted youth) was required by law to provide a specimen of his urine. Two samples of this urine were taken - one for use as evidence in the immediate court hearing and the other to be sealed and analysed separately if there should be an appeal. If, in the specimen used for the court, any drugs emerged from the test then the person was convicted according to law and placed at the disposal of the Director of Narcotics for an indeterminate period of not less than six months and not more than two years.

To accommodate this sudden inflow of drug addicts, special detention centres were opened - and placed under the supervision and management of the Department of Prisons. At the time of Operation Ferret, that department had been respon-

sible for about 7 000 prisoners and persons on remand. Then, literally overnight, this went up to 14 000. Of course of course the newcomers were not classified as being prisoners, they were addicts in need of treatment.

On admission, an addict was subjected to "cold-turkey" - meaning that he would be left alone to recover from his addiction without any special medication. He was required to withdraw on his own. That was to be part of the re-learning process. His agonies of withdrawal were monitored by doctors who could see into the room; but no medical help was given unless he was likely to harm himself. When he had gone through this ordeal of withdrawal - and learned in the process the harm he had done himself by his addiction - the addict was given simple physical exercises to tone his muscles, to gradually improve his strength and to help him to return to a normal condition. Sports and other activities were increased and his general health and fitness improved until he was eventually able to enter the factories inside the institutions and earn his own living - as well as being able to send a little home to his family or being able to save something for his release. In this respect he benefitted from a scheme which, in the organisation of institutional industrialisation, encompassed the prisons the detention centres for the drug addicts and the other types of rehabilitative training.

Some years before, the government had conceived and developed an organisation called SCORE (Singapore Co-operative of Rehabilitative Enterprises), an independent, private but non-profit-making co-operative which was entrusted with the supervision, management and marketing of the industry in government institutions of the types mentioned above. The reason for this was that it had been noticed that prisoners, given years of vocational training and equipped with considerable technical skills, hardly ever used this new expertise when they were released. Many others apparently wasted their time on all the traditional crafts or on time-absorbing jobs without making any distinct contribution to their future rehabilitation. The idea was therefore that, in accordance with Singapore's economic drive in society generally, to reorient the thinking of the prisoners and other detainees from the traditional trade training to productivity and co-operative entrepreneurship.

The Chairman of SCORE was a Chinese millionaire who agreed to operate the scheme for a very nominal salary. He was able to persuade his friends with companies in the private sector to pay for the installation of industrial plants in his various institutions - the attraction being that he offered the available labour at two-thirds of the basic rates of the wages paid outside. Not only a large laundry - one of the biggest in the Southern Hemisphere was provided to serve all the city's institutions. Every centre was equip-

ped with its own conveyer belt type of productive plant for the building of all types of electronic equipment for export. The prisons and detention centres became hives of industry and, in the process, many of the prison problems of man-management were circumvented. Inmates worked cheerfully and felt a sense of achievement. They were doing something for themselves. An inmate could keep anything he earned after he had paid a proportion of his earnings to the authorities for his subsistence. The rest he could send home to his family or have it kept for him on his release. Moreover he could be advanced in the factory: whilst, at first, the outside firms had introduced their own quality controllers and line supervisors to oversee and approve the inmates work, these were soon jobs which the inmates could learn to do for themselves - and thereby improve their status and their earnings.

In this way the work of prisoners and drug detainees in Singapore was harnessed to the country's more general export drive. The benefits to the inmates themselves were also considerable. The human deterioration which typically sets in when people are locked up for long periods was avoided. There was less time for the hard-core inmates to dominate the others and the feeling of making a contribution to society - and to one's own family was enhanced.

On release, a prisoner or detainee could elect to continue the same work in the same prison factory (but now for full wages) or in another outside establishment of the same firm. Knowing his work already he was a useful person available to fill any vacancies. It was indeed in the interests of the firm and of the inmate himself for him to continue the same work if he wanted to do so. If not, then he could still be helped in various ways by SCORE. SCORE might help to place him in some other kind of work outside and in some cases it would advise discharged prisoners and detainees how to market their skills more productively. For example it would advise them to apply for the less popular but more profitable evening shifts in the factories or take on some of the dirtier but better paid jobs in the hotels until they had earned enough to re-establish themselves. Sometimes SCORE provided tools and foundation materials to help groups of ex-prisoners and ex-detainees to set up their own co-operatives or to develop small businesses. One of these had been a small single garage co-operative for panel-beating. With so many cars and minor accidents in Singapore there was always work for the skilled panel-beaters - and much of this could be taught to inmates in the institutions. Another venture was a co-operative garbage collection agency. Thus enterprise in Singapore was brought to bear on traditional forms of incarceration. However, the follow-up was all important.

For prisoners there was parole and various forms of prison after-care. For a drug addict eventually pronounced fit and

released, there was the system of voluntary after-care with the community being brought in to assist with the rehabilitation. This was reinforced in the case of the drug addict with a legal requirement that on release he had to report to the police station once a week for a urine test. As long as this test was clear he was all right. But if once again traces of drugs were discovered in the urine the released detainee was again likely to be re-called or to be further charged with an offence under the Act.

It should be observed that, operating in this way, Singapore may be the only country in the world which has tried to tackle the intractable drug problem mainly from the demand side. Usually attempts to deal with drug-abuse and drug trafficking move in from the supply side - they try to reduce the flow of drugs into the available places with the addicts' rehabilitation programme being largely a disappointing and frustrating attempt to rescue a minority of the afflicted. Singapore has its measures for the traffickers and it is severe on these when they are caught, but the real thrust is on the addict's demand for the drug. Remember that Singapore does not concern itself with the rehabilitation of some addicts. It seeks to deal with all. In attacking the problem at the consumer end, the authorities in Singapore are aiming at reducing the market for drugs in the city. They know that even with all their severe penalties for the traffickers, including the death penalty for some and even with all the controls they can impose at the points of entry, they cannot hope to make any substantial impact on the flow of drugs into Singapore - but if these cannot then be sold widely because there is no large demand then the trade will have been disrupted. Of course it might be possible to make it more difficult to get drugs into the country, but only at the cost of the vital tourism and trade. There would have to be such intensive searches of both ships and aircraft that the economy of the city would suffer. Moreover there is a "white-ant" traffic which has been going on for years across the causeway from Malaysia. Here, every day, thousands pour into Singapore for work in the morning and go back at night. The trade can be organised with each of the thousands carrying only a very tiny speck of heroin. Once through the controls (which would have the greatest difficulty detecting such tiny amounts) the specks are deposited with a collector for a price - and soon he has a substantial amount for sale in the city. Faced with such problems the city moved onto the demand side. It wants to reduce the size of the market. As a city-state this is feasible in Singapore where it might not be elsewhere. But even for a city-state it is no easy undertaking and it has a cost in money and resources which, even so, the people of Singapore feel that they have to bear in order to save their young people.

After some six years of operating the scheme, the Singaporeans claim to be succeeding. In the reports of their after-care organisations the rates of recidivism for drug offences have been steadily declining. If indeed the Singaporeans do succeed in making substantial inroads into the drug problem they will have provided an object lesson for some other countries - and a dilemma for others who might feel that they have to choose between the respect for individual freedom of choice and the measures required to rescue a generation.

Alexander Yakovlev

THE SOCIAL FUNCTIONS OF THE CRIMINALIZATION PROCESS

Criminalization and the stereotypes of social consciousness. The historico-dialectical approach to the treatment of the social function of the criminal law does not ignore at all the obvious fact that a system of norms, taboos, and prescriptions - the sphere of social obligation - is the medium in which the requirements of any social structure, system, and society in terms of regulating the conduct of individuals are reflected. A specific normative order (in which legal order is the essential, central element of this wider definition) in each society is the latter's invariable attribute, and violations thereof are manifested in various forms of conduct deviating beyond the permitted limits of the rules of law and social norms as a whole. "The regulation and order represent precisely the form in which the given mode of production is consolidated and therefore the one in which the latter is emancipated from merely a chance and merely arbitrariness". (1)

In a most general form, criminalization of acts can be defined as a social and juridical process of identifying those acts of individual conduct which can be deemed dangerous for the dominant social relations, and qualifying them in law as criminal, criminally punishable, and unlawful. The nature of the process depends on that element of the social (class) consciousness which constitutes the social (public, state) scale of normative values. The social qualification of an act committed by an individual as socially dangerous is predetermined by both its objective attributes, and by a set of criteria, included into the system of norms, values, ideals, etc., which are shared by the social entities, such as group, class, social stratum, society, and state. The qualifications given to separate acts of conduct may be sharply negative, socially neutral, or maximally positive. A graphic example of the scale of values can be provided by the rules of law which, while protecting the most important social values, tend either to encourage positive behaviour (norms regulating distribution of material goods, depending on the degree of social usefulness of the contribution made by individual acts) or punish socially dangerous acts of behaviour (norms of criminal law). Such scales of values, though not formalized, also exist as moral norms, professional ethics, etc.

Taken in combination, the standards of values represent the socio-psychological scale of values, through which a concrete behavioural act is refracted and is assigned thereby to a definite category from the positions of law, morality, professional ethics, etc. The value criteria are to be found at various levels: on the most general level, law consciousness of society as a whole; on the level of the state, juridical importance (in a class society, from the position of a respective class); and on a more concrete level, within the framework of smaller social groups.

The social scale of values assigned to individual acts of behaviour, the criteria for such assignment are determined immediately by the system of social values existing in the given society. It is characterized by one property which is a very important one from the point of view of identifying the regularities inherent in the process of criminalization - and namely, the disparity in the continuum of the gradually changing value criteria which arises at one point thereof where it becomes necessary to make a distinction between non-criminal and criminal acts of conduct of individuals. The foregoing point can be characterized by two moments. On the one hand, in the objective reality, the distinction between the criminal and non-criminal as made in application to the substantive properties of acts or conduct of individuals does not appear as a clear-cut and single boundary (one gradually passes over into the other), while, on the other hand, in the social consciousness (the social scale of values is precisely this kind of phenomenon) this distinction acquires the importance of a qualitative leap signifying the transmutation of the act from a normal one in its very essence into an objectively criminal one. This assignment of a quality, a property of reality to a value (as also to other abstract, value categories), and the fusion of the values with the material substrate of the act in the social consciousness, as also the identification of the concept of the subject with the subject itself tends to bring about a "materialization" of the concept. Of course, viewed on a general philosophical plane, the concept of the subject and the appraisal thereof are different things. But the concept of crime, as taken in this sense, appears to be rather unique: the concept and the value are fused here into a single whole because qualification of an act as a criminal one means, at the same time, its clear negative social appraisal.

But though committed in a society and arising in connection with, and in pursuit of, certain objectives by the subject, the acts committed by the individual begin to acquire a social quality only exogenously - in the course of interaction with society, its norms and values, and not originally, not in their substance.

The obviousness of this proposition can be clearly confirmed by the high variance in the criteria by which those acts are judged in the conditions of various cultures, historical epochs or even within the framework of various social classes, strata and groups.

However, within the framework of the given epoch, given culture, given social group, community (in the sphere of everyday consciousness) there does arise an illusion that acts of conduct are already subdivided originally into positive and negative, virtuous and criminal, in their very substance.

But from the principle of historicism, from the recognition of the fact that the value criteria as applied to acts of conduct of the individual are conditioned socially (socio-culturally), there follows also another proposition, and namely to the effect that the process of appraisal (though not always realized) constitutes the initial stage in the operation of the social control system, and that, in its essence, social control begins precisely from the moment when an importance, and a social meaning is attached to acts of conduct of individuals, and those acts are appraised from the positions of the social whole.

The socially acquired qualification of the essence of an individual act, its first important feature, signifies the first stage, and the first step forward in the process of the functioning of the social control system. Another important feature of an act or behaviour of the individual consists in its adaptive function. Arising (evidently) spontaneously in the course of an active interaction of the individual with the social milieu, the acts of individual conduct are consolidated in, or removed altogether, from the behaviour of the individual in the course of his response to the way the respective social milieu (group, stratum, class, or society as a whole) reacts to some of his acts or other. The nature of reaction depends on the degree to which the given act is appraised as useful or detrimental by the social entity.

Thus, the identification of the social quality of an act of the individual conduct, the social appraisal of its meaning and significance, represents a form in which the society, the social whole reacts to it and also the first stage of social control, because repetition, change or discontinuation of individual acts in the future depends precisely on the nature of the above-mentioned reaction to them from the social milieu.

In the same way, acquisition by the act of a criminal quality (property) is a form in which the state reacts to the commission by an individual of an act dangerous to society (the dominant class) and also is the first stage in the process of criminalization of this act.

What lies at the basis of this process is the degree of danger the given act may be deemed to represent for the society as a whole and, above all, for the interests of the dominant classes in particular.

The relativity (social derivation) of the concept of crime manifests itself not only in the relativity of the legislative definition of the concept (and thereby in the relativity of the division between the criminal and law-abiding), but also in the relativity of placing definite kinds of conduct in the category of crimes or in the category of other social order violations. The boundary between legal order and social order is, on the whole, drawn by law, rules of law. This boundary should be, in its very nature, absolute, substantive and real for determining the form of reaction by the state and society to the commission of a certain act (criminal punishment or moral censure). This is one of the principal guarantees of legality in dispensing justice and herein lies the universally obligatory nature of law.

Viewed from broader sociological positions, this boundary is socially derivative, relative, and is without any immanent substance, and a special "juridical" reality. At the same time, though socially derivative, this boundary is not arbitrary because "the law must be founded upon society, it must express the common interests and needs of society - as distinct from the caprice of individuals". (2)

A definition of what is criminal and what is not criminal, what is criminally illegal and what is only immoral, is subject to a constant change from society to society and from epoch to epoch: "at the same time, when the English stopped burning witches at the stake, they began to hang forgers of banknotes". (3)

In the middle of the century the gravest crime was sacrilege - defamation of God, defilement of sacred things, then atrocities and sodomy, and only after that murder and theft. In Egypt and Greece, leaving dead parents without burial was a crime; according to ancient Hebrew laws, the gravest crimes were idol-worshipping; sorcery; summoning spirits and disobedience to parents. The stake, capital punishment or hanging awaited those guilty of false prophecy, criminal conversation, etc. "The system of virtues as also that of crime and vice is subject to change with the course of history", wrote the French sociologist and criminologist G. Tard. (4)

Tard raises the question as to whether there exist "instincts" and "natural propensities", which were connected with some specific physiological structure of man and were at all times and in all social organizations regarded as "detrimental, anti-social and criminal". His answer is in the negative, and he admits only that certain acts such as

murder or theft but precisely among persons of their own social groups were viewed as criminal at all times. But, on the whole, the nature of criminality is subject to change. As the legislation and social structure undergo changes, so do the forms in which criminality manifests itself.

"The only accurate and clear thing - I would not say the only one or the best - he wrote, definition of honesty or dishonesty may consist in the fact that an honest man is a conformist and a dishonest man - a dissident in relation to the habits or the public opinion of the given country and the given time. Thus, while viewed today as an evil, dissentience can turn a man tomorrow or the day after tomorrow, into an apostle or a hero ... " (5)

The concept of the criminal depends on the expression of will, opinion, desires, views existing in the social groups. The criminal nature of an act is "established by the dominant respected opinion of the members of that conscious group in which the act has taken place". (5)

E. Durkheim also proceeded from the thesis to the effect that there were no acts criminal per se, irrespective of the way the society may appraise them. Those acts do become criminal in nature not because they possess certain intrinsic qualities but only in connection with the definition the collective consciousness imparts them. In developing the thesis that crime was what the society at the given stage of its development recognized as criminal, Durkheim indicated that, according to the law as it existed in Athens, Socrates was a criminal and his condemnation had an unquestionable ground in the law as it then existed. "However, his crime, namely, the independence of his thought, rendered a service not only to humanity but to his country. It served to prepare a new morality and faith which the Athenians needed, since the traditions by which they had lived until then were no longer in harmony with the current conditions of life" . (6)

However Durkheim followed Tard in admitting that the central socio-political concept of "the will of the dominant class" as the immediate source of law in a class society could be superseded by the socio-psychological "collective view" concept.

