PREFACE

In December 1990, through the close collaboration of organisations in three countries, a Conference was held in Bali entitled '**International Trends in Crime: East Meets West**'. The Conference represented a confirmation of the close links between Indonesia, The Netherlands and Australia in the area of crime and criminal justice.

The Conference had naturally involved many months of planning on the part of both The Netherlands Ministries of Justice and Development, through The Netherlands Council for Cooperation with Indonesia in Legal Matters, the Australian Institute of Criminology and the fledgling Indonesian Society of Criminology. The Conference and the atmosphere of international cooperation which it engendered, was particularly gratifying for the newly-established Indonesian organisation, for which this Conference was also the inaugural meeting.

The Conference itself, held in a location synonymous with goodwill and peace, saw the cementing of many warm friendships and ties between the participating nations, and a realisation of how much we had in common. Indeed, it is intended that an international criminology conference in Indonesia will become a regular event, and plans are already underway for one to be held in 1993.

The papers which follow represent a selection from the large number of informative addresses presented by experts from many parts of the world, in addition to the countries of the sponsoring organisations, including the United States, Britain and Japan. Several of them have been published in abridged form in the June/July 1991 edition of the Australian Institute of Criminology's journal *Criminology Australia*.

A large number of criminological issues of interest and concern to all participating nations were addressed in the course of the Conference. These ranged over a variety of subject areas, including corporate crime, victimology, services for juvenile delinquents, HIV/AIDS in prisons and crimes against the environment. It was clear that despite superficial differences, East and West nowadays share many concerns in the area of crime and criminal justice.

The Conference theme was apparent through the diversity of presentations, for all of them were concerned with bridging the gap between East and West. Theory building in an Asian context looks different through Western eyes, but problems faced in both cultures require translation from academic theory into practical policies which are appropriate in the local setting.

The Conference was made possible only through the courtesy and the generosity of the Indonesian Government, to whom all those who took part owe a debt of gratitude.

Mardjono Reksodiputro
Grat van den Heuvel
Duncan Chappell
March 1992

WELCOME ADDRESS

Singgih
Attorney General of the Republic of Indonesia

ON BEHALF OF THE ATTORNEY-GENERAL'S OFFICE OF THE REPUBLIC OF Indonesia, I wish to extend my warmest welcome to you all in Bali. I would also like to take this opportunity to express my heartfelt gratitude for the cooperation and support you have rendered to the Indonesian Society of Criminology and other agencies concerned. This conference aims to provide a forum that promotes dialogue, continued cooperation, professionalism and goodwill among people working in the field of criminal law, criminology and criminal policy.

There is a tendency for many people who fear crime and react with apprehension to it, to restrict their exposure to the risk of crime and therefore reduce the likelihood of being victimised. Anxiety and anger are probably most easily understood, if not the most widely accepted, motivations to study crime.

The characteristics of modern criminology are concerned with the emphasis on what the study of crime can tell us about the society in which we live. But the purpose of criminology is not simply to learn from society but to solve the problem of crime.

Meanwhile, with the coming of a new century, the world is moving towards an era of amity and cooperation. Even among nations with different backgrounds in culture, history and judicial system, there is a sweeping wave of liberalisation and cooperative exchange. Many countries have shown their commitment to our common aspiration for maintaining law and order and the realisation of social justice, and I believe that this determination has brought us to gather here.

Technological advances have been truly remarkable. Today, the ever-increasing exchange of human and material resources across national boundaries has brought the world into a new era of globalisation. Unfortunately, however, the same advances have been changing the criminal world into a sophisticated and international link. The abuse of narcotics, which gradually but inevitably leads to social decay, is spreading worldwide. And a network of international crime organisations is making effective law enforcement more difficult to implement.

In this new setting, we grow concerned that the national borders which once prevented the flight of criminals now work rather as stumbling blocks for those who pursue them. Ever-increasing smuggling activities, organised crime and international white-collar crime are on the rise as a result of increasing transnational business and commerce. This trend makes us aware of the need for those countries affected to adopt equally sophisticated and international measures to meet the challenge.

We deeply appreciate your endeavour to promote international cooperation in crime detection and prevention and in solving other common problems in the area of criminal justice. Such cooperation is of particular importance nowadays as interdependence and

interaction among nations grows ever broader and closer in the age of industrial sophistication and technological advancement.

One of mankind's deepest desires is to live in a peaceful and stable society, free from violence and ruled by law. And that is why all nations strive to protect their societies from various crimes and other activities that undermine law and order. But the reality is sometimes different and many types of crimes are growing more and more sophisticated, violent, internationalised and gravely threatening the peace and safety of the community.

Under these circumstances all nations must come together to combat and prevent crime, our common enemy. I am confident that this important conference will strengthen and further develop a framework for cooperation and increasing professionalism, so that we can more effectively deal with crime.

In concluding, allow me to express my best wishes for the success of this conference and for the pleasant and fruitful stay in Bali for all of you.

ADDRESS BY GENERAL OF POLICE

Mohammad Sanusi
Chief
Indonesian National Police

ON THE OCCASION OF THE OPENING OF THIS INTERNATIONAL CONFERENCE ON criminology, may I share with you my feeling of gratification for the initiatives taken by the organising committee as well as the experts who are present on this occasion so that, finally, we can hold this conference.

My gratification, first of all, is due to the fact that thorough and in-depth knowledge of crime is very much demanded, especially by the police organisation. Hence, this sort of occasion, I believe, will be very beneficial for us to broaden our knowledge. Secondly, through this conference, which is the first to be held in Indonesia, we have the honour to host an occasion attended by our colleagues from many different countries. It is hoped that the friendly atmosphere and scholarly spirit of this conference will make a considerable contribution to peace and prosperity. But the usefulness of this kind of occasion is more than that. It is not only useful for the professional development of the criminology association itself, but more importantly, it is also useful for the public if the outcome of this occasion can be implemented and applied. Therefore, the presence of prominent experts from several parts of the world at this conference is expected to give optimum contribution to the effectiveness of our efforts in overcoming crime.

Let me put emphasis on such expectations considering that at the present time our nation is making every effort to solve the problems of crime not only for the sake of law enforcement, but also for the sake of the nation as a whole. For our nation, like other developing countries, shows that the crime is not merely caused by a poor degree of obedience to the law, but quite frequently, it is also because of the disharmony of the strategic planning and arrangement in socio-political as well as socioeconomic matters. As a consequence, the elements potentially leading to crime offences are able to penetrate into various sectors of social life, and once the time comes, those elements will turn into crime offences with their various dimensions.

Looking more closely at the global pattern of various aspects of life, it is evident that interdependence among nations in the world has increased substantially. As a result, policies made in one country often have impacts on others. Crimes with new dimensions, such as corporate crime, computer crime, narcotics (drug trafficking), international terrorism, money counterfeiting and the like, have indicated that all countries are so vulnerable in terms of international crimes due to the transparent borders of countries in the world. This brief illustration is intended to remind the experts on criminology and law enforcement agents of

the complexity of crimes and methods of overcoming them. These efforts should be continually intensified so that they can keep pace with these developments.

The role of police is also changing, so that congresses on police sciences embodied in 'Intercentre' (International Centre of Sociological Penal and Penitentiary Research and Studies) take into account that we need to develop the concepts of 'human policing' and 'sensitive policing' in anticipation of the symptoms of humanitarian movement accompanying current world changes.

It is in such a development that the police are required to play the role of social defenders so that they can act not only to uphold law and order, but also as both performers and thinkers who are able to eliminate elements potentially leading to crime.

Therefore, as the motto suggests 'arrest the professional criminal and get in touch with the rest', there are structures of crime and policing style being developed in order to anticipate the developments in society.

In conclusion, I would like to say, may the ideals of the practitioners of law and agents of justice and security be met through this international conference on criminology and may it proceed in a friendly atmosphere and in the spirit of cooperation in accordance with the agenda so that the outcomes will assist in solving humanitarian problems.

THE STATE OF CRIME IN INDONESIA: A PRELIMINARY OVERVIEW*

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Some Statistics

TO EVALUATE THE STATE OF CRIME ONLY ON THE BASIS OF OFFICIAL STATISTICS is, of course, not adequate. Much criticism has been written about the inadequacy of criminal statistics, and criminological literature is full of them. However, in a country like Indonesia, where no real study has yet been made on the extent of crime, there is no other source if one wants to look for indicators to approximate the crime problem. The following discussion does not pretend to be a comprehensive account of the crime problem. It is only intended as an overview and covers only some of the main areas where there is much concern.