Durkheim pointed out that the "liberal philosophy had as its precursors the heretics of all kinds who were justly punished by secular authorities during the entire course of the Middle Ages and until the eve of modern times". (7)

In modern American sociology the problem of social conditioning of prohibition under criminal law is raised within the framework of the interactionists' school. Most extremely, the position of this school has been expressed in the words of Richard Quinny: "No behaviour is criminal until it

has been so defined through recognized procedures of the state. In this sense, the "criminal behaviour" differs from the "uncriminal behaviour" only according to definition that has been created by others. It is not the quality of behaviour but the nature of action taken against the behaviour that gives it the character of criminality." (8)

A more cautious position has been taken by Jerome Skolnik who believes that there is still a group of criminal acts which are criminal by virtue of the danger they carry for all (robbery, murder, etc.). (9) As it would seem, however, even murder cannot in itself be placed in the category of crime in all cases, irrespective of its qualification. Thus, the interdiction "thou shalt not kill" does not apply to cases of war, suicide, necessary defense (whose boundaries are always indefinite), euthanasia, interruption of pregnancy, capital punishment by the sentence of the court, etc.

The same thought was expressed by E.Ya. Nemirovsky who wrote that "far from prohibited, killing of deformed children in Ancient Sparta was even made into law; killing in pursuit of vendetta was considered as a debt until recently". (10)

A number of sociologists underestimate, in this sense, the role of so-called institutionalized (i.e. legitimized) violence, i.e. cases when killing is construed as a security measure. Institutionalized violence, including killing, is thus stable and raised to the status of a system that can turn out far more destructive than any kind of deviant behaviour (suffice it to recall here fascism and other varieties of "ruling criminality"). Klaus Mäkelä, a Finnish criminologist, thinks identically when he points to the following fact which is of no small importance: "penal definition of violent crime, through linguistic-ideological structures, influences the way of thinking, so that structural violence is not comprehended as a problem." (11)

The attempts to point to certain acts as criminal for "all ages and all peoples" (the so-called "natural crimes") have been completely unsuccessful.

In the view of the American socio-anthropologist Margaret Mead, the only social norms which enjoy universal recognition are some (though different in their nature) limitations on killing, certain property rights and prohibition of incest. (12)

The conventionality of boundaries between the criminal and non-criminal shows up in both the objective elements of crimes and also their subjective elements. The conventional character of the limits of crime finds its reflection in the general principle of the Soviet criminal law to the effect that if the significance of an act or omission is

too small to be deemed socially dangerous, it is not a crime though, formally it may contain the attributes of an act provided for in the criminal law. The determination of the boundaries of the "significance" of the danger and its minimal limit beyond which crime "begins" amounts to a value judgement ideally pointing to that which exists in reality as a gradual transition (amount of damage to property; amount of damage sustained by the given person; the degree to which the given person is capable of realising the import of his acts or to regulate them; the limits of necessary defense, etc.).

The criminal law should strive to draw a single line of demarcation between the criminal and non-criminal (in principle, the act cannot exhibit "a little of both") for it otherwise cannot be applied because the machine of justice may bog down in an endless process of drawing distinctions between degrees. Such is a principled peculiarity of the rules of law which places the latter apart from other social norms and values. Moral judgements do have their gradations and transitions; legal prescriptions are single and accurate ones because, if the rules of law are not single and are not definite enough, their application becomes impossible. If law ceases to be accurate and single it ceases functioning as law. Just to the extent to which the boundary between the criminal and non-criminal is allowed to be blurred in the criminal law, the latter weakens the emancipation from "a mere chance and mere arbitrariness" which represents an essential and principled attribute of law which consists in applying the same yardstick in individual concrete (and in this sense always peculiar and unique) situations. If the abstract value categories of law begin to be identified with what they are intended to denote, if definite acts of individual conduct are ascribed "criminal" qualities, irrespective of their social appraisal and if the existence of criminal acts without their appraisal by the society and the state is thereby implied then what we have is the "materialization" of the concept of crime. In this case, the social realities recede to the background, and are distorted, a sociological appraisal of the criminal law is not made adequately, and its social, and class functions are not identified completely enough.

The tendency towards creating definite, single models of conduct in the sphere of criminal law that operates in it objectively (and unavoidably) implements a number of important functions. Some of them relate to obvious and realized functions while others - to latent ones. Identification of such functions calls for analysing social consciousness categories (making substantial contribution to the social regulation of conduct), such as the socio-psychological stereotypes of crime and the criminal. Such pre-established stereotypes characterize definite social interactions. They are both a product of, and the condition for, interaction of this kind. Being implemented with larger or lesser

constancy, they go to make up certain structures (group, intra- and inter-class interactions, etc.). "In this sense, the group structure relates to established evaluations of definite relations between individuals ("value patterns")." (13)

Those properties of social stereotypes (either as the product of, or the condition for, coordination of individuals in the course of social interactions), their role as value patterns in determining the conduct of people, the nature of their public activity (including that in the course of decision-making preceding criminalization and decriminalization of individual acts) are associated with such features exhibited by the stereotypes as their intensity and the extent to which they have been fixed in the social consciousness. The stereotypes of social consciousness exhibit an obvious emotional colouring and also a specific and experimentally established quality which is denoted as a stable tendency towards separation and absolutization of extreme characteristics of certain acts and the people committing them, and towards subdividing the object of perception into "black" and "white". The stereotype is an element of a far more complicated entity - the social attitude, i.e. a special state of social consciousness through whose prism the characteristics of the social milieu and the given situation are refracted. The nature of the social attitude immediately predetermines the nature of the reaction of the community (group, class, nation, society, state) to the social situation under appraisal (in our case - in the course of the reaction to the acts which are an object of criminal law judgement).

Among the peculiarities of the stereotypes as special elements of social attitudes, one can identify stability, emotional (affective) intensity, the tendency towards polarized judgements, the ability to associate and integrate the consciousness of the community members. A stereotype is "an image which is polar in sign, ultimately fixed, allowing not a shadow of doubt in its truthfulness, and encouraging to a strictly singly oriented act: "with us or against us". (14) As applied to the process of criminalization, the social stereotypes of public consciousness lead to polarized judgements regarding the individual acts of the type such as good and evil, criminal and non-criminal. In the conditions of an antagonistic class structure, the stereotypes of the crime and the criminal implement a real social function of maintaining and ensuring the so-called social distance. The social distance is a concept which is used to denote the intensity of interaction between people and as a measure of their proximity (frequency of contacts, duration of contacts and the degree to which the individuals are integrated into some or other communities).

In case when the social distance is minimal, the idea about the participants of the interaction is, invariably, highly individualized, concrete and less stereotyped. But if "the social distance is considerable man sees in another person only a particular case of a definite social category". (15) The relationship between the degree of social distance and the stereotypes of the crime and the criminal is reciprocal. The stabler, the more intense, and polarized the idea about the criminal and the crime of definite kinds, the greater is the distance between the people of such category and the given stereotype. And the farther the participants of the given social interaction stand from one another (the greater the social distance between them) the more stereotyped and single-sided is their view of one another and the acts committed by them. Such a stereotype naturally draws its content from the sphere of social realities which always refract through the prism of the social (group, class) consciousness. Identification of this social conditioning of stereotypes, and their functions in consolidating the social structure of the class society by maintaining the social distance between classes of the given society is done by means of studying those stereotypes of the crime and the criminal which are shared by the dominant public opinion.

The study of the stereotypes of the crime and the criminal that has been carried out in the FRG by G. Smaus in the Institute of Law and Social Philosophy in Saarbrücken (16) confirms the following hypotheses: 1) the social function of the criminal law consists in protecting the vertical structure of society and the substantial differences in the distribution of power and resources; 2) the concept of "norm" expresses the dominant mode of goods distribution (while violations of the norm mean that this order has been infringed upon). Proceeding from the fact that the social consciousness imparts those concepts a socially conditioned meaning, there have been identified, within the framework of the study, the dominant stereotypes of the "typical" and "real" crime and the typical criminal. The interviewed placed in the category of real crimes theft and burglary, robbery which, in majority of cases, are committed by representative of the "lower classes". Failure to pay taxes, and other economic crimes were not mentioned at all as real crimes. Even killing was appraised as a "not quite real" crime because a stereotyped view of the criminals of this kind incorporates the opinion that such criminals have "a psychological deviation". In this case the stereotype of the crime and the criminal brings about a spontaneous decriminalization of such acts in the public consciousness. The conclusion made by the researchers is that only crimes against property committed by people from the lower classes are "real" crimes in the dominant social consciousness.

Under the conditions where class antagonisms do not exist, the social stereotypes of this kind become devoid of the specific validation of this kind, though they do exert their effect in the sphere of public consciousness. To the extent to which the social stereotypes tend to reflect the social realities, they do serve as a means whereby the individual conduct can be organized but since they reflect realities in a stereotyped (simplified) fashion they themselves are in need of being studied and critically appraised.

Criminalization and individual consciousness. The very fact of awareness of the content of the given norm of the criminal law on the part of the person (as a person complying with the given prohibition, and also as a person violating the prohibition) bears witness to the interaction taking place between any person and the social norms of modern culture as a whole and also norms of the criminal law, in particular. Cases when the commission of crime by a responsible person and one of sound mind would not be realized by him as a fact of infraction of the criminal law norms do not exist. This circumstance does have its effect upon the way the subject makes its self-appraisal and upon his self-consciousness - and through it upon his subsequent behaviour. Identification of the characteristic features of this effect means laying bare the most important stage in the process of social control, a stage of the criminalization process. A true social effect, the result of the criminalization process consists in the contribution made by the criminal law into a greater ordering of social interaction and into the consolidation of dominant social relations. The influence the criminal law, the rules of criminal law exercise upon the consciousness and conduct of society members, represents a specific aspect of the regulation of this kind. In the very nature and the result of such influence upon self-consciousness and conduct, there comes to light the real social meaning and importance of individual concrete criminal law decisions and the entire process of criminalization as a whole.

In declaring some or other act as criminal, the criminal law formulates or supplements the system of social values which provide the rallying and uniting point for the members of the dominant class or a majority of members of the whole society. At the same time, the law formulates also the "anti-values", i.e. gives a definition of those kinds of conduct which oppose the social values. Those aspects of the social functions of the process of criminalization can be realised in connection with the formation of the law-abiding, on the one hand, and illegal self-consciousness and conduct, on the other.

In relation to a majority who do not commit crimes and against whom criminal proceedings are not instituted, a positive aspect of the social function of the criminaliza-

tion process manifests itself in the existence and operation of the criminal law. As if indirectly, the criminal law does form and consolidate the law-abiding self-consciousness and behaviour. In relation to a minority who commit crimes and against whom criminal proceedings are instituted, the negative aspect of the social function of the criminalization process manifests itself in the existence and operation of the criminal law. In negatively appraising the conduct contradicting the dominant social values, the criminal law contraposes the majority conducting themselves in a law-abiding fashion and the criminal minority. This kind of a negative aspect of this process social function manifests itself in connection with the personification of the criminal stereotype, i.e. the emergence in the social consciousness of a supposed image of a "true criminal" ("typical thief", "true murderer", "true hooligan") and also in connection with identification of one's self with this image of concrete persons condemned for the commission of crime. Personification of the criminal stereotype is a process that is going on in social consciousness to end up in the emergence of a generalized, stereotyped image of the crime and the criminal. The identification of one's own self with such a personified stereotype of the criminal is a process that goes on in the individual consciousness (often not realized fully).

In utilizing the semantic differential method (17) in the process of research into the way criminals make their self-appraisal, Soviet psychologists (18) have obtained important results throwing light upon the socio-psychological effect that the qualification of the given act as a criminal one under the law and of the person himself as a criminal of some or other category, may have upon the self-consciousness of that person. In this way, the negative, and disuniting aspect of the social function of the criminalization process has been identified. The persons under study were broken down (in accordance with the crime committed) into two main categories: those condemned for violent crimes, and those condemned for pursuit of mercenary motives. Both the self-appraisal as made by criminals themselves and their appraisal by other people were subjected to study. In their content, the appraisals reflected the characteristics of moral traits, of interpersonal relations, the peculiarities and dynamics of the nervous system, etc.

In analysing the most frequently occurring attributes for each group of the criminals, the researchers noticed that they "form a complex of features opposite to the traditional view about some or another criminal" (19) i.e. in relation to the criminal stereotype. For example, for the criminals in the mercenary category, the attributes which stressed generosity, disinterestedness, etc. were found to be of greatest importance. The fact that the given act has been placed by law in the criminal category and the place-

ment of the given person among the criminals as a result of application of this law reflect an authoritative and very low appraisal of the personality of the given man. If the man is indifferent to that appraisal, the latter is ignored by him, and does not affect his self-consciousness, a sharp reaction of such a kind to the low appraisal (an intense emphasis on "polar characteristics") does not arise. And, on the contrary, a reaction of this kind should be considered an obvious indicator of the real effect the criminal appraisal of the given person under law may have upon him, and his self-consciousness. In this situation, there tends to arise what can be called the "negative identification with a criminal stereotype" (a social appraisal acquires a "back orientation").

As do other members of society, the offender too shares the categories of the criminal stereotype. The commission of crime and condemnation for it raises a dilemma before the offender: either to reject the criminal stereotype or identify himself with it. While illegal, criminal behaviour is nevertheless conformist, if viewed at a deeper, sociological level, because no criminal is capable of rejecting the view shared by a majority of the society members regarding what is criminal and what is not. In principle, they, like all the rest, share the dominant ideas of such a kind. Criminals do not embody any "alternative" value systems (a thief appropriating somebody's property does not deny thereby the institution of property, etc.). And he is likewise unable (at least at the rational level) to adopt the criminal stereotype literally only because of an undeniable and sharply negative appraisal. Nevertheless, an exaggerated ("hysterical" in the words of psychologists) self-appraisal is evidence of that real effect the criminal norm under the law really has upon the self-consciousness of the person.

The essential importance of criminal norms under the law in terms of forming the self-consciousness of the person stems from the fundamental sociological provision to the effect that in order to be able to judge himself "man first sees and recognizes himself in other men", (20) i.e. he does not have any other source for moulding his self-consciousness (and self-appraisal) except the people surrounding him, the people of significance to him. Those "other men" include not only participants of the immediate interaction. Man makes his judgement of himself also on the basis of such social actions in which the appraisal of him as made by the respective social entities - groups, classes, the society as a whole, and the state - finds its embodiment. The criminal law, its contents necessarily make their contribution to moulding the self-consciousness, especially in case of its application to the given person in reality.

The self-consciousness of the individual and his self-appraisal determine his conduct to a great extent. The negative identification with the criminal stereotype demonstrates that application of the criminal law lowers self-appraisal, and criminalizes the self-consciousness of the given person. The higher risk of recidivism on the part of earlier condemned persons compared to those who have fallen within the ambit of the criminal law for the first time, as a fact well known to criminologists, apart from other important objective circumstances and difficulties of resocialization of such persons, can also be explained by the negative and disuniting aspect of the social function of criminalization, and, namely, the influence of criminal law upon the criminalization of self-consciousness of those persons.

The social functions of the criminalization process are characterized by the inner discrepancy. On the one hand, the criminal law cannot avoid the consecutive "criminal - non-criminal" division, the "good and evil" polarization rooted in social consciousness stereotypes, because in delineating the "evil", the criminal law concretizes, consolidates and confirms the social importance of essential social values, protected by the force of the state. If the effect of polarization is weakened, and the boundaries between the criminal and non-criminal are blurred, this may negatively affect the social morality and legal consciousness. The criminal law promotes thereby the moulding of socio-psychological behavioural guides, stabilization of social relations, preservation and consolidation of the existing social, class structures (the stabilization function of the criminalization process). On the other hand, the criminal law cannot be identified with the stereotyped categories of social consciousness. The social derivations and the historically conditioned categories of law cannot be viewed as eternal and unchangeable "objective" substances ("things"); otherwise the materialization of the concept of crime can close the way to a constant and unavoidable critical reappraisal of the given concept, and bringing the criminalization process (and, of course, decriminalization) in line with the pressing needs of social development, with the changing social conditions, values, and ideals. The criminalization process should be oriented towards the social realities, and above all, towards possible social consequences which may find expression in purely economic categories, and, what is most important, in the form of socio-psychological costs. Among them, the socio-psychological effect of criminalization of the self-consciousness of persons falling within the ambit of the criminal law occupies a place which is of no small importance.