Let us first look to the prisons (Central Bureau of Statistics October 1988). There are 353 prisons in Indonesia's 27 provinces. The Central Bureau of Statistics reports that in 1987 there were 17,274 inmates detained in all the prisons (16,879 men and 395 women) and in custody (by the police, district attorney and courts) 5,035 offenders (4,890 men and 145 women) totalling 22,309 persons. Comparing the last 6 years, there seems to be a decrease in the prison population. From 1982 the figures are: 27,790; 1983—27,325; 1984—29,495; 1985—29,127; and 1986—19,570. The highest prison population in 1987 is found in East Java (3,572 in 34 prisons; with Kalisosok prison in Surabaya being the largest one), Jakarta (2,952 in 3 prisons) and West Java (2,140 in 22 prisons; where the largest prison is in Bandung). The lowest prison populations in 1987 are found in Yogyakarta (193 in 5 prisons), Maluku (199 in 14 prisons), Bali (321 in 8 prisons) and Irian Jaya (499 in 12 prisons). Although most of the prisons were built before the Second World War, the Indonesian Government attempts to manage the prisons in accordance with the Standard Minimum Rules of the United Nations. Since the concept of 'Pemasyarakatan' (resocialisation) was introduced in the 1960s, Indonesia has gradually met the basic standards laid down regarding accommodation and decent living conditions, although there

* An abbreviated version of this paper entitled 'Crime in Indonesia' was published in *Criminology Australia*, vol. 3, no. 1.

is still difficulty in providing adequately qualified staff. Under the 'Pemasyarakatan' concept, attempts have been continuously made to make prison regimes reformative rather than merely deterrent.

There are 291 First Instance Courts (Pengadilan Negeri) in the 27 provinces (Central Bureau of Statistics November 1988). The total number of cases processed in 1987 was 48,600 involving 59,113 defendants (56,987 males and 2,126 females). The percentage by age was as follows: 73.2 per cent were 21 years and over; 21.3 per cent were between 16-20 years and 4.6 per cent were 15 years or less (0.9 per cent of defendants' ages were not recorded). In the last 6 years, the cases sent to court have increased from 42,730 (1983), 41,341 (1984), 47,185 (1985) to 47,765 (1986). This increase in court cases may have been caused by the increase in the police clearance rate. If in 1981 the clearance rate was 58.3 per cent of a total of 324,334 crimes and other offences reported to the police, in 1986 the police congratulate themselves for having cleared 72.7 per cent of the 244,496 reported cases (Central Bureau of Statistics, July 1988). It should be noted, however, that the clearance rates differ quite substantially between regions. The highest clearance rate in 1986 was in East Kalimantan (93.1 per cent of 22,563 cases), while Jakarta had the lowest clearance rate (38.7 per cent of 17,466 cases). A closer look at the cases in East Kalimantan, however, reveals that 75 per cent of the cases were traffic offences, while in Jakarta 8,799 cases (50 per cent) were theft, burglary and robbery cases, 8.5 per cent fraud cases and 10 per cent assault cases. It should be remembered, however, that besides these reported case figures there are also the unknown unreported cases. The figures cited here should be received with the following observations: that it is extremely difficult to ascertain the true composition of and trends in criminality and that the unknown figure may restrict or distort our knowledge of criminal behaviour.

Under the new law on criminal procedure of 1981, the police have full authority (monopoly) to investigate offences against the criminal code. The investigative powers of the prosecutor offices (there are 430 offices) are restricted to only those offences which are legislated by separate laws outside the criminal code. Law no. 8/1981, 'Law Book on the Law on Criminal Procedure' (Kitab Undang-undang Hukum Acara Pidana), distinguishes quite strictly between 'investigation powers' (kewenangan menyidik) and 'prosecution powers' (kewenangan menuntut). These powers were given as 'separate powers' to the police and the prosecutor respectively. Article 284 however, also gives the prosecutor investigation powers in cases which are referred to as 'special crimes' (tindak pidana khusus). The exception to the general rule is considered to be of only temporary nature. However, a debate is going on with respect to this rule, especially because a draft law on the function and powers of the Prosecutor's Office is now being discussed in the House of Representatives.

The offences which fall under the investigative powers of the prosecutor offices, are classified as narcotic offences, economic offences, corruption offences, subversive offences and smuggling (Central Bureau of Statistics November 1987). A report shows that out of the 44,689 cases received in 1985 by the prosecutor offices, 893 cases (1.6 per cent) cover the above offences regulated outside the criminal code. In 1985 there were: 540 narcotic offences, 158 corruption offences, 117 smuggling cases, 57 economic offences and 21 subversive offences. The report also shows that in 1985 the prosecutor offices handled 74,345 offenders (70,769 males and 3,576 females), of whom 2.5 per cent were minors (not yet 16-years-old) and 67.1 per cent were young adults (between 16-30 years of age). Most of the minors were involved in theft (1,243), assault (229), manslaughter (77) and extortion (52). Out of the 669 defendants involved in narcotic offences, 545 (81 per cent) were between the age of 16 and 30.

These statistics provide some indication of the extent of the crime problem in Indonesia. In addition, Tables 1 and 2 may also be helpful.

Table 1

Selected offences against the Criminal Code reported to the police in 1981-1986

Type of crimes	1981	1982	1983	1984	1985	1986
1. Crimes against public order	1,959	1,702	1,094	926	805	621
2. Crimes against morality	2,997	3,941	3,234	2,816	3,510	3,088
3. Rape	2,147	1,842	2,261	2,114	1,923	1,245
4. Gambling	1,972	1,327	1,889	2,092	2,420	1,835
5. Murder	1,616	1,547	1,769	1,457	1,549	1,369
6. Aggravated assault	15,264	14,466	14,173	13,379	12,414	11,626
7. Assault	16,524	18,553	19,169	18,662	18,398	14,582
8. Burglary	98,199	84,552	78,670	50,964	61,195	47,105
9. Theft	11,738	16,480	13,516	26,884	10,854	11,051
10. Robbery	17,048	16,303	12,637	7,380	6,181	5,687
11. Fraud	13,592	13,995	15,215	14,910	13,617	10,078

Source: Central Bureau of Statistics 1988, *Crime Statistics: Data Source From Police Force 1986*, Jakarta.

Although the tables do not show that recorded crime is increasing, the public are uneasy that crime in the street, especially in the urban centres, is rapidly increasing. Most of this 'fear of crime' comes through the mass media. Violent crime in particular (for example, murder, rape, robbery and assault) produces a feeling of danger and insecurity in many people. Narcotic offences (especially drug trafficking) seems also beyond effective control and may encourage other kinds of crimes in its wake. The growing involvement of youth in criminal offences (starting with offences against public order, progressing to crimes against property and narcotic offences) has greatly alarmed society. Is this the price that a society in a developing country is expected to pay for economic progress?

Table 2

Violations against certain laws outside the Criminal Code reported to the prosecutor office in 1983-1985

Types of law	1983	1984	1985
1. Narcotic offences (Law no.9/1976)	1.004	804	540
2. Economic offences (Law no.7/1955)	446	151	57
3. Corruptive offences (Law no.3/1971)	597	372	158
4. Subversive offences (Law no.11/1963)	67	113	21
5. Immigration offences (Gov.Reg.no.45/1954)	85	34	19
6. Smuggling (Ord. on Customs of 1931)	--	177	117
7. Weapons offences (Law no.12/1951)	1.721	801	880
8. Tax offences (Law no.6/1983)	--	4	6

Source: Central Bureau of Statistics 1985, 1986, 1988, *Crime Statistics: Data Source From Prosecution Office 1983, 1984, 1985*, Jakarta.

Violent Crimes

A survey report delivered in 1983 by the Research and Development Unit of the Police Headquarters (DISLITBANG MABAK) shows also the growing concern of the police towards certain types of violent crimes which were, at that time, everyday news in the mass media (*see also* Police Research and Development Unit 1982). There were nine types of offences which were surveyed:

- bag snatching in the streets (penjambretan);
- hold-ups in the streets (penodongan);
- hold-ups on public transportation (pembajakan);
- robberies (perampokan);
- theft of automotive vehicles (pencurian kendaraan bermotor);
- extortion (pemerasan);
- murder (pembunuhan);
- aggravated assault (penganiayaan berat); and
- rape (perkosaan).

Of interest is that the crime rates (as distinguished from absolute numbers) in the survey show that Jakarta is not the most dangerous city for violent crimes, but that the provincial capital of South Sumatra, Palembang, is of greater risk to its citizens. Of the rural areas, South Lampung has the greatest risk.

In order to reduce the problem of violent crimes, the police have tried to step up vigilance and increase the risk of offenders being caught. There is a general strategy in stepping up police activity, called 'the violent crimes deterrent concept' (konsepsi

penanggulangan kriminalitas dengan kekerasan). Besides concentrating on the nine types of violent crimes and showing their presence in the selected areas where the risk for citizens is the highest, the police also enhance their activity through the support and participation of the public. The program is called 'public safety and order program' (program keamanan dan ketertiban masyarakat or KAMTIBMAS for short) and is usually based in the district administration offices (kelurahan). It has as its extension program the 'environment safety system' (sistem keamanan lingkungan). Fundamental to these programs are public participation and people's willingness to voluntarily assist the police in their task. After its success in residential areas, the program was extended to public places such as office buildings, shopping centres, markets, recreation areas, bus and train stations. Public participation in making their neighbourhoods safe places to live, however, must also be supported by positive government policies to neutralise criminological factors in society such as use of alcohol by minors.