The social relevance of the criminological theories depends on the place the theoretical analysis has come to occupy in the sphere of social realities, on the critical revision of

the stereotypes of "the crime" and "the criminal". In timely reaction to the social realities, the criminalization process does influence the development and improvement of social relations, and updating the existing social, class structures (the dynamic function of the criminalization process). A concrete combination of the stabilizing and dynamic functions of this process is bound up indissolubly with concrete historical conditions in which the development of social functions as a whole takes place, with the nature and alignment of the class, political forces in society, the type of the dominant ideology and the orientation of the state policy.

The functioning of the criminal law brings about the criminalization of the self-consciousness of individuals and herein lies its limited nature and inadequacy as compared to more perfect and socially significant regulators of behaviour, among which mention should be made, in the first place, of the moral regulation. Moreover, to a certain extent, the criminal law can lower the effectiveness of the ethical regulation, because "the image of self as a certain value corresponding to a positive ethical standard constitutes that central psychological entity which, psychologically, ensures the ethical regulation of individual conduct". The ethical progress of society should evidently be characterized by such kind of changes of the social structures and the refashioning of socio-cultural stereotypes that would make it possible to replace, to a growing extent, the criminal law as a means of social regulation based on negative appraisals by ethical control based on strengthening and developing positive realization and appraisal of his self by man on the basis of higher ethical values.

NOTES

- (1) MARX, K. and ENGELS, F.: Collected Works, vol. 25, part II, p. 356-357 (in Russian).
- (2) MARX, K. and ENGELS, F.: Collected Works, Progress Publishers, Moscow, 1979, vol. 8, p. 327
- (3) MARX, K. and ENGELS, F.: Collected Works, Moscow, vol. 23, p. 765 (in Russian).
- (4) TARD, G.: Sravnitel'naya prestupnost (Comparative Criminality), Moscow, 1907, p. 33.
- (5) Ibid, p. 235.

- (5) TARD, G.: Sravnitel'naya prestupnost' (Comparative Criminality), Moscow, 1907, p. 235.
- (6) MARVIN, Ed., WOLFGANG, E. et al.: "The Sociology of Crime and Delinquency".
- (7) Op. cit., p. 12.
- (8) QUINNY, R.: The Social Reality of Crime. Boston, 1970, p. 207
- (9) Politics and Crime, ed. SYLVESTER, S. jr., SAGARIN, E., N.Y., 1972, p. 12-13
- (10) NEMIROVSKY, E.Ya: Sovetskoye ugolovnoye pravo (The Soviet Criminal Law), Odessa, 1925, p. 51
- (11) Scandinavian Studies in Criminology, vol. 3, Oslo, 1974, p. 53
- (12) MEAD, M.: Anthropological Considerations Concerning Natural Law, Natural Law Forum, 1961, vol. 6, p. 54.
- (13) GIBSH, G. and FORWEG, M.: Vvedeniye v marksistskuyu sotsialnuyu psikhologiyu (Introduction to Marxist Social Psychology), Moscow, 1972, p. 267. See also CHAPMAN, D.: Sociology and the Stereotype of the Criminal, Tavistock Publ., 1969
- (14) SHIKHIREV, P.: Sotsialnaya ustanovka kak predmet sotsialno-psikhologivheskikh issledovaniy (Social Attitude as a Subject for Socio-Psychological Studies). - In: Psikhologicheskiye problemi sotsialnoi regulyatsii povedeniya. (The Psychological Problems Involved in the Social Regulation of Behaviour), Moscow, 1976, p. 289.
- (15) SHIBUTANI, T.: Sotsialnaya psikhologiya (Social Psychology), Moscow, 1968, p. 307.
- (16) SMAUS, G.: Everyday Theories on Criminology among the German Population with regard to Marginalization, IX International Congress of Social Defence, Caracas, 1976 (mimeographed copy).
- (17) The method is based on selection by the experimental subjects of an adjective from a respective number thereof whose meaning might, in their view, find their expression in definite concepts to a greater or lesser extent. The adjectives are contrasting in meaning (antonyms - "honest - dishonest", etc.). The results are processed mathematically.
- (18) BATOY, V.I. and KONSTANTINOV, N.Ya.: K voprosu

izucheniya samootsenki prestupnikov (Apropos the Study of Self-Appraisal Made by Criminals). - In: Psikhologicheskoye izucheniye lichnosti prestupnika (Metody issledovaniya) (Psychological Study of the Personality of the Criminal) (Methods of Research), Moscow, 1976, p. 115-143.

(19) Ibid, p. 132

(20) MARX, K.: Capital, Progress Publishers, Moscow, 1978, vol. I, p. 59.

Aleksander Yakovlev

CRIMINAL JUSTICE AS AN ALTERNATIVE IN DISPUTE SETTLEMENT

The true assessment of the position of the criminal justice system in a given society can be made in connection with scientific sociological research on conflicts (disputes) which arise in everyday situations and which call for the application of the specific norms regulating dispute settlement. An example of this type of research was conducted under the auspices of the European Coordination Centre for Research and Documentation in Social Sciences (the Vienna Centre). The participants in the project included representatives from Belgium, Bulgaria, Denmark, France, the Federal Republic of Germany, Great Britain, Hungary, Italy, Poland, USSR and Yugoslavia.

The theoretical framework resulting from sociological research on alternatives in dispute settlement can be applied to the problem of the evaluation of the actual functioning of criminal justice in the broader area of social control.

The experience which has been gained from participation in this international research project permits the opinion that the most fundamental problems of any criminal justice system (as well as many other problems of law and law enforcement) can scarcely be explored at all without the appropriate sociological research. It is not possible to explain a given system while trying to remain within its boundaries. In order to understand a system better, it is necessary to place this system against the background of a broader, general category. In our case, this general category is that of the socio-cultural system where the needs and dispositions give criminal justice its real meaning and significance.

This paper outlines the research in question as well as its main theoretical results. In doing so, it is hoped that an answer will be provided to some extent to some of the questions mentioned in the Discussion Guide prepared by the United Nations Crime Prevention and Criminal Justice Branch: "Have any measures been adopted in order to reduce the potential or actual conflicts between indigenous traditions and institutions and existing codes and legal statutes? Or have studies been conducted on these issues?"

It is also believed that the results of the research strengthen the opinion expressed in the Discussion Guide that "discussion on these questions will assist in the formulation of institutional and other reforms which will

contribute to make the criminal justice process more suited to existing social needs and more responsive to current changes".

It must be pointed out, however, that the problems outlined in the Discussion Guide are somewhat restricted by the boundaries of the criminal justice system itself. The Guide calls for a "more comprehensive and integrated approach to criminal justice", for the "consideration of criminal justice and its component parts as a whole, i.e. as a system". But, first of all, criminal justice itself is only a part of the general machinery of justice, which includes for example the civil and administrative branches. Secondly, the real criminal justice system, when looked upon not merely as a set of rules and institutions but as a real and active social phenomenon, is but one element in a constant process of interaction between this system and the people. The system is responsive to their needs, dispositions and demands.

We believe that it is very useful to look at the criminal justice system, first of all, in connection with the other branches of justice and, secondly, in its interaction with the population.

The focal point of this interaction is the situations which arise in real life and which call for the intervention of the law. Such situations most typically express themselves in the context of dispute settlement. Broadly speaking, criminal justice systems typically react to conflict situations. It would seem very useful to try to understand under what conditions people consider that a given conflict requires state intervention and, if it does, should this intervention be by the criminal justice system or some other system, and should the norms applied be official or traditional. Other similar questions could be raised.

The study of dispute settlement, in other words the study of the ways and means of resolving incidents and conflicts which arise in the course of everyday interaction with other people, permits an investigation of the essential sociological aspect of the functions of the criminal justice system. Of course, this approach does not allow us to deal with the main body of incidents which are easily recognized as crimes, but even so, it has considerable advantages. The object of study here is the "twilight zone", in other words the incidents and conflicts which can be interpreted in one of many ways (administratively punishable violations, torts in civil law, purely private matters which are liable only to mediation by an unofficial agent, and so on).

Consequently, this approach will allow us to see under what circumstances the criminal justice system is called into action, and what makes it more preferable for the parties

concerned to resort to the other alternatives in dispute settlement.

Even more, the clarification of this problem has broader significance from our point of view. If we are able to obtain a wider understanding of under what circumstances the "criminal justice" type of conflict resolution either goes or does not go into action, then we will learn something essential about the functioning of the criminal justice system itself, because the choice of alternatives in dispute settlement is but one part of the prevailing attitudes regarding the system of justice as a whole, including the criminal justice system.

As has been aptly stated by H. Bredemeier, "the function of law is the orderly resolution of conflicts".(1) Such conflicts may take different forms: as conflicts between individuals seeking a resolution under civil law, or as a conflict between the state and the individual under the rules and definitions of criminal law. Indeed, if "the law must be founded upon society, it must express the common interests and needs of society - as distinct from the caprice of individuals"(2), and the function of law in this respect is "to contribute to integration through the resolution of conflicts".(3)

In 1980, a survey on "Law and Community Dispute Settlement" was conducted in two small towns in the Georgian Soviet Socialist Republic. The survey was based on a modified version of the questionnaire elaborated for two studies previously conducted in Poland (4) and Bulgaria (5).

The samples used in the survey were taken from among the inhabitants of the Georgian towns of Telavi and Tschinvali who, in some degree, were involved in disputes and conflicts in their communities.

Telavi is one of the oldest towns in Georgia. It is situated in the eastern part of the republic, in the foothills of the Gemborsky Mountains in the very centre of the Alozanskaya Valley. It is located in Inland Kachetija, the main traditional vine-growing and wine-producing region.

The mode of life in Telavi may be described as transitional: it illustrates the transition from village to town. Despite some external signs of urbanized life (such as the presence of social and educational colleges, the construction of the new parts of the town in accordance with modern styles of architecture and planning, and so on), the general modus vivendi and everyday life of the inhabitants remains closer to traditional rural norms. The numerous traditions of everyday life have their roots in ancient times, in different traditional ways of life and especially

in the vine-growing tradition. These traditions are alive throughout Inland Kachetija.

The second town, Tschinvali, is the centre of the autonomous region of South Ossetian. It is situated in a valley in the southern part of the region, primarily along the right bank of the Ziachvi River. Tschinvali may be described as a town of a mixed type: along with its administrative functions, it plays the role of an industrial, cultural and educational centre, with no one function dominating the others.

It is especially significant that, against the background of the considerable decrease in population in the entire autonomous region, Tschinvali is the only town with stable population growth. From 1959 to 1970, the increase was 40 %. The town is growing primarily at the expense of the rural southern parts of the region. In addition, Tschinvali is notable for some industrial growth when compared with the typically agrarian character of the rest of the region.

Telavi may be regarded as a settlement with a more homogeneous and stable population, with an emphasis on agriculture. It can thus be called a traditional type of settlement. Tschinvali is characterized by its heterogeneous and mobile population, and by its higher level of industrial development. It can thus be regarded as a modern type of settlement.

These two sociologically significant differences between the two settlements are accompanied by

- stronger, more individualized and more durable social ties and relations, by more effective informal social control in the traditional settlement; and
- more impersonal functional ties and relations, by more weakened informal social control and by its replacement with formalized social control in the modern settlement.

The results from the survey in each settlement shall be given below separately. In the cases where the differences are not sociologically significant, the data will be summarized for each settlement in turn. The data will also be compared with the corresponding data from the Polish and Bulgarian studies. (6)

On the basis of this data, the following features of disputes may be used in classification:

1. The disposition of the conflict: either property conflicts (about "things") or conflicts concerning moral prestige and values (about "symbolic objects").

2. The parties to the dispute: family disputes or local disputes in the "territorial" sense of the work (i.e. conflicts between neighbours and relatives).

The disputes may be classified also by community as shown in Table I.

Table I. Subject of dispute, by community (see note 7).

Subject of dispute	Community		Total
	Tschinvali (traditional) (in per cent)	Telavi (modern) (in per cent)	
Disputes caused by damage to reputation through insults	13.3	13.6	3.5
Disputes based on assault	8.3	4.9	6.4
Quarrels between neighbours	8.3	17.3	13.4
Disputes on the limits of ownership or property	60.0	37.0	46.8
Owner-tenant conflicts	11.7	7.4	9.2
Debt-related disputes	1.7	1.2	1.4
Conflicts with communal agencies over the poor quality of services renders	-	1.2	0.7
Conflicts with the administration of enterprises	6.7	4.9	5.7
Conflicts arising from professional relations with subordinates or superiors	1.7	-	0.7
Other disputes	1.7	6.2	4.3

Despite the variety of traits which characterize a social situation in which disputes are settled, two obvious sides can always be noted. On the one hand, there are the expectations and preferences of the disputants regarding the desired manner of settling the dispute (i.e. the expectations regarding one out of all of the possible alternative solutions). This is the subjective aspect of alternative

dispute settlement. On the other hand, the objective social structure reality includes, as inherent institutions, various procedures (both official and traditional) for dispute settlement. This is the objective aspect of dispute settlement.

The various combinations and interactions of the subjective and objective aspects of alternative dispute settlement are manifested in the functioning of the social control system, i.e. in the control over the dispute settlement. Criminal justice constitutes an essential part of this system.

The subjective aspect of alternative dispute settlement (the sphere of expectations) consists of the ascribing of a subjective sense and significance to the matter under dispute and of the subjective choice of the most appropriate principles of dispute settlement.

The ascribing of an individualized and subjectivized significance to the objective characteristics of the matter under dispute, and the clarification of this leads to the classification of disputes into various groups. When speaking about the objective characteristics of disputes, we (and some other researchers) refer to the classification and characterization of disputes in accordance with the objective features of the matter under dispute. In this connection, a subdivision of disputes into two major classes is the most evident classification:

- a) disputes about material objects and things (land, money, buildings and so on); and
- b) disputes about intangibles (reputations, the alleged indecent behaviour of neighbours, insults and so on.)

This approach should be enlarged from the point of view of the subjective significance and meaning which are ascribed to the matters under dispute by the disputants. This determines the choice among various alternative ways of settling the dispute; in other words, the subjective significance is manifested in concrete social actions. It would therefore be useful to single out two other groups of disputes and add them to the two groups already mentioned (disputes over material objects and disputes over intangible matters and social values). It is suggested that these two additional groups be classified on the basis of the subjective significance which is ascribed them by the disputants and on the basis of the concrete types of action which are predetermined by this subjectivized significance. Following this subjective approach, disputes may be subdivided into two groups:

- a) utilitarian (rational, instrumental) disputes; and
- b) non-utilitarian (emotional, expressive) disputes.

According to this classification, the social actions which are predetermined by the subjective significance ascribed to the matter under dispute, and which are undertaken in order to solve the dispute, will in their turn also fall into two groups:

- a) an instrumental mode of dispute settlement; and
- b) an expressive mode of dispute settlement.

In speaking of the varieties of disputes listed above (two with objective characteristics and two with subjectively assessed characteristics), it would be reasonable to assume that the following combinations of dispute characteristics are possible:

- a) utilitarian disputes about material objects; and
- b) expressive disputes about "symbolic" objects.

There are good reasons for recalling in this connection that the combination of "objective" dispute characteristics with subjective ascribed significance (a "perceptual" characteristic) is the most common. Indeed, the majority of disputes over land, money or property, indeed, have a rational and utilitarian character, while most often disputes on "matters of honour" are emotional, expressive and non-utilitarian.

The objective and perceptual characteristics of the matter under dispute makes the dispute more or less liable for settlement through criminal justice. Respectively, the substantive and evaluative characteristics of the matter under dispute would make it suitable for civil procedure.

As has been aptly stated by Thurman Arnold, law is "primarily a great reservoir of emotionally important social symbols".(8) Among all of the distinctions which can be made between criminal justice and other forms of adjudication, there is one that is of the greatest relevance for us in this connection: criminal justice is not called upon simply to compensate something or restore something, but to pronounce judgement on who is wrong, evil and guilty, and who is right, good and innocent. This moral bearing of criminal justice makes it suitable for serving a very important social need: it strengthens and symbolically upholds shared values and moral predispositions.

Consequently, since (and if) one may not easily compromise on matters of moral principles (as compared to morally indifferent matters), the next step after specifying the symbolic (emotional, affective) nature of the disputes which are more liable for resolution through criminal justice, is the specifying of what type of dispute resolution will lead to an "end product" deemed to be more suitable

for the parties concerned. It seems reasonable to argue that the most appropriate way of dealing with "material" (rational, instrumental) disputes can be the reaching of a compromise, and maximalistic (rigoristic) approaches would seem to be more conformable for "symbolic" (emotional, expressive), taking into consideration the above-mentioned characteristics of disputes of this type.(9)

We can now say that the criminal justice approach to dealing with disputes arises out of the symbolic meaning attached to the matter under dispute, and it is accompanied by the rigoristic attitude of the disputants.

However, it is not hard to imagine a situation where, although a matter of dispute had a strong symbolic value and the disputant has an extremely rigoristic attitude, he nevertheless does not turn to the criminal justice system for intervention. Such a situation may be due to the fact that the disputant "took the law into his own hands", and thus preferred to take an unofficial route, seeking to attain his aims of symbolic satisfaction outside of formal criminal law. In so doing, he may easily be transformed from the subject of the criminal justice process into its object.

Because of this, the subjective aspect of the criminal justice approach to dispute settlement has at least three constitutive elements: the symbolic meaning of the matter under dispute, the rigoristic attitude of the disputant, and the preference of the disputant for a formalized and official manner of settling the dispute.

Our research has indeed showed that the respondents varied in regard to all of the above-mentioned parameters of the alternatives to dispute settlement. Below, we shall compare the data from research in the Georgian Soviet Socialist Republic, and the Republics of Poland and Bulgaria.

A comparison of the data obtained in our survey with the corresponding data from the Bulgarian and Polish studies shows some rather important discrepancies in the attitudes of the respondents. In the Georgian survey, there is a quite evident prevalence of "maximalistic" and "legalistic" approaches as well as of rigid positions regarding the desirable outcome of the disputes, while the Polish study (10) demonstrated that the respondents there were more inclined to compromise, to applying the law more flexibly and to finding ways of settling the controversy informally (see Table II). A tendency very similar to that in the Polish study and very different from that in the Georgian data was also manifested in the Bulgarian study.(11)

Table II. Comparative data on preferences in dispute treatment (in per cent)

By what means would you prefer to settle your dispute?	Georgian towns (1980)	Oppolno (Polish town, 1977)	Poland (entire country, 1974)
1. By complete satisfaction of the just claims of one side, even if this doesn't suit the other	58.3 %	8	12
2. By mutual agreement resulting from mutual concessions	34.7	90	79
3. By settling the dispute in full accordance with the law, even if this doesn't suit all the interested parties	59.6	17	28
4. By finding a mutually satisfactory solution, even if the law is not strictly observed	38.3	80	59
5. By turning to official bodies authorized to ensure enforcement of their decision on the dispute	57.4	22	32
6. By taking the advice of persons not concerned with the dispute on how to act	34.1	73	52

In order to interpret the survey findings, it is necessary to single out two relatively independent dimensions regarding the possible subjective alternatives in dispute settlement.

The first dimension determines the expected mode and essential features of dispute settlement. These are the more or less commonly shared principles of dispute settlement. They include the following traits which may be arranged according to the decreasing level of maximalism in dispute settlement:

1. Absolute justice, which means the complete satisfaction of justified claims.

2. Absolute legality, which means resorting to litigation in strict accordance to the law, despite the possibility that someone may suffer because of this.
3. A compromise, which means partial concessions by both disputants.
4. Partial legality, which means the flexible observance of the law to the extent that this meets the interests of both sides.

The second dimension of alternative dispute settlement covers the external or formal procedural principles tied up with the availability (or inavailability) of the third party in the dispute, and first and foremost with the type of this third party - formalized (official) or informal procedure. These principles may be arranged according to the decreasing degree of formalization of the possible alternative procedures of dispute settlement. They include:

1. Turning to official state agencies (such as the militia and executive agencies).
2. Law suits (turning to the courts).
3. Turning to quasi-judicial institutions (comrades' court, conciliation or mediation commissions, and so on).
4. Dispute settlement with the help of non-official (informal) mediators.
5. Dispute settlement with no interference by a third party (the autonomous manner of dispute settlement).

The two dimensions mentioned above are relatively independent of each other. Even so, they may be combined in different ways, when the persons interested in a resolution of their dispute choose one of the possible alternatives. (12) Logically speaking, there may be four main alternatives of dispute settlement. This may be called the "ideal types":

1. A formalized rigoristic type, with complete satisfaction of claims in strict accordance with the law within the framework of official procedure (Type I). This is in essence the criminal justice alternative.
2. A formalized tolerant type, with mutual concessions within the framework of official procedure (Type II). This alternative is closer to civil law.
3. An informal rigoristic type, with complete satisfaction of claims with no application to official bodies and

with no formalized procedure (Type III). In this situation there is a tendency to "take the law into one's own hands".

4. An informal tolerant type, with mutual concessions without turning to official institutions and without formalized procedure (Type IV). This is the mediation alternative.

These positions may be outlined in the following scheme (Table III).

Table III. The subjective alternatives in dispute settlement.

The matter under dispute	The formalization of dispute settlement	
	Formal ways	Informal ways
Rigoristic type	I	II
Tolerant type	III	IV

The survey carried out by Naumova made it possible to demonstrate a direct positive correlation between the age of the respondent and a tendency to insist on the complete satisfaction of the claims of one of the disputing parties, despite the dissatisfaction of the other (formal law procedure and adjudication). (13)

In the course of the survey, also the differences in the preferences for alternative means of dispute settlement showed by the respondents in Tschinvali (the community typifying a transition from a traditional to a modern settlement) and by respondents in Telavi (the traditional type of community) were examined (Table IV).

Table IV. Preference of respondents for means of dispute settlement, by community.

Community	Dispute settlement alternatives			Total
	Preference for dispute settlement in strict conformity with the law despite possible dissatisfaction of one of the parties	Preference for mutual satisfaction of parties even if this is not in strict accordance with the law	No data	
Tschinvali	70.0 %	26.7	3.3	100 %
Telavi	51.9	46.9	1.2	100

The same differences may be traced in regard to the preferences in the procedure of dispute settlement (Table V).

Table V. Preference of respondents for alternative procedures, by community.

Community	Alternative procedure of dispute settlement			Total
	Preference for turning to authoritative body capable of enforcing its decision	Preference for help of know-how of third person to ensure that everyone is satisfied with decision, even if procedure is not in strict conformity with the law	No data	
Tschinvali	66.7 %	30.0	3.3	100 %
Telav	50.6	37.0	12.4	100

The differences cited may have two explanations:

- they may occur because of the correlation mentioned above between the age of the respondent and the favoured alternative;

- they may appear not only due to the difference in the age of the respondents but also due to the types of social interactions by which they are bound. These interactions in Tschinvali (the modern type of community) and Telavi (the traditional community) are different.

Table VI gives the break-down of the age of the respondents in the two towns.

Table VI. Age of respondents, by community.

Age of respondents	Community		Total
	Tschinvali	Telavi	
Under 25 years	13.3 %	6.2 %	9.2 %
25 - 35	8.3	13.5	11.4
36 - 45	10.0	19.8	15.6
46 - 55	18.3	17.3	17.7
56 - 65	28.4	28.4	28.4
66 and over	20.0	11.1	14.9
No data	1.7	3.7	2.8
Total	100	100	100

The table shows that there is no significant decline in the distribution of figures characterizing the two communities. We suggest that this makes it possible to single out and emphasize an independent variable such as the type of social interaction (the nature of social control) which affects tendencies in the preference given to one or another alternative in dispute settlement.

It would seem expedient to list separately the data on the levels of education of the respondents, as such a characteristic considerably influences the preferences of the respondents for a certain alternative in dispute settlement (Table VII).

Table VII. Level of education of respondents, by community.

Level of education of respondents	Community		
	Tschinvali	Telavi	Total
Primary	10.0	6.2	7.8
Incomplete secondary	23.2	19.8	21.3
Secondary	30.0	37.0	34.0
Secondary technological	6.7	2.5	4.3
Incomplete special secondary	6.7	11.1	9.2
Incomplete higher education	1.7	1.2	1.4
Higher education	20.0	16.0	17.7
No data	1.7	6.2	4.3
Total	100	100	100

The above data confirm our hypothesis which was formulated above regarding the independent significance of the type of community (and, consequently, of the type of social interactions) in the choice of alternatives in dispute settlement, as there are no noticeable differences between the inhabitants of these towns as far as the level of education is concerned.

The data from Dr. Naumova's study in Bulgaria (14) show that the preference given to one or another alternative is indeed influenced by the following rather important factors: the age and educational level of the respondents. The correlations are as follows:

1. Along with an increase in the age of the respondent
 - a) there is an increased tendency towards "absolute justice"
 - b) there is a decreased tendency towards compromises,
 - c) there is an increased tendency towards settling the dispute in strict accordance with the law,

- d) there is a decreased tendency towards flexible application of the law,
- e) there is an increased tendency towards resorting to litigation,
- f) there is a decreased tendency towards turning to informal mediators.

The preferences given to "taking into account the interests of both sides" and to flexible application of the law in the frame of formalized procedure means that, along with an increase in the level of education, there is a growing tendency towards the application of the Type II alternative (formalized tolerance). A mature age and advanced education favour positive attitudes towards formalized procedures of dispute treatment (such as law suits and turning to other official bodies).

On the other hand, a low level of education and a younger age favour informal procedures of dispute settlement.

It is interesting to note here that the only dimension which reveals a common tendency connected with both an increase in the level of education and with the increased age of the respondent is the "formal" one. As for the other rather essential criteria of dispute resolution, the tendencies take the opposite direction. The tendency towards "absolute justice", with no compromises, to dispute settlement in strict accordance with the law, increased along with an advance in the age of the respondents. At the same time, the tendency towards compromises in dispute settlement, towards the flexible application of the law increases along with an increase in the level of education. All of this speaks in favour of our hypothesis, framed above, of the relative independence of these criteria.

The interpretation of the data given above requires that the correlations between the level of education and the age of the respondents is revealed. If it is supposed that there is a positive correlation between these variables (and this is the most probable variant), it may be concluded that the increase in the level of education combined with a lowered age of the respondent leads to a preference for Type IV dispute settlement (i.e. for an informal, tolerant settlement of the dispute).

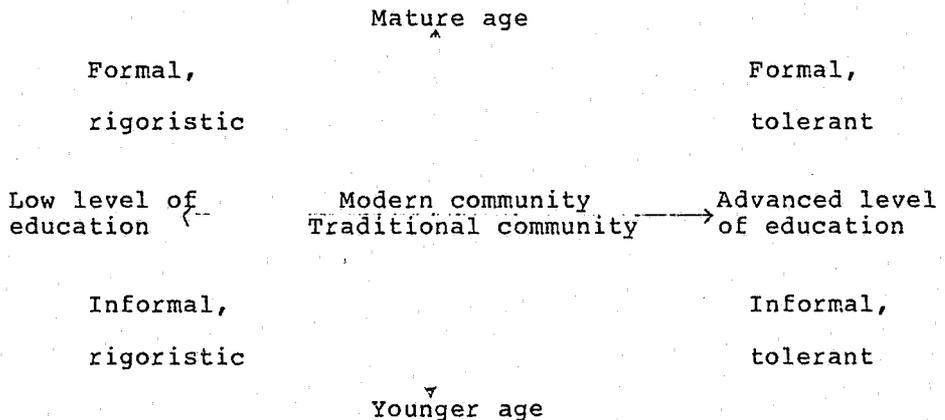
It can thus be said that

- 1) A mature age together with a low level of education is conducive towards a preference for Type I dispute settlement (the formal rigoristic type), the one most suited to the criminal justice system.

- 2) A mature age together with a high level of education promotes a preference for Type II dispute settlement (the formalized tolerant type), which is the civil law oriented attitude.
- 3) Younger age together with a low level of education contribute to a preference for Type III dispute settlement (the informal rigoristic type), which is connected with, for example, "kangaroo courts" and vendettas.
- 4) Younger age together with a high level of education contribute to a preference for Type IV dispute settlement (the informal tolerant type), which is connected with mediation.

People who are advanced in age and education are prone to preferring formal-tolerant methods of dispute settlement, and younger educated persons are prone to preferring informal tolerant methods. The elderly who are lacking in education are prone to preferring formal rigoristic dispute settlement (i.e. criminal justice)(15), and the young who are lacking in education are prone to preferring informal rigoristic methods. These are some of the conclusions which can be drawn in respect of the influence of age and education on the preferences given to dispute settlement alternatives. They may all be outlined as in the following scheme (Table VIII).

Table VIII. Distribution of subjective dispute settlement alternatives.



The over-all picture, however, becomes more complicated if we consider not only the characteristics of the disputants but also the characteristics of the disputes as well, i.e. its utilitarian or expressive significance for the opposing parties. If we are right in suggesting that rigoristic and maximalistic attitudes on the part of the disputants are more typical when the disputes concern symbolic and expressive matters ("matters of honour"), then this particular circumstance may lead to explanations of the preferences given by the Georgian respondents to formal rigoristic dispute settlement alternatives, as the age and educational level of these respondents do not differ from the samples in the Polish and Bulgarian studies.

Along with the impact of factors defining the subjective aspect of dispute settlement alternatives, its outcome also depends on the essential features of the objective possibilities of settling controversies, i.e. on the objective aspects of such alternatives. This aspect should be analyzed in the context of the functioning of the system of social control on the whole, as one of its functions is the function of control over dispute settlement. In saying this, we are following a theoretical scheme of the social control system which was elaborated in our previous study of the problem of the efficiency of law.(16)

An essential feature of social reality in the frames of which controversies arise and disputes are treated lies in the fact that there is always a third party in the dispute, i.e. the society, the state, social class or group whose norms and standards constitute frames of reference for the evaluation of the matter under dispute and its character, and for the choice of alternatives and the procedure for its settlement.

This inherent existence of the "invisible third party" alters the "two-track" (subjective) structure of the dispute (one side versus the other) into a more complex interaction of a tripartite (objective) character. In this, the third party is in opposition to the two disputants. In such a reality, the desires and attitudes of the disputants come face to face with objective social structure.

Already at the stage at which the controversy becomes a dispute, i.e. when an objective conflict of interest (or a conflict regarded as such) is "translated" by the disputants into specific legal language and is dealt with in the framework of rights and duties, then the third party comes into action and provides definitions, notions and categories which contribute to this transformation of a controversy into a dispute.

It goes without saying that such a transformation does not take place in regards to all controversies and situations. There should be at least minimal consensus between the

counterparts in order for this transformation to take place. This transformation is possible only in conditions under which there exist not only discrepancies in interest but also some shared norms for settling controversies, norms acceptable for the counterparts, no matter whether these are legal norms, traditional norms or any other modalities of social norms. If there is not even minimal socio-cultural homogeneity, no controversy can be transformed into a dispute. Under such conditions it can only result in an antagonistic conflict.

At least four essential positions can be marked out as producing an impact on the situation in which a controversy is transformed into a dispute:

1. The objective characteristics of conflicting interests, the degree of their compatibility (or incompatibility), and consequently the objective possibility (or impossibility) of their complete or partial conciliation.
2. The social status (and, primarily, class position) and roles of the disputants which they have in the social structure of the society.
3. The character and class structure of the society itself, the type of statehood, the specific nature of the particular social unit in the framework of which controversies arise and disputes are settled.
4. The perception and evaluation of the dispute by the participating parties from the point of view of its greater or smaller significance for their interests.