In Indonesia, the use of alcohol among the young has recently begun to be a problem. It is common to have strict rules on the sale of liquor, especially to minors, but nowadays, control of the sale of liquor, particularly cheap liquor which is locally made, has been very much eased. Anyone can now buy cheap locally made liquor at street stalls or cigarette and tobacco stalls. Many high school students who are detained by the police because of vandalism, disturbing public order or gang fighting among themselves, admitted that they are familiar with the use of alcohol. Although this does not in any way mean that there is a causal relationship between the use of alcohol and delinquency, the easy access of liquor to youth may certainly influence their behaviour. It is therefore high time that there were stricter controls on the production, distribution and sale of liquor in Indonesia, especially in sales to minors. Although the vulnerability of intoxication varies greatly between individuals, the links between disorderly conduct or assault whilst drunk and the use of alcohol by minors are well known. Thus, it is high time that the government took a closer look into the alcohol industries in Indonesia. Some years ago in Jakarta, a study group was formed to discuss the problems of alcohol use in Indonesia. Most of the members of the study group are medical doctors specialising in psychiatry. At one of their meetings in which the writer presented a paper (January 1985), the focus of the problems discussed related to 'intoxication as a contributing factor in violence' and 'the economic aspects of the alcohol industry: income for the state'.

The most publicised cases, which the public read daily, are, of course, murder and rape. The newspapers will often use the occurrence of these crimes to attract the attention of their readers and to increase their circulation. The public who frequently read about these crimes will gradually become panic-stricken and concerned at what the law enforcement agencies are doing. The mass media has coined a new word in the Indonesian language —'kejahatan sadis' (sadistic crimes)—to describe the horrific crimes frequently documented. Under this term come the mysterious killings of known criminal gang members, 'rape and killing of the victim', 'robbery and rape of the victim' and 'murdering and cutting the body into pieces to be easily discarded'. That these crimes shock the public is understandable, as it shows how little importance the offender placed on the value of life and chastity of women. Those responsible for law enforcement will feel the pressure, like for example, in the latest case of a 'gang rape' by six high school students on a twenty-year-old peasant girl. The women organisations in the city where the trial was conducted demonstrated in front of the court and demanded that the offenders be given the death sentence.

The public usually acquires its knowledge about criminal cases through the mass media. Their sentiments about the case are usually influenced by news reports. The role of the press in influencing public opinion in criminal cases has been widely debated, especially in cases where there is much public interest such as in murder or sex offences. On the one hand, there is the duty of the press to inform the public about the case. This information is

necessary to enable the public to evaluate the risks that they may encounter in daily life. It also enables the citizens to follow the criminal process on one of their fellow citizens and to be informed about what is being done by the responsible law enforcement agencies. On the other hand, especially in cases involving significant emotional elements, it may evoke sentiments which are unfair to the offender. It may also create a fear of crime which is out of proportion to the real situation. Short of trial by the press and contempt of court, by interfering in the trial process, the unnecessary headlines or emotional stories in the news may jeopardise the case for the defence. Unnecessary information on the life of the victim may also cause harm to the reputation of the victim and their family.

The code of ethics of the Association of Indonesian Journalists (Persatuan Wartawan Indonesia) has tried to restrain irresponsible news coverage, by requesting their members to adhere to the 'ten rules for writing crime news'. The most essential rules deal with the subjects of 'presumption of innocence', 'due process of law' and 'trial by the press'. In the last few years there have been several short courses conducted for journalists to acquire better knowledge and to discuss mutual problems and standards of work. The Institute of Criminology at the University of Indonesia has run some of these courses, which were designed for journalists who write crime reports. For example, a two-week course held in December 1986 was called 'Kursus Peningkatan Pengetahuan Wartawan tentang Ilmu Ilmu Forensik dan Berita Kriminalitas'.

It should be added, however, that the court also ought to control the publicity surrounding a trial, when it is apparent that the accused might be prejudiced or disadvantaged by the press. So far, Indonesian courts have not yet taken sufficient steps on this matter.

Urban Crime

Industrialisation processes in certain Indonesia urban centres and the development of transportation facilities have created vast migration to the cities. People are emigrating to find better employment and because of the appeal of attractive city life. The conditions they find are often the opposite. Usually there are not enough jobs and consequently, fierce competition. There is also a shortage of decent low cost housing. For children it also means a loosening of social and family ties, which is frequently accompanied by lack of parental upbringing. These are all factors which are conducive to crime. However, to decrease the tendency for urbanisation, village development programs aimed at improving the village are being undertaken throughout Indonesia.

That the cities have higher crime rates compared with rural towns and areas is a well-known fact. Cities like Jakarta, Surabaya, Medan, Palembang, Ujungpandang, Semarang and Bandung have grown very rapidly in the last decade. Unfortunately, the building of new industrial areas and factories, does not also mean the development of new housing areas and facilities for the migrants who are seeking jobs in the new industries. The existing housing areas and facilities, which must accommodate the migrants in their stay, are not adequate to receive them. In short, the cities are not ready to receive the rush of these new residents. These people will usually reside in the cheapest housing area—city slums—that is to say, the thickly populated area marked by poverty. It is therefore not surprising that the 'frustrated expectations' of these people are conducive to crime.

Organised criminal activities may be prevalent in many of the slum areas, for example, drug trafficking and the receiving of stolen goods. These, in turn, will promote other types of crimes like theft, burglary and robbery. Local district administration agencies which have slum areas in their districts should take special steps to combat drug addiction and the use of alcohol by youth. There should be coherent prevention and education programs with enforcement measures and arrangements for the care of drug and alcohol addicts.

The essential task of the police in this type of housing area is to prevent crime, and not so much to enforce the law. To carry out these programs, the police should develop prevention initiatives that involve members of the respective communities and their community organisations. The 'kamtibmas' and the 'sistem keamanan lingkungan' approach are not sufficient, as they are directed more towards defending the community against criminal offenders. The prevention programs in the slum areas should be directed more towards helping offenders or potential offenders. The police should work more closely with citizens and other local officials to put a mechanism into place to aid both drug and alcohol addicts. The procedure must be easily accessible to every addict, quick in responding to the problem and free of charge. Another aim of this mechanism would be to prevent conflicts between the community members and the addicts. The problem of crime should not only be handled through 'traditional repressive' methods but through efforts to give a better quality of life to the people (especially those living below the poverty line). Academics, mostly criminologists, have often insisted that defence planning should also be incorporated in the national development programs. Planners of economic national development should also heed the views of the 'social defence' planners.

Still another urban crime problem is organised crime. Although no study has as yet been made on this problem, the general feeling and consensus is that it is quite widespread in Indonesia. Although mostly identified by the public with narcotics trafficking, the expert opinion is that it has also encroached into both fraud and corruption activities. It has, therefore, a highly destablising and corrupting influence on fundamental social, economic and political institutions. Public revenue fraud and corruption, in particular, have caused great concern. Unfortunately, although public awareness of the enormity of the problem is growing, effective counter-measures and preventive strategies are still lacking. So, possible devices to prevent or minimise the impact of organised crime should continue to be explored. An integrated policy of investigation and prosecution, by both the police and the prosecutor, should be put in place. Research into the structure of organised crime should be encouraged, since it can contribute to a more informed basis for the development of prevention programs. For Indonesia, a research area which is still underdeveloped is research in relation to corruption, its causes, nature and effect, its links to organised crime and anti-corruption measures. It is hoped that in the coming years research in law enforcement, as well as in the criminal justice system, will have a better reception compared with the preceding years. In this context it may be proper to mention the need of evaluative research, which may well reveal the failure of certain programs.

The aims of research can be simply defined as to convey new facts or to increase understanding of already known facts. Another purpose is to evaluate the results of a program or policy. The necessary data to reach this aim is obtained through empirical research. Researchers in law enforcement and the criminal justice system, in Indonesia, who have mostly majored in the studies of law, still have much to learn about methods in social research in order to conduct effective research. This is part of the problem that has to be faced in the development of research in Indonesia in this field, the results of which have to be reliable and which in due time will have to produce recommendations and alternatives for decision makers (*Survey and Research for a More Rational Criminal Justice System*).