In case a controversy is transformed into a dispute, it becomes more accessible for regulation. It may remain rather acute, but even so, it will not remain mere struggle. It will be a dialogue conducted in a language which is more or less shared by the parties. Thus, the main function of the "invisible third party" (i.e. of society, class, social group, but primarily of the state and law) is to provide for this shared language and definitions which make the dispute and its significance exact, and which formulate the positions of the disputants.

It is at this point that we should certify the existence of the first stage of social control over disputes. It is evident that the dominating ideology and morals, the ruling system of law inevitably imposes over the disputing parties the definitions mentioned above, thus framing and formalizing in a certain manner the social reality in which the dispute is settled.

After a controversy is transformed into a dispute, the latter begins its specific development within the framework

of the system of social control, acquiring a definite legal character and falling into a concrete typological category. The social typology of disputes is defined by the value of one or another dispute modality for the social unit in the frames of which the dispute is settled. With regards to its social value, the dispute may be attributed to the range of civil cases, and then the initiative falls to the disputants themselves. However, it may be seen to be a criminal matter (or an administrative matter), which will then entail state intervention. Furthermore, the dispute may be evaluated as a moral and ethical one, calling for settlement through re-education of social reprimands in accordance with the norms and traditions of the dominating morals. Or, finally, the dispute may be defined as a private matter for the disputants themselves, and it will then be considered a matter which can be settled by them alone, not by anyone else. But even in this last variant (not to mention in all of the preceding ones) there will always be "invisible third parties" in the dispute, parties that determine both the category of the dispute and the alternatives in how it is settled. In all the cases, the concrete dispute is referred to one or another category after it has been judged on the basis of the social scale of disputes, ranging from those of "maximum value" to those of "no value at all" for a particular social unit (society, class, social group, state).

Now that the dispute has received a somewhat more concrete form and definition (i.e. after its has been referred to a certain category and labelled) it is ready to be settled. The "invisible third party" also takes concrete shapes and acquires, for example, the form of a court, an administrative agency or an informal mediator. The third party reveals itself through these concrete norms and criteria of dispute resolution, which should be applied in this particular situation.

This stage is followed by the next one - the stage in which the dispute is actually settled. Here again, the tripartite structure of the dispute is manifested in the nature of its solution. The tripartite structure comprises the characteristics of the disputants, their interests and claims, their social status and roles as well as the interests of the third party, i.e. the interest of the social unit, of its social and class structure. At this structural level, the dispute reveals such meanings and characteristics of the third party as the degree of cohesion of the social system and its sensitivity to disputes.

The ability of the social system to deal with disputes may be characterized by the following parameters:

1. By the combination (or by the availability) of official (state-recognized) and non-official (traditional) institutions for dispute settlement; and

2. By the combination (or by the availability) of dispositional (voluntary), private principles of dispute resolution and of imperative (in respect of enforcement) public principles of dispute resolution in the framework of the social system.

Accordingly, four main types of social system actions in dispute resolution (types of procedure) may be outlined, as represented in Table IX.

Table IX. Objective alternatives in dispute resolution.

Principles of dispute settlement	Type of institution	
	Official institutions	Traditional institutions
Imperative principle	I	II
Dispositional principle	III	IV

On this basis, four corresponding types ("ideal types") of procedures in dispute settlement may be singled out:

1. Official - imperative procedure (Type I)
2. Official - dispositional procedure (Type II)
3. Traditional - imperative procedure (Type III)
4. Traditional - dispositional procedure (Type IV).

Before we reach the stage of actual dispute settlement, the stage in which the dispute is referred to a certain category predetermines the procedure of dispute resolution.

We may find a typical example of official-imperative procedure when the court treats the conflict as a violation of criminal law (a variation of this would be treatment of the case by administrative authorities, for example by local Soviets of People's Deputies or by the militia). An example of official-dispositional procedure can be found in litigation which is resorted to when norms of civil, labour or family laws are violated (a variation of this is the case of treatment by a comrades' court, by a commission on labour conflicts, and so on). Traditional-imperative procedure may be illustrated by enforced dispute settlement in accordance with traditional norms which strictly provide only for one variant of settlement, which is secured by

non-official social pressure (for example the pressure of public opinion, ostracism or even more severe means of a violent character). Traditional-dispositional procedures are expressed when those involved voluntarily turn to local authoritative community members for the resolution of the dispute through mediation, with advance consent given to the acceptance of any outcome at all.

Our research showed that in a significant number of cases (68.8 %) official bodies were voluntarily turned to for dispute resolution. 17 % did not apply to such bodies, and there is no data on 14.2 % of the cases. Those involved turned primarily to local Soviets (92.8 %). The next body in importance (by the number of times they were turned to) is the militia (the police; 23.7 %). (The total exceeds 100 % because some persons turned to two or more instances simultaneously.)

In 7.2 % of the cases, the press was turned to, in 6 %, it was the procurator's office. This same percentage is typical of the involvement of party agencies and the administrations of enterprises.

In 5.2 % of the cases, the local court was turned to for settlement of the dispute.

And what was the reaction of the official bodies to these requests for help? In the opinion of the respondents, in 31.6 % of the cases these agencies actively contributed to the settlement of the dispute. However, in 15 % of the cases they were not considered active enough, and in 15.8 % of the cases they showed indifference. In 9 % of the cases the disputed parties reached a conciliation as the result of the intervention by official bodies; in 10.5 % of the cases, there was an improvement in the relations between the disputing sides. On the other hand, the relations became worse in 5.3 % of the cases, and the dispute was aggravated in 3.8 % of the cases.

In the opinion of the respondents, there was no result in 27.8 % of the cases.

At this stage of the settlement of the dispute in the system of social control, the following factors interacted. On one hand, we have the disputants' subjective orientations towards one of the four alternative types of dispute settlement (formal-rigoristic, formal-tolerant, informal-rigoristic, and informal tolerant). On the other hand, there are four objective types of dispute treatment procedures which exist in the frames of social structure (official-imperative, official-dispositional, traditional-imperative and traditional-dispositional).

It would be quite logical to assume that the orientation of the disputants towards a formalized-rigoristic type of

dispute settlement would be better met by official-imperative procedure; orientations towards the formalized-tolerant variant would be better met by official-dispositional procedure; orientations towards the non-official-rigoristic variant would correlate with traditional-imperative procedure; and informal-tolerant orientations would correlate with traditional-dispositional procedure.

This deductively formulated correlation finds support in the data of both our study and that of the Bulgarian study. In these two studies, a sociologically significant factor was considered: the fact that the data of the survey vary according to the type of community where the respondents live and according to the character of the social control system functioning in these communities (i.e. according to the three types of community: modern, traditional, or transitional from traditional to modern).

Three different situations in the functioning of social control correspond to the three types of settlements surveyed by our Bulgarian colleagues. First of all, these are three different combinations of formal and informal social control. It would be quite reasonable to assume that informal social control is stronger in traditional settlements, while formal social control is not so noticeable. In modern developing settlements, the dependency is the opposite.

The research data support the following hypothesis: along with the transition from a traditional to a modern type of settlement, the tendency towards "absolute" justice grows while the tendency to seek compromises in dispute resolution decreases; the tendency to deal with disputes in strict accordance with the law increases while the tendency to use it flexibly decreases (rigorism); correspondingly, the tendency to resort to litigation increases and the tendency towards dispute resolution through mediation decreases (formalism). Hence we have two poles: one of them (the modern communities) is characterized by the domination of formal-rigoristic alternatives in dispute settlement (Type I alternatives) while the other (the traditional communities) is characterized by the domination of informal-tolerant alternatives (Type IV alternatives).

Taking into account the fact that the official-imperative procedures of dispute resolution are spread for the most part in modern settlements, while traditional-dispositional procedures are spread in traditional ones, it becomes quite evident and fully supported by research data that there exists a connection (as we have assumed) between the preferences given to concrete types of dispute resolution (the subjective aspect of alternative choice) and the character of the dispute resolution procedures available in the social structure (the objective aspect of alternative choice).

It goes without saying that in real life, there are inevitable collisions between the subjective expectations that the disputants have of the most appropriate method of dispute settlement and the procedures and principles of this method objectively inherent in the social structure.

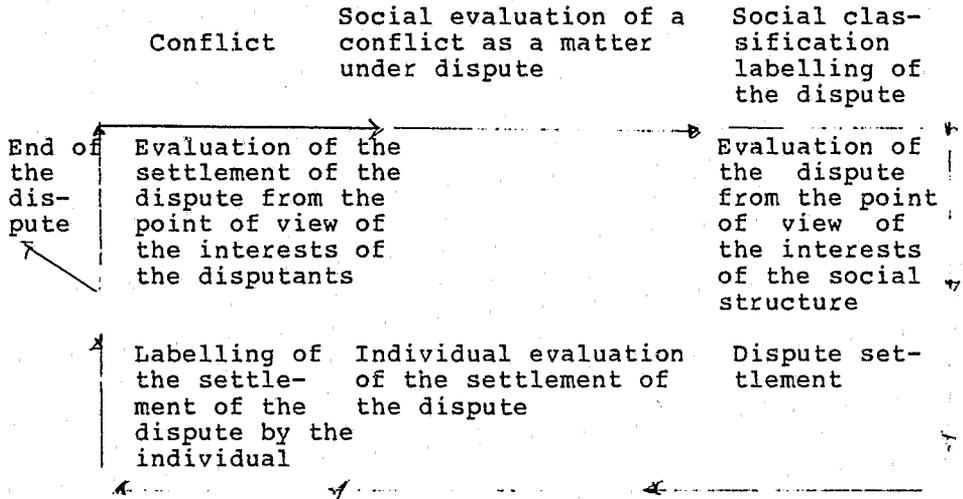
As has been shown by research conducted under our guidance in the Dagestan Soviet Autonomous Republic (in the North Caucasian region)(17), before the Revolution there existed a particular custom built on Muslim law ("Adat", "Shariat"), that of paying money for a bride to her parents ("kalim"). Today, this custom is only a rudiment of the past, and if it occurred, it is regarded by the criminal law as a crime.

The great majority of the population indeed understand the progressive character of this attitude of law, which prohibits consideration of a woman, a bride, as an object of trade. However, this research revealed that in several instances the meaning of the custom has changed somewhat: a bride looks at the amount of "kalim" offered to her parents as an indication of her personal worth in the eyes of the groom and as a measure of the respect that is due to her. In these instances, there arises a conflict between the law and the rudiments of a custom which has partially revived (independently of a norm of "Adat" and "Shariat", which are mostly rejected). It is now based on the specific socio-psychological stereotyped notions based on vanity and prestige.

Now we must draw attention to a cyclical character of the dispute settlement process, which manifests itself in the fact that a certain type of dispute settlement becomes an object of evaluation on the part of the disputants. Indeed, in this respect "justice" can be understood "as the subjective feeling that one has got what's coming to him, that one has received his 'due'. This amounts to say that internalized expectations have been met."(18)

In the same way in which the social structure evaluates and labels the dispute, the settlement of the dispute is evaluated by the disputants. On the basis of the results of this evaluation the disputants redefine the dispute situation, and relabel the dispute. The attitudes of the disputants towards the resolution of the dispute may vary from complete acceptance and the giving up of any further steps, to its complete rejection and complete non-acceptance by one or both sides. In the first case, the social control over the dispute is exercised in full, while in the second case it fails completely or at least partially. In this last variant, the cyclical process continues. This may be outlined as in the following scheme (Table X).

Table X.



Generally speaking, there are at least three possible variants of the functioning of the system of social control in dispute settlement.

In the first (and most typical) variant the majority of conflicts is transferred to the dispute stage, and the settlement is perceived by the disputants in such a way that this leads to the exhaustion of the dispute matter and the end of the conflict. The proportion of conflicts solved through open opposition and by regulated settlement remains constant.

In the second variant, the proportion of disputes structurally classified and regulated by norms is increasing, while the proportion of conflicts is going down. This may testify to the tendency towards a certain stabilization of the corresponding social relations.

In the third variant, there is a tendency towards an increase of conflicts not regulated by norms and a tendency towards the decrease of disputes dealt with in accordance with the norms of law (or by traditional norms). This may testify to the weakening of social control over dispute settlement and to the destabilization of the corresponding social relations.

NOTES

- (1) BREDMEIER, H: Law as an Integrative Mechanism. Sociology of Law. Ed. by V. Aubert. Penguin Books, 1969, p.53.
- (2) MARX, K. and ENGELS, F.: Collected Works. Progress Publishers, Moscow 1979, vol. 8, p. 327.
- (3) BREDMEIER, H.: op.cit., p. 60.
- (4) KURCZEWSKI, J.: Small Disputes in a Small Polish Town, 1977 (mimeograph)
- (5) NAUMOVA, S.: Law and Dispute Settlement in a Bulgarian Town, 1980 (mimeograph).
- (6) KURCZEWSKI, op.cit., and NAUMOVA, op.cit.
- (7) The total in Table I may exceed 100 %, as the same person may simultaneously be involved in several disputes.
- (8) ARNOLD, T.: Law as Symbolism. Sociology of Law, edited by V. Aubert, Baltimore 1969, p. 47.
- (9) Of course, the general outline may vary and become more complicated. For example, land disputes may acquire considerable symbolic and expressive colouring. Furthermore, "matters of honour" be converted into matters of material restitution for "disgrace" and may acquire an evident rational, instrumental character.
- (10) KURCZEWSKI, op.cit.
- (11) NAUMOVA, op.cit.
- (12) As stated by Naumova (op.cit., p. 4), "a strong dependence has been established between the flexibility and mediation as principles for settling disputes."
- (13) NAUMOVA, op.cit., p. 8.
- (14) "With regard to education the principles of compromise, flexibility and court are preferred by educated persons, while justice, law and mediation - by those with poor erudition." Ibid, p. 9.
- (15) It is interesting to note that research conducted by G. Metzger-Pregizer in the German Federal Republic on the problem of the social control of deviant behaviour in industrial enterprises revealed that "there is a tendency for the occupants of lower social position in

firm to show a greater readiness to report theft. The older the employee questioned, the greater his readiness to report cases of theft..." G. Metzger-Pregizer, The Internal Administration of Justice at the Place of Work. Research in Criminal Justice. Ed. by the Criminological Research Unit of the Max-Planck Institute of Foreign and International Penal Law. Freiburg, 1982, p. 24. If we were to equate (as seems possible) a social position with the level of education, a similar "criminal justice attitude" on the part of the older and lower-educated respondents can be reported.

- (16) YAKOVLEV, A.: The Efficiency of Law and Social Control. European Yearbook in Law and Sociology 1978. Ed. B.-M. Blegvad et al. Martinus Nijhoff Publ., 1979, pp. 139 - 153.
- (17) USUPOV, M.: The Conflict of Social Norms as a Criminogenic Factor. Candidat dissertation, M., 1982 (in Russian).
- (18) BREDEMEIER, H.: op.cit., p. 60.

Inkeri Anttila

THE IDEOLOGY OF CRIME CONTROL IN SCANDINAVIA. CURRENT TRENDS

In every text-book on criminology we are told about the differences in the criminality of different countries and different cultures. It is even more evident that the crime control system varies from one area to the next, even though the criminality itself may be more or less similar. In order to understand the crime situation, therefore, we need to understand the system of crime control. In criminological research, the analysis of the control system in different countries constitutes an exciting and important field of research. To take a specific example, a promising question for continued research is to uncover why the prison rate may well differ in closely situated Western welfare states - why is it that some countries, for example the Netherlands, only has a fraction of the prison rate of another country, for example Finland?

Today we may feel that our modern world is more unified than before. Even so, there are still tremendous differences between systems of crime control. It seems to me that even in Western Europe there are quite distinct "zones" of crime control: a Franco-Italian zone, a Western zone including Great Britain and the Netherlands and a Northern zone covering the Scandinavian countries. The Socialist countries could be subsumed as one zone, although they differ from each other more than Western observers are prepared to think.

My own country, Finland, is culturally a part of Scandinavia. All of the Scandinavian countries share a common legal heritage - as a matter of fact, up until 1809 Finland was part of Sweden - and the Scandinavian countries have developed a well-established system of cooperation in crime control, with annual top-level consultations and permanent commissions.

The criminal justice systems of the Scandinavian countries hold many principles in common. One of them is relatively strict legalism, according to which the courts are given less power than in for example the common-law countries. As a consequence of this there is a high degree of legal predictability based on written law. Another feature typical of all of the Scandinavian countries is the fact that sentences of imprisonment are traditionally set by the courts in fixed terms. From an international perspective, all Scandinavian countries favor short-term, not long-term,

institutional confinement, if indeed such measures are used at all. Fines are very frequently used.

As is the case elsewhere, also in Scandinavia every decade seems to have brought forward new topics for public discussion. In Scandinavia the crucial topic during the 1960s was the system of sanctions. The proposals and demands for reform focused both on the so-called treatment orientation and the law-and-order mentality with its harsh penalties and extensive incarceration of recidivists.

In small countries such as those in Scandinavia, small groups of experts or even single opinion leaders may bring about visible changes in legislation or public debate. In all the Scandinavian countries these new ideas on the system of sanctions led to the first partial reforms within ten years from the time they were first presented. During the next decade, the 1970s, the new ideas set in motion efforts to create new penal codes (which happened in Finland and Norway) or to realize substantial partial reforms (as was the case in Denmark and Sweden).

This new line of thinking was at first referred to at times as neolegalism or neoclassicism. Today, however, neoclassicism has altogether different connotations in the United States, and I feel that it would be overly ambiguous, if not misleading, to use it to characterize Scandinavian trends.

What, then, are the main principles of this new Scandinavian ideology?

1) The starting point, of course, is that the confidence in the ability of the criminal justice system to eliminate criminality has been lost long ago. In every society there is, and will always be, behavior which, in the opinion of the majority, is disturbing and cannot be tolerated. Crime will never disappear, even though it may take different forms at different times.

In Scandinavia, the idea that the criminal justice system has a very modest role in the control of undesirable behavior is generally accepted. However, it is also felt that since the criminal justice system is a necessity, constant reforms of the system are equally necessary.

2) As for the reason for punishment, in Scandinavia it is no longer believed that the aim of punishment should be rehabilitation. The idea that coercive sanctions - no matter whether they are called punishment or disguised by some other name - can cure the criminal of his criminality has been abandoned.

There was a time about twenty to thirty years ago when penal experts in Scandinavia believed that the average

prisoner could be reformed through scientifically planned rehabilitation efforts. This philosophy won a legion of supporters; the ideology seemed to be humane and mild compared to ordinary criminal justice. However, gradually the accumulating weight of research led to the conclusion that there was very little empirical support for this medical model or treatment ideology in general. It was also clearly shown that this model did not necessarily lead to a milder and more humane system. On the contrary, it often favored long indeterminate sentences, sometimes even for rather trivial offences. It also ignored the principle of equality before the law. During the last decades the philosophy of coercive treatment has lost its credibility and most of its support in Scandinavia.

I have repeated all of this mainly because there was a time when the Scandinavian countries, especially Denmark and Sweden, were widely known as forerunners of the treatment-oriented approach. Of course, the idea itself was invented elsewhere, but it flourished in Scandinavia. Twenty-five years ago it was officially proposed in Sweden that the word punishment be replaced with the more neutral term, sanction. Some special institutions for psychopaths, such as Herstedsvester in Denmark, were known all over the world. Now, the indeterminate incarceration of offenders has been abolished or at least severely restricted in all the Scandinavian countries.

3) In many countries, the abandoning of the medical model (or the treatment ideology) has often been associated with the acceptance of the idea of deterrence through harsh punishments or increased punishments. In the global perspective, this risk should certainly be taken into consideration. However, this has not happened in Scandinavia. As I mentioned before, punishments in Scandinavia are rather mild. Fines are applied as the most common sanction in the system, and the few prison terms used are generally only a few months in length. The median of unconditional sentences of imprisonment in Scandinavian countries ranges from two to four months. Imprisonment sentences are rarely given in years: only 2 - 3 % of the sentences given each year exceed two years. Short-time increases in the level of punishment are rarely used, as it is felt that the hoped-for effect would generally last only a short time, and the costs and suffering would exceed the possible benefits.

What is still left of the coercive treatment ideology is connected either with special groups of offenders such as drug addicts or with the use of non-institutional, rather mild sanctions, such as the use of probation. As a matter of fact, there are dissenting opinions also on the rightfulness and the efficiency of supervision when combined with probation and parole. (Even so, at the present time, both systems seem to be too well-established for any fundamental changes.) New forms of non-institutional sanctions

have been developed. In addition to the well-known alternative of "community service", which at the present time is being tested in Denmark and Norway, also a new sanction called "intensive supervision" has been officially proposed in Sweden. This would be a special sanction for those offenders who need more care and supervision than the average offender.

4) In Scandinavia, the idea that punishments have, and should have, a general preventive effect has wide support. But in this connection, it is necessary to explain what Scandinavians mean by the term "general prevention", which does not seem to be the same as another term often given as a synonym, "general deterrence". One component of general prevention is, of course, surely its deterrent effect. This, in turn, depends on both the severity of the sanction and the subjective certainty of punishment, of which the certainty of punishment is probably the more important. But another, perhaps even more important aspect of general prevention is the maintenance of standards of morality by publicly denouncing undesirable behavior as morally wrong.

It may have been more a historical mistake than a historical necessity to allow prisons to take over such a central role in our system of sanctions. Even so, at least in the short run prisons will continue to remain a part of our system. Their main function is to dramatize the intensity of society's condemnation and thus contribute to the preventive mechanisms working in the system. In some individual cases, prisons also serve for the incapacitation of dangerous offenders. Their main function, however, is to strengthen the general preventive effect of punishment.

I realize that many have serious reservations about the general preventive effect of punishment. Undoubtedly the situation varies from one country to the next. The most favourable situation in this respect can be found in small countries with a homogenous population; all of the Scandinavian countries would fit this description. One American professor recently told me that there can be little grounds for general prevention in the United States, as no one ever knows what punishment the court will actually give. This is not true of Scandinavia. Even though also in the Scandinavian countries there are considerable differences in what is known about the law and legal practice by people of different ages and with a different background, recent studies show that the general population is well familiar with the level of punishments for ordinary offences. A few years ago, as many as one half of those interviewed were able to give the exact level of punishment for the cases given. Of course, we must remember that in Scandinavia the courts adopt a more uniform sentencing practice than what is the case in many other countries. Naturally this makes it easier for the population to get to know the level of punishments.

In Scandinavia, it seems to be clear that the acceptance of the idea of general prevention does not mean the acceptance of the necessity of severe punishments. The very idea that a certain level of sanctions would be necessary to ensure effective general prevention is rejected. This refers above all to the prevalence and severity of imprisonment sentences.

In urbanized and industrialized welfare states the frequency as well as the length of prison sentences may actually appear to have decreased. This may lead to the illusion that the criminal justice system itself would have become more lenient. But, at the same time, the punitive value of prison sentences as experienced by the offender and his environment has greatly increased along with the increase in the standard of living. Therefore, a prison sentence which may have seemed lenient yesterday is experienced as much harsher today. This argument has often been used in Scandinavia to support demands for alternatives to institutional sanctions and for shortening sentences of imprisonment.

Most criminal policy experts in Scandinavia, however, feel that even these alternatives to imprisonment should in principle remain punitive. It is pointed out that from the general preventive point of view it would be more appropriate to call a sanction (for example) a "punitive warning" than merely "waiving of punishment" or "absolute discharge". The traditional fine should not be forgotten or rejected. It satisfies the demands of justice when set according to the old European method of so-called "day-fines", first invented in Portugal, then applied in Finland and now in use in many European countries. In this system, both the seriousness of the offence and the wealth of the offender are simultaneously taken into consideration.

In Scandinavia, as in Continental Europe in general, the term "diversion" is rarely used. Some ten years ago, we simply did not know that in America this term was used to signify almost any alternative sanction. Then we learned what the new term meant in the technical sense. We also realized that "simple diversion", which only involves the waiving of prosecution or of punishment, was actually quite familiar and in wide use in Scandinavia. Such a measure is in fact so wide-spread that in Sweden prosecution is waived in almost one half of the cases of theft each year. In Sweden, non-prosecution is possible on many different grounds, and not just on the grounds of the pettiness of the offence.

"Diversion with intervention", which means transferring the case to another authority, possibly to another system of social sanctions, is not viewed with favor in Scandinavia. It is felt that the use of diversion with intervention is a dubious, possibly even dangerous trend. First, it

would be very difficult to evaluate the severity of alternative sanctions, no matter whether they are called sanctions or something else. Second, it has been argued that the general preventive effect would decrease if it were to be felt that the offender was not being punished at all. According to the Scandinavian way of thinking diversion with intervention can be defended only within strict limits, for example for young drug addicts. It should in practice generally serve as an alternative only to unconditional imprisonment, when the offender himself would be prepared to exchange the normal sentence for other measures. This idea is apparent in the new Swedish sanction which is called "contractual treatment", and which involves voluntary commitment to a treatment program in an institution. The use of this sanction would be acceptable if the offender would otherwise go to prison.

5) If the main goal of the crime control system is general prevention, the system of sanctions should be as clear and uncomplicated as possible. This will make it possible for the average citizen to understand and accept the system. As I have already mentioned, legislation is and always has been in a central position in Scandinavia, and the present Scandinavian philosophy emphasizes even more than before the importance of written law. The maximum and minimum limits of the punishment for each offence are listed in the law. Recently, excessive legislated limits on sentences have been criticized, as it was felt that this gave too much power to the courts, power which can be misused to pass overly harsh or arbitrary sentences.

I have read with great interest of the sentencing guidelines drafted and adopted in several states in the United States, as similar ideas are already incorporated in Scandinavian law. In accordance with the Scandinavian legalistic traditions, however, these guidelines are not drafted by an administrative authority but by the legislature. Iceland was the first Scandinavian country to incorporate general sentencing guidelines into its legislation. A similar law was passed in Finland during the 1970s.

When considering the new Finnish law on sentencing it must be recalled that the criminal law in Finland always gives the maximum and minimum limits for each offence. The new penal code chapter on sentencing begins with a general provision stating that in choosing the actual punishment consideration must be given to the uniformity of sentencing practice, in other words to the equal treatment of offenders before the law. It is also decreed that every punishment must be in just proportion to the dangerousness and harmfulness of the individual offence in question. All of this means a favoring of uniform predictable sentences based on proportionality between the intensity of the offender's guilt and the severity of the sentences. Overly individualized punishment is not accepted. However, it is

important to realize that there should always be room for vast discretion toward more lenient punishments, although similar discretion in the opposite direction is not accepted. The ideology of "tariffs" or "normal punishments" for various offences is thus based on an asymmetric relationship.

According to the Scandinavian ideology, discretion in sentencing should not be based on, for example, the behavior of the offender before the offence; instead, it should center on the criminal act and the intensity of the criminal intent at the moment of the act. The external characteristics and the consequences of the act are primarily only of secondary importance only.

This also means that the recidivist should not be punished more severely than a first-time offender unless the new offence indicates that he is a deliberately calculating offender who regards the normal punishment as relatively lenient. It is true that this principle has not been carried to its logical extreme in any of the Scandinavian countries; for example, the law allows more latitude for giving a conditional punishment - similar to what is known as a suspended sentence in the United States - to offenders who have not spent a long time in prison. It is important to note that a reform of the law in Finland eight years ago abolished a general system of more severe punishment (i.e. a special latitude) for recidivists, and that similar reforms were later carried out in Sweden and Denmark.

Finland is the only Scandinavian country to have included in its penal code a specific provision on the cumulation of sanctions. The law explicitly states that, in measuring punishment, reasonable consideration shall be taken of other consequences of the offence or the punishment to the offender, if the over-all result would be unreasonable in the light of the type of offence. Thus, for example the punishment may be reduced if it is known that the offender will lose his job or has been severely disabled because of the offence. The purpose of this reform was to go beyond simple mechanical uniformity in punishment.

6) The Scandinavian ideology I have described so far is also reflected in the attitude towards imprisonment and prison administration. According to this ideology, prison conditions should be improved not only on humanitarian grounds but also for reasons of justice. This can be justified as follows. The prisons are needed primarily for strengthening general prevention. Because prisoners serve as warning examples, the burden now piled on their shoulders should be lightened. They should be given psychological and psychiatric help if they request it, just as they should be given assistance upon release from prison. Some prisoners could even be granted a pension if a very long sentence has resulted in social disability. However,

improvements in the prison system should take place only in order to ease the circumstances in prison. It should never be felt that an offender should be sent to prison for his own good, for example to provide him with room and board for the winter. The prisoner should be given care and treatment only because he is in prison anyway.

Furthermore, a supposed need for treatment should not give the authorities the right to lengthen a sentence or place the offender in a special institution where release would be based on an assessment of whether or not he is cured of his criminality. Recidivism should not be an automatic reason for replacing imprisonment for a specific term with incarceration for an indefinite period, or for labelling the offender as a psychopath who requires special treatment.

Previously, short terms of imprisonment were opposed on the grounds that they do not deter or rehabilitate. Since we now know that also long terms do not rehabilitate, we are left to evaluate the importance of deterrence. We feel that at least in the peaceful Scandinavian countries even a rather short sentence serves as an individual warning and as a tool in general prevention. The significance specifically of the length of the term is considerably less than what was thought before.

It is therefore felt that the average length of the sentences should be reduced. In most cases the prison sentence could be measured in days or weeks rather than in months or years. Such a system is actually already being applied in Norway and in Denmark, where sentences of up to three months (four months in Denmark) are measured in days. Now that we know that long terms of imprisonment will not rehabilitate, nothing keeps us from also using shorter sentences. A shortening of the general statutory minimum for imprisonment has been carried out or at least proposed in Scandinavia precisely on this basis. In Sweden, this minimum period was recently lowered from one month to fourteen days. In Finland, where the general minimum term of imprisonment has been at 14 days for already a century, recent proposals have called for lowering the minimum to six days.

7) Up to now I have concentrated on the system of sanctions. A presentation of the present situation in Scandinavia, however, would not be adequate if limited to the reasons for punishment. As a matter of fact, it has often been stated during recent years that in the control of crime the scope of punishable behavior is even more important than the punishment itself.

There has been a trend towards decriminalization in Scandinavia, as there has been in practically every European country. One or two decades ago, primarily so-called moral

offences were in the limelight, and some reforms were carried out. At that time, for example, the selling and distribution of pornography was decriminalized in Denmark and Sweden. Finland was the first Scandinavian country to decriminalize what is known as "drunk and disorderly", and Norway and Sweden soon followed the example.

Later attempts to restrict the scope of the crime control system have tended to be based on the need for rationality rather than on ideological motives. The most recent example is the law that came into effect in Finland three months ago on "standard penal fines" by the police. According to this system, the police issue "tickets" for very minor offences, and where the size of the fine does not depend on the income of the offender. However, many experts have criticized a similar tendency towards a system of fees, where the punishment would be set by an authority other than a court of law, especially when the fee in question actually amounts to a severe sanction. An example is the punitive fees for excessive loads on trucks. These experts do not consider it suitable to use fees instead of punishment for example because of the fact that the general preventive effect of the criminal justice system may suffer if the public begins to receive the impression that the payment of a certain sum of money, as it were, gives them the "right" to break the law. Because fees are not viewed as punishments they may also become unreasonably severe, or there is no obligation to ensure that they are in proportion to the gravity of the act in question.