Recently the Indonesian public has been made aware of the vulnerable position of the national banks as targets of criminal activities. Bank frauds by sophisticated means and the irresponsible use of banking funds have raised questions in the minds of the public as to how adequately the banks protect their money. A workshop held in January 1989 as a cooperative effort between Bank Indonesia (the Indonesian central bank) and the 'Commercial Crime Unit of the Commonwealth Secretariat', has opened the eyes of many participants to the intricate underground methods of criminal operators. The transnational dimensions of organised crime in the financial and economic sectors especially require

cooperative arrangements on a more comprehensive basis. In the field of criminal legislation, preparatory work should be done to define new offences with respect to money laundering, organised fraud and the offence of opening and operating accounts under false names. In the area of computer crime, research should also be considered. Reform in criminal legislation should also take into consideration the penalties to be imposed on operators of organised crime. Forfeiture of the proceeds of crime represents one of the more significant penalties. As law enforcement plays a crucial role in programs against organised crime, it is important to ensure that law enforcers have adequate information about crime impact studies and the identification of criminological factors in the implementation of the Indonesian development programs. The establishment of a specialised interdisciplinary agency to specifically study organised crime should also be considered.

Crimes Against the Economic Welfare of Society

Over the last twenty years the government has successfully improved the economic condition of the country through improvements in the fields of commerce, communication and modern equipment. With the increase of economic activities, apparently manipulation in these fields also increases. Manipulation takes various forms and is a threat to the welfare of society in developing countries like Indonesia.

Activities in the field of banking and finance, include violations of foreign exchange traffic, and the banking credit system, manipulations of negotiable instruments and generally illegal banking practices. Another form of manipulation is fraud, for example, the production of false shipping documents (which may be part of smuggling activities) or the falsification of company books (which may be part of a tax fraud). Other forms of manipulation in the general economic sector are fraudulent activities towards consumers, such as selling shares in questionable companies to the public or marketing low quality goods and goods hazardous to health. In the last few years, when enforcement of intellectual property laws has been stepped up, cases of infringement appearing before the courts has increased.

Although in developed countries the above crimes are considered more or less conventional crimes, for developing countries they are quite novel crimes[1]. Most of these crimes are committed by those who are educated and have a good economic position in society. Hence they are referred to as the 'white collar criminals' of developing countries. Quite a few of these 'white-collar criminals' have shielded themselves behind corporations. There is, therefore, increasing pressure to amend the criminal code so as to make it possible for corporations to have criminal liability. The concept of corporate criminal liability is not found in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana). However, outside the Code the concept has been accepted in full (i.e. the corporation as an offender has criminal liability) since 1955 (Law No. 7/1955 on Economic Offences) and later in 1963 (Law No. 11/1963 on Subversive Offences) and in 1976 (Law No. 9/1976 on Narcotic Offences).

Crimes against the economic welfare of society, should also include corrupt activities of government officials. These crimes usually take the form of fraud involving public funds. However, other forms of abuse of public power are also conceivable. Usually they are in the form of accepting bribes in return for official favours or taking 'kickbacks', that is, the secret return of part of a payment to the state. This kind of 'bureaucratic corruption' has resulted in serious losses to state finances. In many instances, the deceit takes the form of secret cooperation between officials holding public power and businessmen holding

[1] Further discussion of this topic is contained in a recent study by Chrispinus Boro Tokan, criminal law lecturer at the Nusa Cendana University in Flores, of the social reaction of 'criminal offences against the local customs' in the Lamaholot village in East Flores.

economic power. An increase of this type of collusion will not only bring vast financial losses to the state, but more importantly will lower people's morale. It will decrease the people's confidence in genuine government efforts to improve people's welfare through economic development plans.

The vast increase in economic crimes has made it imperative for the government to take firm steps to enforce the law against offenders. Due to the low visibility of these crimes, the government needs specially trained investigators and law enforcement officers to enforce the law against corruptive practices (Law No 4/1971 on Corruptive Offenders). Coordination of law enforcement is in the hands of the Attorney-General. So far, the actions taken by the government against the corruptive practices mentioned above have been applauded and supported by the people. However, there is still too much hidden crime and it is very much hoped that the law enforcement agencies will increase their efforts, so that a clean government can be realised in the not too distant future.

One of the characteristics of unconventional crime is that the victim is usually an 'abstract victim' and in many cases there is collective victimisation. Such victims can be found in relation to consumer offences or consumer frauds and also environmental offences. Many cases of consumer fraud can be observed where the victims remain silent, in for example, cases of misleading advertisements, merchandising fraud and business opportunity swindles. In cases of environmental pollution, such as the pollution of rivers and lakes, the people whose livelihood depends upon those waters usually remain silent. It is, therefore, encouraging to see that in the last few years more and more non-governmental organisations have stepped up their activities to speak up on behalf of these silent victims. It is likewise encouraging to see how the government and the law enforcement agencies are reacting positively.

Conclusion

There is a need to improve our understanding of the crime problem. It should go hand-in-hand with a better understanding of how the criminal justice system works. We should also bear in mind the various constraints with which the law enforcement agencies have to cope in their daily work.

The international exchange of data and experiences, as evidenced by this conference, will enable a cross-cultural comparison of our respective criminal justice systems. This in turn, will hopefully improve our crime-control mechanisms and develop more effective prevention and rehabilitative approaches.

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INVISIBLE VICTIMS IN INDONESIA: A CONCISE REPORT ON ENVIRONMENTAL POLLUTION*

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Even after death, we will remember what you have done to us.
W. Eugene Smith and Aillen M. Smith, in Minamata

The cats that are lazy don't realise
the dirty rats.
They come to terrorise.
Being smart and false
The rats behave disgustingly.
Probably because the cats pretend not
to see.
Iwan Fals (Indonesian Folk Singer)

'Invisible Criminals'

THE EXPRESSION 'INVISIBLE CRIMINAL' IS NOT FOUND IN CRIMINOLOGY. However, I propose to use this expression in connection with the changes resulting from the advancement of science and technology, and also with what the Germans call 'Umwertung aller Werte' or the collapse of values in social, moral and even in religious spheres.

From a criminological perspective, criminals do not want to be left behind by the changes and challenges of the age; they jealously join the race with the law. This race becomes worse if the criminals cooperate with the authorities, with resultant abuse of power in our community. In this context, the authorities are controlled or even steered by the

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'invisible criminal'. This 'invisible criminal', if seen through everyday spectacles, is an honourable citizen who rides in stylish cars and uses expensive perfume. And on his study table stands in an expensive frame a photograph of him together with authority figures, as confirmation of his special status, which would discourage tax officers.

The justice authorities seem to be hypnotised in this race. They claim that there has been only one real case of pollution—the Sidoarjo case—because this one was brought to court. However, the court dismissed the case. Meanwhile the situation regarding the Surabaya river, which may be approaching the severity of the terrible Minamata affair in Japan (*see* separate section in this paper), is almost disregarded.

Likewise, the case of the Indorayon Utama factory in North Sumatra, where the stench of pollution can be smelt 40 km from the factory, is belittled and the local people's concern is not given proper attention. The Association for Studying and Developing the Community (KSPPM) in Siborong-borong, North Sumatra, which has been officially established, is not allowed to operate any more by the local military district head.

It has also been said that the Bengawan Solo river has been so heavily polluted that it needs to be rinsed with the water from the Gajah Mungkur reservoir (*Surabaya Post Daily*, 3 September 1990). Evidently 'pollution is continuously threatening us' and 'poisonous elements are increasing' (*Jawa Pos Daily*, 31 August 1990). In *Jawa Pos* it is further stated that 'at least 62 industrial enterprises in and around Surakarta have been throwing their waste water into the Bengawan Solo river and polluting the water'. In Jakarta, the Governor has twice expressed his annoyance because factories are throwing their waste water into the Krukut river (*Merdeka Daily*, 8 September 1990). The *Suara Pembaruan Daily* (10 September 1990) reported: 'The pollution in the Mahakam river and Karang Mumus river is becoming more and more alarming'. The list of pollution incidents will not stop as long as the press is given the freedom to report about it.

It seems that law enforcement officials have forgotten the statement in Statute No. 14/1970 that besides upholding the law, we must also honour justice. Therefore, the classical idea that the law must be just needs to be questioned. In the case of Sidoarjo and Indorayon Utama, for example, it can be seen clearly that the law seems to be upheld but justice is disregarded.

It is no wonder then if people ask: 'Have the police and the public prosecutors carried out their duties well?' We observe from the cases mentioned that:

- the criminal law has been dominated by the administrative law with many undesirable consequences;

- it is essential for the definition of a criminal act in the law of environment management to be reformulated in a more exact and accurate way so that a meaningful law can be proposed;

- if this cannot be done soon, the police and the public prosecutors ought to use the law for economic crimes in facing environmental pollution problems.

'Invisible criminals' seem to be a specific phenomenon of the end of the twentieth century, and if the problems they cause are not handled strictly and immediately, they are likely to become worse.

Some may think that these 'invisible criminals' look like what Sutherland (1983) labelled 'white-collar criminals', and from a certain point of view, the opinion is not totally wrong. If we consider, however, their influences and their practices, and if we place them in the context of the new phase of accelerating economic development in which people expect to enjoy justice and prosperity, these 'invisible criminals' take on a new dimension.

In listing some of the more egregious examples of environmental pollution, I would like to refer to the report of the Communion of Churches in Indonesia (1989). This report specifically mentions the following instances:

- pollution in Porsea resulting from the establishment of a pulp and rayon factory, and forest-stripping;
- increasingly unfertile soil and other environmental consequences resulting from forest-stripping in Kalimantan—funds designated for replanting of trees have disappeared;
- disturbance of the ecosystem in Maluku resulting from forest-stripping carried out to provide raw materials for plywood factories;
- lack of environment awareness everywhere, accompanied by the high use of plastic and tin wrappings which cannot rot, thus increasing environmental pollution;
- the desire to accelerate the production of agriculture has stimulated the excessive use of pesticides, which threatens the lives of other creatures, including human beings, through the pollution of ground water;
- social problems have resulted from the policy of some companies in employing underaged children as cheap labour;
- products rejected overseas as having undesirable qualities are freely sold in Indonesia;
- factory labourers in industrial cities are squeezed by their employers, who are trying to reduce production costs to the lowest rate;
- women labourers receive unjust treatment—no equal pay and very little work care and protection;
- rights are being ignored in the process of land release, especially in the government's providing land for the needs of communities;
- lack of capital among small-scale businessmen and the complexities involved in getting loans with low interests from banks or loan-giving cooperatives encourage money-lenders who charge very high interest;
- the need for foreign exchange has caused communities in tourist regions to disregard the rights of the local citizens to enjoy development and education;
- the need for skilled foreign personnel in many projects, often necessitates the foreigners' presence without their families, which can be socially disruptive;
- the policy of transmigration is often mishandled, so that many of the people resettled in underpopulated regions return to their original settlement. Similar problems flow from inadequate care of Indonesian guest workers sent to other countries;

- most projects, with complete infrastructures, are concentrated in Java, which causes urbanisation to increase and causes the construction attempts in regions outside Java to be neglected, especially because the best experts are gathered in Java;

- there is an unwillingness in communities to question the consequences of government policies, such as the selection of project locations and procedures for land-compensation;

- the rapid rate of economic development has led to social disruption in families and whole communities;

- the imbalance between population growth and the creation of jobs causes high competition for jobs and increases urbanisation.

'**Invisible Victims**'

We will not find the expression 'invisible victim' in the terms of victimology either and it is important not to confuse this phenomenon with victimless crime. In prostitution for example, there is an opportunity for the prostitute to choose to enter a business arrangement with the client: the woman is willing to render a service and the man is willing to pay the fee. In the context mentioned above, we can say that there is an agreement between both parties—between the criminal and the victim, if we insist on using the term 'victim' for this case.

In the case of the 'invisible victims', by contrast, there is no agreement at all. The 'invisible criminals' pretend not to know that there will be victims at all. In the case of Minamata, the Chisso company did not want to know or pretended not to know anything about 'victims', although the first clear case of what became known as 'Minamata disease' was reported in 1953. The Minamata affair is taken up here as an example and warning about how dangerous such negligence can be if a government does not take drastic action.

It should also be mentioned here that in the United States, Congress and the individual state legislatures have created thousands of new laws concerning the environment. And in handling dangerous environmental pollution, the twenty thousand attorneys who specialise in environmental law have become some of the most sought-after professionals in the United States. Furthermore, *Time* magazine of 12 March 1990 reported that 'the Justice Department now has twenty full-time lawyers working on such prosecutions, backed up by US attorneys and FBI agents across the nation, plus fifty criminal investigators at the Environmental Protection Agency'. It is indeed an example which should be given proper consideration.

We need to be aware that people's health is a precious asset of any country. What will happen to Indonesian people who cannot afford to have mineral water, which is in fact more expensive than gasoline? It is a fact that ordinary people drink water processed from the water of the Surabaya river, which may have been polluted by industrial and domestic wastes. Even though the authorities say that they continuously monitor the pollution, the people are still anxious. In Surabaya one can see, on certain days of the week, great amounts of foam in the river. The evidence of pollution speaks for itself, although there have been inspections carried out.

It is vital that we should be very cautious and should learn from the Minamata case (*see* later section in this paper). From this affair we learn that even experts and scientists can be silenced. The Government of Japan in fact warned the fishermen that they might get nothing

if they did not accept Chisso's offer promptly. It seems that even the Government of Japan could be steered by the 'invisible criminals'.

Invisible Crime

Two expressions are called to mind when considering the phenomenon of 'invisible crime'—'water never flows upward except when it is forced by a pump' and 'big dogs won't bite one another'. Together, these sayings go some way to explaining why most prison inmates come from the lower class of society. Those few from the upper class of the society have either committed such heinous crimes that they are intolerable to their friends, or alternatively they have been sacrificed by their friends because of the need for a scapegoat.

About 18 years ago, in a scientific lecture in the Faculty of Law in Airlangga University, I tried to describe a profile of a white-collar criminal. I wrote that:

> many criminals of this time wear expensive suits and ties, seem to be obedient to the law, eager in giving to charities, and if necessary, become members of well known social committees, riding in luxurious cars, carrying out hidden crimes behind beautifully arranged speeches and politeness. They don't come from the poor and unrefined class of the society, they don't have large muscles like common gangsters according to Lombroso's picture of criminals. They often have handsome faces, their wives are generally beautiful, but they are 'saloon robbers' who are as wicked as robbers and murderers, but use other methods.

While for white-collar criminals I use the term 'saloon robbers', for 'invisible criminals' I use the term 'mass murderers'. If we seriously study the Minamata affair, for example, we will find how horrible and terrifying the consequences of their actions can be.

The Minamata Affair

The Minamata affair was not only horrible and terrifying, but also very poignant. The people of Minamata were fishermen who lived peacefully and tranquilly. Their lives were transformed with the establishment of the Chisso Corporation, which had begun as a carbide and fertiliser company (in Japanese, 'chisso' means nitrogen), but by this time was a petrochemical company and a maker of plastics.

The people of Minamata began to suffer from a strange disease which caused brain-damage. Eugene and Ailleen Smith explain the phenomena of the Chisso-Minamata disease as follows:

> The nervous system begins to degenerate, to atrophy. First, a tingling and growing numbness of limbs and lips. Motor functions may become severely disturbed, the speech slurred, the field of vision constricted. In extreme cases, the victims lapse into unconsciousness, involuntary movements, and often uncontrolled shouting. Autopsies show that the brain becomes spongelike as cells are eaten away (Smith & Smith 1975).

At first, this strange disease was thought to be infectious but even cats died after eating the polluted fish. It was in early 1956 that the disease took on the proportions of an epidemic, and finally became known as 'Minamata Disease'.

In July of 1959, a group from Kumamoto University reported that organic mercury was the cause of the disease. Many independent committees were formed. One met only four times, then mysteriously disappeared—it had been sponsored by the Japanese Chemical Association, of which Chisso was a member. Another committee reported bluntly that the cause definitely was mercury poisoning, and was disbanded the next day. Chisso used

many cunning methods to show that it really would clean industrial wastes, even though in fact it did not hesitate to bribe, buy, or silence experts and scientists. However, the truth could not be hidden indefinitely and finally the Japanese Government has to admit the bitter reality.

Tackling Pollution in Indonesia

In April 1988 in Jakarta, the Minister for Population and the Living Environment stated, among others things, that: 'the community needs to be involved actively in questioning pollution cases to bring forward suits to court'.

Can this good suggestion function in the 'sobural' (an Indonesian acronym for social values, civilisation aspects, and structural factors) existing in the Indonesian community? Last year, Minister Emil Salim from the Department of Population and the Living Environment named three large industries which had been polluting the environment and had been violating the Government's regulation. One of them had also been logging forests arbitrarily. People silently wonder if the Government cannot take proper actions against such violations, then who can? As I mentioned earlier, the Association for Studying and Developing the Community (KKSPPM) in North Sumatra, which had been unyieldingly fighting for the people's rights, was silenced and its activities were stopped by the local military district. This fact is surprising, ironic, and frightening.

Development of this country, especially the process of modernisation, will sooner or later bring with it unknown and unexpected consequences. Especially in a Third World country like Indonesia, which is working hard to establish a just and prosperous nation, development should always emphasise improving the welfare of the people without causing the people to suffer. Development should not bring prosperity to only a part of the nation, but rather should enrich all the people.

Our government has been working hard to improve the people's welfare, but all this work will not mean much if the people then suffer because their health is damaged by environmental pollution; especially at present, when there is not yet any law which can strongly support a 'class action'. We cannot even be sure if we can claim financial compensation for the people who have been injured by the consequences of environmental pollution. It seems that the people's welfare in connection with environmental issues is not regarded seriously.