The discussion on decriminalization has been important and, in part, successful. However, during the same period there has also been a reverse orientation towards criminalization. Offences causing danger - not necessarily concrete damage or injury - have been in the center of this tendency. Examples of such offences are drunken driving or labor safety offences that do not cause any actual harm. During the recent years more has been said and written about what acts should be criminalized than about what offences could be decriminalized. In Scandinavia, as almost everywhere, one of the moral crusades has been directed against what has been called economic crime. Here there seems to be several problems involved, as new forms of economic crime cannot be incorporated very easily into the traditional legal system of the legalistic Scandinavian countries. These traditional systems have tried to avoid wide and vague definitions of offences, which almost seem unavoidable when dealing with economic crime,

8) In recent years an ideology called the just desert movement appears to have received a considerable amount of attention here in the United States. It is in many respects close to the Scandinavian way of thinking, as it stresses the idea of predictability and certainty of punishment and rejects the use of long indeterminate sentences. (In Scan-

dinavia, the incarceration of dangerous recidivists for indefinite periods corresponded best to such sentences).

There are, however, also great differences, which affect core issues. The Scandinavian crime control policy is clearly future-oriented: it believes in prevention-oriented rationality. In Scandinavian jurisprudence the use of punishment or of a certain amount of punishment is rarely motivated by the statement that the offender "deserves" it, but rather by the need for general prevention or individual warning. There seems to be no need to justify punishment with any metaphysical theory or atonement or retribution.

It is true that references may sometimes be made to the concept of retribution. Such references may refer to conscious or unconscious elements in the general sense of justice. Atonement may also be brought up in the discussion because it is felt that such a concept may help the offender to relieve his feelings of guilt or it might help others, in particular the victim of the offence, to accept the offender back into society after release from prison.

But an idea of more importance is the idea that just retribution can also be used in order to apply standards of justice to the solution produced through future-oriented rationality. The idea of just retribution is then seen as a limiting principle with the task of preventing arbitrary or overly harsh punishment. Crime control should not cause suffering to the individual which is out of proportion to the social dangerousness of the form of criminality being controlled. The Finnish Penal Code Committee Report of eight years ago therefore made frequent mention of the view that the system of criminal justice should be "both rational and just", in this way underlining the desirability of both elements of the system.

In reading reports on criminal policy from around the world, I have been struck by the observation that almost everywhere an association is made between neoclassicism and the principle of justice on one hand and severe punishments on the other. It also seems to be almost heretical in many countries to refer to general prevention as an argument in criminal policy, as also this term seems to be immediately associated with a harsh level of punishments. Thus, apparently Scandinavia is in a special position. For years, there has not been a single proposal planned or carried out in Scandinavia that would have led to a harshening of the general level of punishments. On the contrary, all the reforms have been directed at lowering this level of punishment. Incarceration for indeterminate periods has been abolished or severely limited; imprisonment for life has been abolished in Norway; there has been a deliberate attempt to lower the median of the terms of imprisonment in Denmark; and in all of the Scandinavian countries, the use of fines has been increased.

I would thus wish to emphasize once again that even though many of the reforms which have taken place in Scandinavia can be credited to an ideology with many similarities to neoclassicism, this is not the same thing as an ideology designed for the harshening of punishment. Reference to general prevention does not mean that those in charge of criminal policy would wish to scare the public with severe sentences. It may even be pointed out that this ideology does not say anything at all about how severe the level of punishment should be! It may be, therefore, that the old traditions in Scandinavia have been useful: as we have become used to a light level of punishments, we can retain it quite easily. Any changes towards a harsher line would not be compatible with the general sense of justice, nor would there be any ideological justification for any such changes in the Scandinavian countries.

Is, then, everything as it should be with Scandinavian criminal policy? Certainly not. There is much room for criticism, even though reforms have already been carried out.

Experts in Finland are constantly worried by the high prison rate. Finland has the dubious distinction of having the highest prison rate in Scandinavia despite the fact that the number of offences leading to imprisonment per capita is no larger than in Sweden or Norway; on the contrary, for example the annual number of thefts reported to the police in Finland is only one third of that in the other countries. We do know why there are differences between Finland and the other Scandinavian countries. One reason is that Finland uses a higher level of punishments for property offences. But - and this is interesting in itself - one factor is the high proportion of crimes solved by the Finnish police: the clearance rate of offences is considerably higher in Finland than in the other Scandinavian countries. In any case, the Finnish experts are agreed that we should be able to manage with the same per capita prison population as in the other countries.

Out of the proposals for reform that have been made in Sweden, criticism can be directed at the proposal that severe administrative measures replace punishment or that the cars of drunken drivers be confiscated by the state - should the drunken driver indeed happen to be the owner of the car.

In Denmark, in turn, the idea has surprisingly been again brought up that the position of the prosecutor be eased by relinquishing the demand for demonstrating intent for offences where, previously, this has been a self-evident requirement. Finally, Norway appears to have problems in completely abolishing a system of indeterminate incarceration.

Thus, every now and then one meets with demands for an increase in punishments or at least in sanctions in Scandinavia. However, it would appear that the continuous and close cooperation among the Scandinavian countries in the drafting of legislation and in research provide the possibility for constructive criticism, at the same time as it places the laws of Finland, Sweden, Denmark, Norway and Iceland on a more uniform basis.

Matti Joutsen

FROM THEORY TO RESEARCH TO POLICY: SCANDINAVIAN DEVELOPMENTS
IN JUVENILE CRIME PREVENTION AND CONTROL

Summary

This paper is a presentation of current youth crime research in the Scandinavian countries (Denmark, Finland, Norway and Sweden). It begins with an overview of the research establishment and notes its close connections with decision-making. This is followed by a general review of the somewhat different research interests in the different countries, as well as the background crime and criminal policy situation in Scandinavia. The paper concludes with examples of how research has influenced criminal policy, and of recent research projects.

Youth crime is understood in this paper, in accordance with general Scandinavian practice, as the commission of criminalized acts by those under the age of 21. The minimum age limit of criminal responsibility in Norway is 14, and in the other Scandinavian countries 15 years. Children below this age are not subject to punishment, but to possible social welfare measures. "Delinquency" as a more general concept will not be examined.

1. The research community in Scandinavia

Research in criminology in Scandinavia is carried out primarily by two types of institutes. In Denmark and Norway, criminological research is above all academic research carried out in the universities, primarily at the institutes of criminal law. In Finland and Sweden, on the other hand, the primary research institutes are connected with the government.

Annika Snare has characterized the orientation of these different research locales by saying that, in general, the research in Norway is sociological (with a somewhat "radical" orientation); research in Denmark has a more psychological approach; and research in Sweden and Finland is sociological and policy-oriented. (1) It may be added that, with the exception of Denmark and with further minor exceptions in Sweden and Finland, criminology is almost entirely sociological. (2)

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In practice, as pointed out by Patrik Törnudd, the most important factor in guiding the orientation of research is the background of the researcher, not the setting of the research. (3) Furthermore, the extremely close contacts among Scandinavian researchers help to even out any differences.

Even so, there has been some exchange of fire between the "academic" and the "government" researchers regarding the value of their respective research. The debate continues, but there is general agreement that, in all of the Scandinavian countries, the ties between criminological research and the formation of criminal policy are exceptionally close - even in cases where the research has been carried out by academic researchers, fiercely defensive of their independence. (4)

Not only are government reports regularly based on empirical data, but researchers are called upon to advise the government on various policy issues. Furthermore, in small countries such as those in Scandinavia, there is a large amount of interchange between positions in the research world and civil service. (5) Finally, the distinction between academic and government research is lessened by the similar academic training, the similar pressures from outside sources and the constant contacts among the researchers themselves. (6)

It may also be expressly noted that all of the Scandinavian countries provide a relatively favourable research climate, in that the wealth of documentation produced as a by-product of the highly-developed welfare states is generally made easily accessible for research purposes. Also, those interested in macro-level data can utilize extensive statistical time-series. For example, certain Finnish-Swedish crime-related statistical series can be traced back for two centuries. On the question of youth crime in particular, few researchers have had any serious difficulties in obtaining the basic data needed for their studies. The primary barriers are raised when an outside researcher seeks to obtain information on individual cases which the bureaucracy in question believes should be kept confidential in the interests of the youth or his family. There are, however, always exceptions to this open-handedness, usually caused by an overly zealous and secretive bureaucrat.

A distinctive feature of criminological research in Scandinavia is the high degree of international cooperation. This is fostered by the Scandinavian Research Council for Criminology, which was established in 1962. The Research Council organizes regular meetings between decision-makers and researchers, publishes research findings in its "Scandinavian Studies in Criminology" series, disseminates information on current research and developments in its newsletter, and provides research grants. (7)

The distinctiveness of Scandinavian cooperation lies in the extent to which joint research projects, involving at times all of the Scandinavian countries, are undertaken. Also, pilot studies in one country are often used as examples for

the other countries. The first self-report study in the world to use an entire age cohort was carried out in Norway in 1965 (8); it was then performed in Finland (9), Sweden (10) and Denmark (11). Similarly, after a victimisation study was performed in Finland (12), the research design was copied in the other countries. (13)

2. Youth crime and criminal policy in Scandinavia

Youth crime is not only a popular research topic, it is a common subject of general discussion and worry in Scandinavia just as it is almost anywhere else. However, after a heady increase in the reported crime rate from the late 1950s to the mid 1970s, the situation at the moment can be called relatively stable.

In all of the countries, the main problem is the commission of property offences, especially theft, petty theft and the taking of motor vehicles. The per capita property offence rate is higher in Denmark and Sweden than in Norway and Finland. Also in Denmark and Sweden, drug abuse is gaining increased attention. Gang violence was topical in Sweden, and is now topical especially in Copenhagen.

The development of criminal policy in Scandinavia can be readily described, as the close connections between the countries result in the rapid spread of any trends to all the other countries. Soon after the turn of the century, the child board system was adopted in Norway (14), to be adopted almost immediately in Denmark and Sweden, and in 1936 by Finland. (15) Much attention was paid in this to the newly emerging science of criminology, which suggested the deleterious and criminogenic effect of a "deprived childhood". In general, individualization of punishment and other social reactions was the order of the day from then on to the early 1960s, when - in part due to the attention given to empirical research results - it was replaced by a renewed focus on general prevention.

In describing the current criminal policy of all of the Scandinavian countries, the term "neo-classicism" has been used. It is true that, almost simultaneously, all four countries published official reports reaffirming a distaste of coercive treatment of offenders. These reports continued the tendency begun during the 1960s of taking the guilt manifested in the offence as the principle factor in determining punishment, and of minimizing the importance of the circumstances of the offender. The principles of equality before the law and of proportionality in punishment also remained firmly entrenched in this approach. The use of the term "neo-classicism", however, is misleading in its connotations of American just deserts and harshness of punishment. Internationally speaking, the level of punishment in Scandinavia is quite low, and there is every indication that for example the use of imprisonment will continue to lessen. (16)

This, however, applies primarily to criminal policy, and not so much to child and social welfare. All of the Scandinavian countries continue to use the child welfare board system of dealing with delinquent children, not the juvenile court system. This is especially important for those below the age of criminal responsibility, as these children will not appear in court as defendants. Of special interest is the situation in Sweden, where the police are not even permitted to investigate offences committed by those below the age of fifteen except in special circumstances. The matter will be dealt with solely by the municipal child welfare board. Although major reforms in Sweden and Finland have recently been carried out with the avowed intention of improving the legal safeguards in the procedure as well as the appropriateness and effectiveness of the measures themselves, the keystones of Scandinavian criminal policy do not fit in well with the operation of social welfare measures. (17)

3. Research on youth crime in Scandinavia: general observations

In common with the situation in many other parts of the world, juvenile delinquency is a very popular subject in criminological research in Scandinavia. Snare judges it to be a core area of criminological interest. For example, the Danish and Swedish councils for crime prevention have published several studies on juvenile delinquency (18), and it has been the subject of countless undergraduate theses.

To begin with commonplaces, two observations made elsewhere have received constant confirmation in Scandinavian research: juveniles have a higher rate of recorded crime than adults, and the dark figure of crime is high.

The first point, the higher rate of recorded offending, was made most recently by von Hofer. His statistical study of the development of crime in Sweden covered the two centuries from 1750 to 1982. He noted - perhaps surprisingly - that adults had a higher rate during the 1800s, but that the 18-20 year-olds took over the lead at the end of the century, to relinquish it to the 15-17 year olds during the 1930s. In general, the rate for all age groups increased rapidly during this century, but the increase was greatest for young offenders. (19) The picture from the other Scandinavian countries regarding the trend during this century is similar.

As to the second point, the dark figure of crime, the joint Scandinavian studies of hidden delinquency have already been mentioned. They have repeatedly demonstrated the wide extent to which youths have engaged in petty criminal acts, and the fact that there are few youths at either extreme - those who have committed no offences, and those who have committed serious and repeated offences. The studies have also observed the very considerable similarities in the crime structure in all four countries. One of the most recent and thorough such study focuses on all 8th graders

(13 to 14 years of age) in a suburb of Copenhagen. 745 out of the base population of 898 pupils responded to the study, which was published as a series of ten publications between 1979 and 1982. (20)

Another recent self-report study emphasized a social control theme, and dealt with the link between crime and other social problems. (21) The study focused on about 150 ninth graders (16-year olds) in each of five municipalities in Finland (total N = 574). The municipalities had been selected so that they represented both urban and rural areas, and areas that were assumed to be either high or low in the number of general social problems. It was found that there was indeed a somewhat greater amount of deviant behaviour in the "problem" city than elsewhere, but otherwise there was little intermunicipal difference. The fact that some areas are seen to have more problems than others despite the absence of any significant actual difference may be due to the ease with which problems come to the attention of the authorities in these "problem" areas, or to the greater effectiveness of informal control in the "low-problem" areas. The researcher concludes that although the general environment is one important factor, the social relationships that the individual forms are of even greater importance. The researcher also notes that the laxer social control and more abundant opportunities in the cities increases the risk that otherwise law-abiding youths will commit (minor) offences.

Another Finnish study compared two cities of similar size but with a different crime rate in the light of various theories of crime. The city with a lower crime rate was the older of the two, and its growth had been slow. The city with a higher crime rate had grown at a rapid pace at the time of industrialization in Finland. Consequently, the many new inhabitants in the area had not had the opportunity to establish stable relationships not immediately associated with their employment. In particular, there was an absence of organised leisure-time activity. (22)

4. Popular themes in research

Four popular themes in criminology in general have close links with studies of youth crime. They are: unemployment as a criminogenic factor, the use of narcotics, the criminogenic role of gangs, and the status of immigrants and other minority groups. Cited below are some recent Scandinavian examples of each.

The supposed link between unemployment and crime was considered in a recent Swedish study, which analysed interview data gathered in 1979 from a representative sample of 16 to 24 year old boys in the city of Stockholm (N = 363). The Swedish researcher concludes that the slight connection between unemployment and criminality observed may primarily be due to the fact that both phenomena are affected by the background of the youth. Also, those youths who have difficulties in social adjustment may quit school earlier than others, and they may then have difficulties in immediately

finding and holding employment. (23)

A Swedish pilot study dealt with the relation between drug criminality and property criminality. A commonly held assumption is that drug dependence leads to the commission of property offences in order to support the drug habit. The pilot study dealt with those suspected of an offence during 1976 who, in addition, were suspected of a narcotics offence during the following six years. Of those who have committed offences other than narcotics offences, for 50 % the first offence was not a drug offence. In addition, for 60 % of those with a drug offence as the first offence, no other offences were reported during the following six years. The researcher concludes, therefore, that only a minor part of the population suspected of drug offences is involved in other criminality. These offenders, in turn, are responsible for a large share (up to 30%) of vehicle theft, burglary and unlawful driving. The researcher suggests that these results seem to speak against the statement that there is a causal relationship between drug criminality and property criminality. However, as it is possible that the minor part of the studied population which was involved in a large part of other criminality was primarily those well advanced in their drug career (and would thus need to commit crimes against property in order to finance their habit), further research is needed. (24)

As for the role of gangs in criminal behaviour, the Scandinavian statistics clearly show that most youth offences coming to the attention of the police are committed in groups. In particular the Norwegian statistics are useful in this regard, as they contain an age classification beginning with 5 - 9 year olds. These show that the younger the age group, the rarer are offences committed alone.