Does environmental pollution disturb the Surabaya, Wonokromo, Awung, Jagir, and Brantas rivers only? The *Suara Pembaruan Daily* of 29 October 1988 reported, among others things, that 'the attempt to overcome pollution in the Bekasi river hasn't succeeded so far. The water of the river is still dark and bad-smelling, so it was said by the people who live along the river-side . . .'. It was further stated that '. . . they not only suffer because the water can't be used for washing and bathing, but also because there are no fish anymore . . . '. The regional Government of Bekasi has been asked to sue the owner of the industrial company which causes the pollution, but that has not yet happened. The *Kompas Daily* of 25 February 1989 spoke along the same lines: 'If not regulated, the tin mine in Bangka can pollute its environment'. I cannot list here all the reports about acts which, recognised or not, will ruin the country's future for the sake of the prosperity and greed of a few immoral people.

Can action be taken to save these rivers? Environmental pollution does not only happen in Java. The case of the Cavenagh river in Singapore is a very pertinent one for our purposes. This was an extremely polluted waterway running through the centre of Singapore. In the mid-seventies, the level of pollution was such that the Government of Singapore decided to take dramatic action to clean up this mess. Within ten years the stinking water, junk and garbage had all gone. The clean river is now a national asset, which

has become a recreation facility, and moreover it has a social and cultural function for the present and future generations.

Appeals to the people during political campaigns become empty slogans. Beautiful promises are just lip-service. So, it is not surprising that the newspapers only supply news about 'days of empty speeches'. The social gap, about which President Suharto has given many warnings, is answered by sharing only one per cent of the profit for the people's cooperation. It will do no good, if one hand gives honey while the other hand gives poison in the shape of environmental pollution.

Conclusion

This paper cannot of course cover all cases of environmental pollution in Indonesia. Through the cases which have been discussed, however, it is hoped that those who have the responsibility to take care of the people's welfare will be moved to take the measures needed to prevent the continuance of environmental pollution.

The present situation in Indonesia can be summarised as follows:

- the Indonesian government has been working very hard to improve the welfare of the nation and the country. However, it must be recognised that careless development may become the cause of environmental pollution;
- 'invisible victims' exist in Indonesia, as a result of careless development and resultant environmental pollution and damage, even though the number has not yet reached a dramatic level;
- to prevent the increase in the numbers of 'invisible criminals' we need a set of laws which are firm, clear, and which can be enforced honestly and with responsibility;
- in the near future the government needs to make a law for 'class action' and a firm, clear and practical law about compensation for the victims of environmental pollution;
- industrial methods and machinery which have been abandoned in Western countries because they cause environmental pollution should not be used in Indonesia;
- the courts should be oriented, for the sake of justice, towards the welfare of the people.

The writer hopes that this description of 'invisible criminals' and 'invisible victims' may give a sufficiently clear picture to motivate us to develop our talents and to fulfil our responsibility not only to our children, grandchildren and to our country, but especially as people who have faith in God, to the Creator of the universe who has shown His mercy and love to our fertile and prosperous country.

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THE SOCIOCULTURAL APPROACH IN CONTROLLING VIOLENT CRIME*: A CASE STUDY OF 'SIRI' PHENOMENON IN BUGINESE-MAKASSARESE COMMUNITY, SOUTH SULAWESI, INDONESIA

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WHY DOES CRIME OCCUR? THE EXPLANATION MAY BE BIOLOGICAL, psychological, juridical, anthropological or sociological. Whatever approach is applied in explaining crime, criminological studies should always aim to be relevant and useful to the society in which such studies are carried out.

It ought then to follow that the result of criminological inquiries should provide bases for policies leading to the reduction of crime. In this regard Sellin has mentioned that 'the result of such a study may afford a basis for social action or public policy which is in harmony with dominant attitudes' (Sellin 1970, p. 6).

This paper will take a sociocultural approach, which seems the most appropriate in discussing strategies for controlling violent crime in Buginese-Makassarese society in Sulawesi. According to some studies (Nur 1982; Ishak 1985; Thontowi 1986; Ariyanny 1987), a considerable proportion of violent crime in that society flows from a particular sociocultural feature of the society, namely the phenomenon of 'siri'.

'Siri' is best interpreted as the concept of honour, dignity, or reputation of a person and his family. If one's 'siri' is perceived to have been downgraded by another in public, then

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according to customary law (adat), that person and his family are obliged to restore their 'siri' through the execution of violent conduct (usually homicide) against those who have caused the loss of 'siri'. If such action is not taken, then those who have lost their 'siri' will be considered worthless by society.

The knowledge of crime causation in the case of 'siri' is very valuable for controlling crime. Sutherland and Cressey mentioned that such a knowledge: 'would be useful in control of crime, provided it could be 'applied' in much the same way as an engineer 'applies' the scientific theories of the physicist' (Sutherland & Cressey 1977, p. 522).

In line with the assertion of Sutherland & Cressey, violent crime in the Buginese-Makassarese society, which is attributable to 'siri', may be controlled through social planning to alter the orientation of the society from the use of violence in resolving conflict, into more acceptable behaviour in accordance with dominant attitudes in the society, which are anti-violent.

To explain how the sociocultural approach might work in controlling violent crime in Buginese-Makassarese society, the discussion will be divided into two parts: the sociocultural circumstances in which 'siri' is used as a rationale to execute violent behaviour; and the requirements for an effective and successful sociocultural approach in controlling 'siri'.

The Sociocultural Circumstances in which 'siri' is used as a Rationale to Execute Violent Behaviour

Literally, 'siri' means dignity or honour or reputation, but as a sociocultural concept it has two meanings which seem contradictory. Firstly, '**siri ripakasiri**' is the deep feeling of shame that one's dignity has been degraded by others in public. Secondly, '**siri masiri**' is a way of life which directs one's spirit to gain success.

This paper deals only with the 'ripakasiri' issue. In the case of 'ripakasiri', if a person perceives that his dignity has been degraded by others, he is socially expected to restore his dignity by killing the offenders. The reason is that, according to the Buginese-Makassarese value system, a person who has lost his 'siri' ('mate siri') is no longer valuable as a human being. His status is the same as an animal, so it is better to die than to live without dignity. To die as a consequence of fighting for 'siri' is a worthy way of dying (Abidin 1983, p. 7).

'Ripakasiri' is felt not only by the direct victim himself but also by all of his family. Thus, the duty to restore 'siri' is not only the duty of the victim but the duty of every member of the family. The duty to restore 'siri' will be executed any time or anywhere whenever possible, even though the incident may have occurred in the past. In Buginese-Makassarese society this solidarity strengthens the 'siri' value.

As violence in 'ripakasiri' is socially or culturally accepted or even expected, Abidin (1983, p. 3) comments that it is not a revenge but a customary moral obligation that must be observed. Errington (1977, p. 43) further reports that for the Buginese-Makassarese, there is no more important goal in their life than to maintain 'siri'.

Situations in which 'ripakasiri' might occur, originally related to marriage affairs—for instance, elopement as a result of a young man and his girl friend not obtaining approval for their marriage from the girl's parents. Elopement might also occur if no agreement could be reached between the parties concerning the number or the value of the bridegroom's gifts to the bride. Beside marriage affairs, homicide, rape and sexual harassment are the most common situations resulting in 'ripakasiri'.

Nowadays, 'ripakasiri' may also include any incident which is perceived to be humiliating, even though such incidents may be regarded as trivial elsewhere. For instance, in the Mandarese community (another ethnic group in South Sulawesi which has the 'siri'

concept), to touch somebody's head is considered to cause loss of 'siri'. Such an act would cause one to feel 'ripakasiri' which could lead to violent conduct in order to restore 'siri'.

Even though 'ripakasiri' is expected to be restored through violent conduct, conciliation between conflicting parties is available. In Buginese society, if the case has been brought before the customary leader, the person who feels 'ripakasiri' is not allowed to take any action against the offenders until the dispute is heard. However, in the Makassarese community the dispute is discontinued only if the offenders have sought asylum and have been granted protection by the customary leader, and are on the premises of the protector. If the offender is outside the yard of the customary leader's house, the protection is no longer in force.

Intervention from the customary leader to the disputing parties is possible because both parties respect the 'siri' of the leader. However, if the intervention fails, or the disputing parties do not respect the leader's decision, it will be perceived by the leader as degrading his 'siri' and will cause 'ripakasiri'.

The customary leaders in Buginese-Makassarese society are known as 'Pabicara'. Their tasks are to mediate between their followers and officials of the government, to arrange marriages, to conduct customary ceremonies, and to settle disputes. Unfortunately, the role of 'Pabicara' in settling disputes is not acknowledged in the Indonesian legal system. Moreover, at present there remain only a small number of 'Pabicara' who have the authority of the custom. Their role and position will not be replaced in the future because the influence of the custom has declined (*see*, for example, Mattulada 1980, p. 106).

Even so, the value of 'siri' still exists in Buginese-Makassarese society because the value is transferred to the young generation through the socialisation process. However, observers of the culture believe that the 'siri' value which is now observed is distorted, because now the Buginese-Makassarese are only acquainted with the 'siri ripakasiri' rather than 'siri masiri', and disputes which now result in the use of violent conduct to restore 'siri' are not like previous disputes.

In comparing the Buginese-Makassarese with other sub-cultures where violence flows from the value system (*see* Wolfgang & Ferracuti 1970), there are similarities because of the readiness to use a weapon. In this regard, there is a traditional curved dagger which is almost always carried by the Buginese-Makassarese male—**the badik**. Because violent crimes in South Sulawesi almost always involved the use of the badik, between 1985 and 1987 the police in that area conducted operations to seize badiks from owners, sellers and producers. It was expected that the operation would result in the reduction of violent crimes. In fact it did not. (*See* Table 1 for the number of violent crimes and homicides from 1985 to 1989 in the South Sulawesi and South East Sulawesi Police Districts.)

Table 1

Violent Crimes—South Sulawesi and South East Sulawesi

Year	Violent Crime	Homicide
1985	110	214
1986	185	523
1987	176	244
1988	144	233
1989	78	210

Source: Indonesian Police Headquarters, Centre for Co-ordination and Operational Control.

The failure of the police operation was blamed on defects in the operation itself, which did not consider the sociocultural circumstances which predisposed violent crime, that is the existence of the 'siri' value.

A Sociocultural Approach in Controlling 'siri'

To run an effective sociocultural approach in dealing with 'siri', it should be based on knowledge of how Buginese-Makassarese society operates. In this respect, a carefully planned program of research is the answer.

The research program should be staffed by anthropologists, communication experts, psychologists, legal specialists and criminologist-sociologists. The main goal of the research would be to reformulate the 'siri' value into an acceptable value in accordance with the dominant, non-violent, attitudes. The program could be executed through the promotion of non-violence values.

The first task of the researchers would be to identify sociocultural resources which can be utilised in the promotion activities. For instance, they need to identify:

1. who has the capacity to act as agents of change, if the customary leaders no longer exist;

2. what kind of folklore exists which could be utilised for the transformation of new ideas;

3. what, how, and by whom should the reformulation of the 'siri' value be carried out.

In these tasks, the anthropologists might take the dominant role.

After the sociocultural resources which can be utilised have been identified, the next stage is to plan what kind of communication can be used in transforming new ideas effectively in the community. It is important to investigate what circumstances exist in the community which might be helpful in this process. This stage is the responsibility of the communication experts and psychologists.

Finally, it should be determined in which area the program would be executed, how long it should take and when the local community would be involved. Since the results of the program would not be visible in the short term, they need to be determined by monitoring and evaluating instruments in the program's design. A control area also needs to be identified, which would be used later in the measurement of the program's effectiveness.

It is vital that the researchers in the program act simply as facilitators who provide ideas to the local communities. Thus, it is necessary to consider how we can ensure that the local community perceive that the program is based on their own activities, in their own interest.

Based on the empirical experience gained through the program, the legal experts could plan how the sociocultural values and custom of local community could be adopted by the formal legal system in the conciliation process of dispute settlements. Finally, criminologists might learn the advantages and disadvantages of the sociocultural approach in dealing with crime which might lead to some useful proposals in criminal policies.

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THE PREVENTION OF CHILD EXPLOITATION AND ABUSE: A COMMUNITY RESPONSIBILITY*

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OVERCOMING CHILD EXPLOITATION AND ABUSE AND ASSISTING ITS VICTIMS IS A massive problem. We see it as a community problem that we must solve together. This is especially necessary in developing countries, because of their unfavourable circumstances created in the past and today. Thus, we have to mobilise funds and forces to cope with this national and international problem.

The existence of the problem of child exploitation and neglect is indicative of a decrease in the level of responsibility felt by some of our fellow community members. Millions of children become victims of various irresponsible acts of their fellow human beings.

This problem is recognised as a world problem. At the United Nations in New York on 30 September 1990, many state political leaders gathered at the World Summit for Children to undertake a joint commitment and to make an urgent universal appeal—to give every child a better future. A world declaration on the survival, protection and development of children was declared and a plan of action for implementing the declaration in the 1990s was agreed upon.

The Convention on the Rights of the Child provides a new opportunity to make respect for children's rights and welfare truly universal. Further attention, care and support should be accorded to disabled children, as well as children in other difficult circumstances.

Included in this declaration was a very significant commitment, namely, that the signatories are willing to work towards ameliorating the plight of millions of children who live under especially difficult circumstances—as victims of apartheid and foreign occupation; orphans and street children and children of migrant workers; displaced children and victims of natural and man-made disasters; the disabled and abused, the socially disadvantaged and the exploited. The signatories will also work for the special protection of the working child and for the abolition of illegal child labour. They will also do their best to ensure that children do not become victims of illicit drugs.

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Indonesia has ratified this declaration: it is in accord with the Pancasila philosophy, the 1945 Indonesian Constitution and other regulations on social welfare.

In order to understand the Indonesian problem better, its geographical and demographic situation needs to be taken into consideration. This affects the ways Indonesia copes with the problem of preventing crime and treating offenders and victims in general, and especially preventing child exploitation and abuse.

Indonesia is the largest archipelago in the world. It consists of five major islands and about 30 smaller groups. Altogether there are 13,667 islands of which about 6,000 are inhabited. The estimated area of the country is 5.2 million sq km, which consist of a territory of 2 million sq km and a sea territory of 3.2 million sq km.

There are about 200 languages and dialects spoken in the whole archipelago, belonging to the different ethnic groups in the population. There are a number of different religions, including Moslem, Christian, Hindu, Buddhist and other beliefs.

In 1985, the population of Indonesia was 164 million compared with 147 million in 1980 and 119 million in 1971. Projections to the year 2005 indicate a further increase of 67 million. In 1985, about half the population was under the age of 15. In 1990, the estimate is 183 million, with the number of citizens under 24 years at 105 million—58 per cent of the whole population. These population increases have led to changes in the socioeconomic setting and in social policies affecting children.

There have been several changes in Indonesia's demographic structure. We now manage to hold the population growth rate at 2.1 per cent annually. A change in shape of the future population may result from the number of children aged 5-9 years now exceeding the number of children under age five for the first time since 1961. On the other hand, the proportion of women of child-bearing age is growing larger and it will increase from 24.5 per cent of the total population in 1985 to 26 per cent by the year 2000. This change will herald another significant increase in the size of the population of children under five years of age.

A second major structural change to Indonesia relates to rapid urbanisation, mainly in Java, which appears to be largely due to rural-urban migration. The current average urban growth rate of 5.5 per cent continues. By 1995, there will be 73.5 million urban dwellers, or about 36 per cent of the total population. The urban child population aged under four years could reach approximately 9.6 million.

A third factor concerns the great and still increasing level of unemployment and semi-employment. The proportion of the labour force employed in the industrial sector in the cities will probably not increase and may even decrease in proportion to those in the labour force without the necessary skills.

Based on these problems, this paper will look at two issues: implications for child survival and development, and protection measures especially for working and street children, and alternatives for solving problems through child welfare measures.

Working Children and Street Children

Children in the labour force

ILO Convention no. 138 and Recommendation no. 146 states that :

> National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work, on condition that such work is not likely to be harmful to their health or development, nor to prejudice their attendance at school or their participation in vocational orientation or training programs.

It further advocates a firm national commitment to full employment; the progressive extension of other economic and social measures to alleviate poverty, thus making it unnecessary to have recourse to child labour; the development and progressive extension of social security and other family welfare measures, including children's allowances; the development and progressive extension of adequate facilities for education and vocational orientation and training; the adoption of special measures as regards children and young persons who do not have families or who do not live with their own families and also of migrant children and young persons; and the introduction of compulsory full-time attendance at school or participation in vocational orientation or training programs, at least until the age of admission to employment. The Recommendation also proposes that member states should take as their objective the progressive raising to 16 years of the minimum age for admission to employment.

The Indonesian labour law, Act No. 1/1951, is in accordance with this Convention. It contains prohibitions against child labour: children under 14 years are not allowed to work; youngsters of 14 to 18 years are forbidden to work in the evening, in mines and other dangerous places.

In Indonesia, working children can, however, be found in some of these areas. The following are the types of work and activities identified by the Department of Social Affairs:

- Infants under five years of age being used by their parents to beg. The sight of a beggar carrying a child under the heat of the sun is designed to arouse pity. Several such cases have come to light; even a baby 'rental' business for this purpose has been discovered.

- Children over five years of age, from underprivileged families, are obliged by their parents or others to beg or collect food leftovers.