Continuing on this same theme, a Swedish study utilizes a longitudinal study of 575 criminally active youths and 259 co-defendants over a six-year period in one Swedish municipality. The study was primarily directed at analysing the relations between the criminally active youths, and the effect of these relations on their criminality. The researcher concludes that the majority of the offences can be seen as a form of interaction between the youths, in other words as a way of passing time together. For the exceptionally criminally active - the 5% of the youths suspected of offences in the municipality who committed 45% of the offences for which youths were suspected - the commission of offences can be considered the dominant mode of interaction with their peers. The study also affirmed the loose structure of "gangs" or groups; the membership is constantly undergoing change. No groups that operate as a cohesive criminal gang in the sociological sense could be discerned. On the other hand, the most criminally active youths were part of a network of "criminal relationships" in the municipality. (25)

As noted above, statistical comparisons of the crime rates of certain minorities with the majority population have been a common type of research. One example of such studies in

Sweden dealt with those punished for offences in 1967 and 1977, and used as the variables the nationality, the offence and the age of the offender. Such research, however, may raise as many questions as it answers. For example, it has been noted that statistically-based research involves the drawback that only certain background variables (type of offence, age, sex and minority group) can be used. Furthermore, along with studies which indicate that the crime rate for other minorities is below the rate of the general population, such studies do not explain the reason for the differences. (26)

One major project on the connection between immigration and crime is currently in progress in Norway. The project is called "Contacts between immigrants and the police and courts". (27) At this stage, one of the researchers involved has documented some preliminary cautions about the methodological problems involved, and analysed past research. Already the controversial nature of immigration leads to the risk that any research results will (and have been) taken out of context. Also, many studies do not take into consideration all the background data available; for example, the link between the alien and the host country (immigrant worker, tourist, family member etc.) is often ignored. Furthermore, often research assumes that the age and sex breakdown of the various immigrant groups in the host country is the same; already this can lead to serious misinterpretations of rates of crime.

5. The role of programmes in research

The above studies have dealt with the amount and structure of youth crime. The prevention of crime, the treatment of offenders and the operation of the criminal justice system (and of the social welfare system) have also received their share of attention.

Studies on prevention and control in the United States are often analyses of the effect of various "programmes", in which certain changes are made in criminal policy, and the effect is studied. Examples may include drug programmes, work release, various courses or training programmes, the concentration of social welfare and other services, and so on. These programmes are normally limited in time, space and scope, in that they apply only to certain offenders in a certain jurisdiction for a certain period. As changes in the "normal course" of criminal justice, they provide an adequate (although pale) counterpart to the laboratory conditions of the more exact sciences.

It may thus seem surprising that this paper has thus far not mentioned any crime prevention programmes in Scandinavia. The reason for this is that programmes in the above sense are fairly rare in Scandinavia. As noted by Patrik Törnudd in commenting on the design for the II United Nations Crime Survey (28), programmes seem to be associated with large bureaucratic organizations that provide funds only for clearly delimited projects. The Scandinavian countries, on the

other hand, tend to change procedures only on a permanent and nation-wide basis, after weighing the pros and cons of the alternatives. This is partly due to the legalistic nature of the Scandinavian countries (offenders can be dealt with only in accordance with explicit statutory provisions).

A recent and important exception to this dearth of isolated programmes was a Norwegian project entitled "Alternatives to Prison", dealing with the most appropriate reaction for relatively young (14 - 15 years old) but criminally active youths. Although most young offenders in Scandinavian can be dealt with through social reactions other than stigmatizing legal sanctions (and, elsewhere in Scandinavia, those under 15 are only subject to social welfare and child welfare measures), there remains a core group with an accumulation of problems. One of the assumptions in the project was that for this group coercive measures could be used, but only for a short time and to a very limited extent. The purpose of the project was to concentrate resources on one county in Norway with a population of about 200 000. The project basically involved the following elements: 1) lay boards to arrange mediation between victims and offenders; when no solution is forthcoming, the victim can take the matter to court as a criminal case (of the 31 cases involving 72 persons during the pilot project period, only 4 cases were referred to court, with the other cases receiving what was considered a mutually satisfactory solution); 2) ad hoc groups of e.g. child welfare, educational and other officials formed to deal specifically with one individual case; 3) "alternative education projects" where the educational and child care authorities plan joint projects not only to integrate delinquents into the educational system but also to keep motivation high. These alternative education projects can combine classroom teaching in small groups with such things as sailing trips, farming activities, car repairs and wilderness trips; and 4) improved contact between the police and the child care authorities. The over-all tentative evaluation of the results of this intensive effort in one county is that it effectively diminishes the use of incarceration, increases the successful reintegration of offenders into society (the offences involved have included armed robbery, sexual assault, violence towards the police and heavy narcotics abuse) and increases cooperation among authorities. However, the project is still in progress, and the final evaluation remains to be done. (29)

Most studies on prevention and control are limited to evaluations of the efficiency of current procedures. This type of research is very closely connected with a factor noted above, the close link between Scandinavian research and decision-making.

One criminal policy measure in particular has been the focus of research: the use of imprisonment. (30) Imprisonment has been studied by a spate of committees in all of the Scandinavian countries, and the central prison authorities of each country have a permanent research unit. Official (or semi-official) committee reports issued at the end of the 1970s were unanimously agreed on the need to decrease the use of

imprisonment, in particular for youthful offenders; constant reference was made to the poor prognosis for young prisoners shown by research. (31) The research has also borne fruit: the prison population and especially the youthful prison population in all of the Scandinavian countries is declining. (Denmark has about 490, Finland 315, Norway 210 and Sweden 100 offenders below the age of 21 as of Feb 1, 1984.) (32)

6. The outlook for future research

Conducting research in a small country may have its drawbacks. For example, the available resources are limited. However, this may be offset by the greater influence that researchers in such countries may have on policy. What may be even more important, the close interaction between research and decision-making may in time lead to an improvement in the awareness of what researchers can do, and of what can (and more important, what can not) be achieved through official measures.

It was a Scandinavian sociologist who began what can be called the greening of legal research. Johan Galtung, famous for his research on peace and conflicts, described three models in the application of law, the blue, the red and the green. (33) Derick McClintock then brought this analysis to criminology. Briefly, he argues that the blue and the red model are based on a centrally organized criminal justice system, with the blue bearing striking resemblances to the classical model of criminal law, and the red to the therapeutic model. The emerging green model points out the limits of official control, and the innumerable benefits of giving the local community the responsibility for social control. (34)

The most notable Scandinavian representative of the "green wave" of criminology is Nils Christie of Norway. (35) Although not an abolitionist, he is prepared to support a large dismantling of the present criminal justice system, and a return to more traditional forms of control.

The discussion between the adherents of Christie and of the green wave on one hand, and those supporting less far-reaching criminal policy reforms on the other, has only recently begun. A more moderate reading of Christie, however, is that his criticism of criminal policy is primarily directed against the harshness of the just deserts movement in the United States. As already noted above, the recent development of criminal policy in Scandinavia has gone towards a lightening of the repressiveness of criminal justice. The effect of Christie may well be to draw attention once again to the limits of official control, and the need to supplement it with community control.

This shift entails many things. One is that more emphasis will be placed on decision-making and the utilization of expertise within smaller administrative and social units. (36) As illustrated by the Norwegian "Alternatives to Prison" project referred to above, it is probable that more

research will be devoted to the activation of the local community in crime prevention. There are already clear signs of this, ranging from police research emphasizing community patrolling to proposals for more mediation and arbitration as a replacement of official criminal justice measures. (37) We already know that unofficial social control is more effective than official control (especially official control involving repression); it is for the researchers to demonstrate how it functions and how it can supplement the official criminal justice system.

Notes

- 1 Snare, Annika: Criminological Research in Scandinavia. Manuscript, Stockholm 1984, pp. 4 - 10. Regarding the situation in Norway, see Lochen, Y: Norwegian Sociology: Social Rebellion and/or Professional Participation? Acta Sociologica Dec. 1982, pp. 358 - 365, and Olaussen, Leif Petter - Sorensen, Robert K: Norwegian Criminology and Changes in the Political and Ideological Structure in Norway, University of Oslo 1977.
- 2 The biosociological school of criminology has been largely limited to some studies carried out at the University of Denmark and the School of Medicine of the University of Helsinki.
- 3 Törnudd, Patrik: A More Sombre Mood: The Status and Roles of Criminology and Its Institutional Relations with Public Policy and Practice. IX International Congress in Criminology, Vienna, 25 - 30 September 1983 (mimeo), p. 7.
- 4 Cf. Törnudd, op.cit., p. 3 ff.
- 5 For example, researchers may be called upon to serve on government committees, or they may assume temporary official positions. On the other hand, those in government office may take leave of absence to conduct research at the University or under the Academy of Science.
- 6 Törnudd, op.cit., pp. 9 ff.; Snare, op. cit., pp. 9 - 10, and esp. 11 - 16. For a general comment on the links between research and criminal policy, see Anttila, Inkeri: The relationship between research and criminal justice policy. in Papers on Crime Control, Publications of the National Research Institute of Legal Policy no. 26, Helsinki 1978.
- 7 Cf. Snare, op. cit., pp. 1 - 3.
- 8 Christie, Nils - Andenaes, Johs - Skirbeck, Sigurd: A study of self-reported crime, Scandinavian Studies in Criminology I, Oslo 1965, pp. 86 - 116. See also Andenaes, Johs - Sveri, Knut - Hauge, Ragnar: Kriminalitetshyppigheten hos utstraffede 1, Norsk undersøkelse, Nordisk tidsskrift for kriminalvidenskab, 2-3/1960, pp. 97 - 112.

- 9 Anttila, Inkeri - Jaakkola, Risto: Unrecorded crime in Finland, Institute of Criminology, publications A:2, Helsinki 1966.
- 10 Werner, Birgit: Den faktiska brottsligheten. Nordisk tidskrift for kriminalvidenskab 1-2/1971, pp. 106 - 141, Stangeland, Per - Hauge, Ragnar: Nyanser i grått, Oslo 1974.
- 11 Greve, Vagn: Kriminalitet som normalitet, Copenhagen 1972.
- 12 Aromaa, Kauko: Arkipäivän väkivalta Suomessa, Institute of Criminology, publication M:11, Helsinki 1971.
- 13 Cf. Wolf, Preben: Victimization research and means other than crime statistics to provide data on criminality, Means of improving information on crime, Second criminological colloquium, Council of Europe, Strasbourg 1975, and Hauge, Ragnar: Offer for lovbrudd, Tidskrift för samfunnsforskning 16/1975, pp. 322-333.
- 14 Cf. Stang Dahl, Tove: The Emergence of the Norwegian Child Welfare Law, in Scandinavian Studies in Criminology V, Oslo 1974, pp. 83 - 97.
- 15 Cf. for example Joutsen, Matti: Child Offenders in Finland, publication no. 39 of the National Research Institute of Legal Policy, Helsinki 1982.
- 16 Cf. Heckscher, Sten - Snare, Annika - Takala, Hannu - Vestergaard, Jorn: Straff och rättfärdighet - ny nordisk debatt, Stockholm 1980.
- 17 Cf. Joutsen 1982, op.cit.
- 18 Snare, op.cit., p. 20.
- 19 von Hofer, Hanns: Brott och straff i Sverige. Historisk kriminalstatistik 1750 - 1982. Diagram, tabeller och kommentarer. Statistiska centralbyrån, Stockholm 1983, p. 5:5, and tables 5:5 and 5:6. See also Tham, Henrik: Brottslighet och levnadsnivå. En undersökning av män i kriminalregistret födda 1892 - 1953, Uddevala 1979 (English summary: Crime and Living Conditions - A Study of Men in the General Criminal Register in Sweden, born 1892 - 1953), pp. 27 - 29.
- It should be noted that this statistical series in von Hofer's analysis is based on court statistics. It is possible that previously, a larger proportion of young offenders were dealt with by other means, and thus would not appear in these statistics.
- 20 Balvig, Flemming: Ungdomskriminalitet i en forstadskommune, Kriminalistisk Institut, University of Copenhagen, Denmark, 1979 - 1982 (volumes I - X).
- 21 Sipilä, Jorma: Nuorten poikkeava käyttäytyminen ja yhteisön rakenne, Institute of Social Policy, University of Jyväskylä, 1982.

- 22 Takala, Hannu: Kaupunkirikollisuuden selittämistä ja kunnallisen kriminaalipolitiikan mahdollisuuksista. English summary: On explaining urban crime and the potential for municipal criminal policy. National Research Institute of Legal Policy, Publication no. 35, Helsinki 1979.
- 23 Sarnecki, Jerzy: Arbetslöshet och kriminalitet bland de unga, in Swedish National Council on Crime Prevention, Brottsutvecklingen, Lägesrapport 1983, p. 167 - 183; a Scandinavian assessment of corresponding research results in the FRG is given in Hjerrild, Inger M: Arbejdsloshed og kriminalitet. Nordisk tidskrift for kriminalvidenskab 3-4/1979-1980, pp. 191 - 203.
- 24 Solarz, Artur: Narkotikalagbrytare och deras belastning med annan brottslighet. En förstudie. in Swedish National Council on Crime Prevention, Brottsutvecklingen, Lägesrapport. A recent study on the methodology of drug abuse research was Hauge, Ragnar - Nordlie, Ole: Pålitligheten av selvrapportert stoffbruk blant ungdom. Nordisk tidskrift for kriminalvidenskab 3/1983, pp. 145 - 158; this noted the difficulties and possible sources of error in self-report studies, but concluded that, on the whole, the results were reliable.
- 25 Sarnecki, Jerzy: Brottsliga ungdomsgång, Swedish National Council for Crime Prevention, Rapport 1983:2, Stockholm 1983.
- 26 Sveri, Britt: Utlänningarnas brottslighet, Kriminalvetenskapliga institutet, University of Stockholm, 1980, and Tham, Henrik: Utlänningarna och brottsligheten - forskningens läge in Eriksson, Ulla-Britt - Tham, Henrik: Utlänningarna och brottsligheten, Swedish National Council for Crime Prevention Rapport 1983:4, Stockholm 1983.
- 27 Falck, Sturla: Den kriminelle invandrer - eller "en farlig forskningsmyte"? Nordisk tidskrift for kriminalvidenskab 3/1982, pp. 118 - 137 (the Norwegian title of the project is Innvandreteres mote med politi og rettsvesen).
- 28 Törnudd, Patrik: memorandum to the Crime Prevention and Criminal Justice Branch of the United Nations on the planned II United Nations Crime Survey, 1982 (used with permission).
- 29 Stangeland, Per - Waal, Helge, Institute of Criminology, University of Oslo; the project is currently in progress.
- 30 The social welfare measures applied to juvenile offenders have also been heavily researched, and this research has been instrumental in leading to major reforms in Sweden and Finland, as noted above. The Finnish research is summarized in Joutsen 1982, op.cit.
- 31 Cf. Heckscher et al, op.cit., passim.
- 32 Prison Information Bulletin no. 3/1984 of the Council of Europe, Statistics Concerning Prison Populations in the Member States of the Council of Europe, Table 1, Strasbourg.

The Finnish data is from the bulletin of the Prison Administration Department of Finland, and includes 74 youths in remand prison.

- 33 Galtung, Johan: What Kind of Development and What Kind of Law? International Commission of Jurists Conference on Development and the Rule of Law, Institute Universitaire d'études du développement, Genève, in connection with the project on Goals, Processes and Indicators of Development (undated mimeograph).
- 34 McClintock, Derick: The process of intervention: Judicial control and social-administrative protection, IVth International Seminar on Comparative Studies of Juvenile Delinquency, Brussels, May 20 - 22, 1981 (unpublished). For an application of this to the situation in Finland, see Joutsen, Matti: Criminal Justice and Social Justice for Young Offenders: Finland. United Nations ad hoc Meeting of Experts on Youth, Crime and Justice, Rutgers University, Newark, New Jersey, November 2 - 8, 1983.
- 35 Christie, Nils: Limits to Pain, Oslo 1981.
- 36 Törnudd 1983, op.cit., p. 11.
- 37 Recently, a major project on the use of mediation and community conflict-solving has been begun in a suburban area of Helsinki, Finland. This project has already generated widespread local support from the police, the local courts and other local authorities, and there have also been a large number of community volunteers.

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