- Children performing jobs such as selling snacks or helping carry people's shopping bags. Often children can be seen in the rain carrying umbrellas for rent or helping to push stranded cars caught in a flood.

- Children used as unpaid labour in rural areas, either in agriculture or fishing, usually either in taking care of their younger brothers and sisters while the parents are at work, or being obliged to work either as servants or farm labourers.

- In Jakarta and other cities, children working in the services sector, as shoeshine boys, selling cigarettes, newspapers, food and drinks, cleaning, and stacking bricks. In the manufacturing sector children work in soap-making industries, cigarette and tobacco factories, textiles, biscuits, handicrafts industries and in other small scale industries.

Nationally, in 1985 there were estimated to be 2.7 million children aged 10-14 and 6.7 million children aged 15-19 years in the workforce. Street children were coordinated by the street pedlars organisation which was formed in September 1988 in Jakarta. This organisation has around 8,000 members whose daily income varies from Rp. 1.000 to Rp. 4,000[*] depending on working hours, location, etc.

A survey conducted by the Social Research and Development Board in 1988 revealed that of the age group 7-15, 70 per cent had attended elementary school and 25 per cent had attended secondary school. The low level of education is understandable as more than a

[*] $A1 equals approx Rp. 1500 as at March 1992.

third of them work to pay for their education, as well as for the material benefit of their families. The survey showed that half were still attending school.

Street children

Numerous children from underprivileged families are totally without any family relationship. This is usually the result of one of the following:

- The children are unwanted by the family and are considered a burden. Poverty often causes parents to consider the arrival of the child as a misfortune and the child is ignored from birth.
- Some parents feel obliged to accept the birth of their children but do not take care of them themselves or leave the children uncared for.
- There are parents who willingly accept their children but their poverty means that they are unable to take care of them, and, although they may attend school, they must also earn a living.
- In the case of single-parent families, relatives may not feel obliged to help care for them.

Strategies to Improve the Lives of Working Children and Street Children

In line with the Repelita V (five-year development plan), Indonesia recognises the magnitude of the poverty problem and the need to mount an intensified effort to reduce poverty. Indonesia reiterates its commitment to growth and structural change with an emphasis on developing an efficient infrastructure necessary for sustaining a rapid rate of economic growth. In order to address more directly the needs of the poor, a number of poverty-related programs have been undertaken during the Repelita V period, some new programs have been initiated and other existing programs strengthened. The programs will:

- promote the equitable distribution of social and basic services;
- provide water to low income groups in both rural and urban areas where there is a water shortage;
- stimulate development in poorer areas through a series of integrated area development projects.

In determining priorities for assisting working children and street children, basic needs indicators should be employed to identify the most needy children, guide the planning and delivery of services and monitor the situation of poor rural and urban children. The use and selection of these basic needs indicators are based on the following data:

- the geographic areas with a high number of children;
- areas where there is a lower than expected level of school attendance;
- city areas which are influenced by migration/urban growth with consequent inadequate housing and poor environmental conditions.

Children's problems cannot be solved unless their family's problems are solved. The problems faced by underprivileged families originate in their limited ability to meet their basic needs—material, mental and spiritual. It is apparent that economic needs must be met first. This does not mean that only this aspect should be addressed: while the economic needs are being met, the other needs should also be fulfilled gradually.

Those children who are separated from their families will have additional serious emotional and social problems. In the case of orphans, it is necessary to create families similar to normal families for them, either through institutions or foster parenting. In both cases the task is not only to care for and educate the children, but also to make every effort to compensate for their loss.

Social rehabilitation is more complicated than physical rehabilitation and should be handled professionally. Children from families suffering from poverty-related psychological problems tend to show a low intellectual level as a result of critical early childhood experience in terms of health, nutrition and emotional deprivation.

A Plan of Action to Overcome Street Children's Problems in Jakarta

There are various approaches which can be employed, depending on which factors we look at in solving the existing conditions in Jakarta and other big cities in Indonesia.

As most street children belong to poor families, the introduction of poverty alleviation programs as set out in the fifth development program is very relevant. These programs aim to increase the income of the family and to maximise the purchasing power of available income. For example, a small scale credit scheme has been introduced to poor families to boost the development of entrepreneurship in trading, industry and service activities. By increasing family income in this way, families will gain additional purchasing power for purposes such as improving the health and education of their children.

Unequal opportunities for receiving various services is a common phenomenon for the poor and maximising the purchasing power of the existing income is vital. In slum areas with no access to clean water, low income people have to buy water for their daily use at higher prices compared to the people who live in the areas where piped water is available. The government is aware of this and is trying to bridge the gap by introducing additional water schemes and installing water pipe connections which the people can afford. With such policies people need to spend less than before on essentials.

The survival, protection and development of today's children is the pre-requisite for the future development of humanity. Empowerment of the younger generation with knowledge and resources to meet basic human needs and to grow to their full potential should be a primary goal of national development. Indeed, investment in children's health, nutrition and education is the foundation of national development.

It is known that 3.1 per cent of street children have never been in school and 71.3 per cent do not proceed past primary school. It is assumed that the problems faced by street children lead to problem in education. However, 72.5 per cent of the parents of street children say they are conscious of the importance of their children's education.

To help ensure that their potential for development is achieved, a special program has been introduced for street children called PAKET KEJAR A, and PK3 (non-formal education). These are educational tools for working in the community that can enhance capability in areas such as home industries, small scale trading, agriculture and mechanics.

It is well known that peer relations play an important part in the development of children in learning such skills as how to cooperate, discuss and plan action with others. For the benefit of child development, a special action plan needs to be introduced to working and street children through peer group intervention in the form of 'KARANG TARUNA'

programs. The programs and activities are coordinated through LKMD (village development councils) to enable the younger generation to participate in the planning and implementation of cooperation development to support their vocational and technical skills, their income generating activities and their sport activities.

As well as the programs mentioned above, problems caused by poverty still require other development-oriented programs such as:

- assistance for the victims of natural disasters;
- assistance for the families of independence war heroes;
- coordination of the welfare of isolated communities;
- coordination of youth activities;
- coordination of the community's role through community social workers.

These programs implemented via the Department of Social Affairs are in the form of development projects. To date, these projects are mostly focussed on the underprivileged.

Programs are not dependent on the government budget alone. Apart from the routine and development budgets, community participation through local organisations plays an important role in the operation of programs or financial support for the underprivileged.

International bodies like WHO, ILO, UNESCO, UNICEF and UNDP assist in refining and complementing the operational mechanism, and the management of existing social organisations. In addition, several other foreign bodies like USAID and OECF provide invaluable assistance in the funding of programs.

Supporting Laws and Regulations

In Indonesia, the basic design for social welfare development is founded on the principles of the Pancasila philosophy, the 1945 Constitution, and on the operational principles of the Guidelines of the State Policy.

As a reflection of the national ideas laid down in the Preamble to the 1945 Constitution, a number of articles of the Constitution oblige the State apparatus to create social welfare based on social justice. They are article 27 paragraph (2) and article 34, the full texts of which are as follows :

> Article 27 par.(2): Every citizen has the right to obtain decent employment and live in accordance with the standard of humanity.
>
> Article 34: Poor and destitute children shall be taken care of by the State.
>
> Article 31 par.(1): Every citizen has the right to obtain education.
>
> Article 33: Embodies the characteristics of social justice and humanity in social as well as public life.

As a further interpretation, the conceptional principles of social welfare development shall be enhanced by various laws and regulations to be used as:

- the legal basis for the implementation of social welfare efforts in Indonesia;

- directives for the government in setting up policies for the implementation of general administration tasks and the efforts of social welfare development;

- supervisory means on the implementation of social welfare efforts undertaken by the government as well as by the community.

The operational principles, comprising laws and regulations on social welfare, include among other things:

1. Laws

   a. Act no 1/1951 re Labour Law
   b. Act no 6/1964 re Basic Stipulations on Social Welfare
   c. Act no 9/1976 re Narcotics
   d. Act no 4/1979 re Child Welfare
   e. Act no 2/1989 re National Education System
   f. Act no 8/1981 re Criminal Procedure
   g. Act no 1/1946 re Criminal Law (1918)

2. Government Regulations

   a. Government Regulation no 31/1980 re Care of the Homeless and Beggars
   b. Government Regulation no 42/1981 re Social Welfare Services for the Poor
   c. Government Regulation no 2/1988 re Child Welfare Services for Children with Problems

3. Presidential Decrees

   a. Presidential Decree no 39/1983 re Coordination of Social Welfare Efforts for the Handicapped
   b. Presidential Decree no 40/1983 re Coordination on the Care of the Homeless and Beggars
   c. Presidential Decree no 36/1990 re Ratification of the Convention on the Rights of the Child

Nevertheless, the operation of the programs is still affected by the lack of sufficiently qualified personnel, which results in unprofessional field coordination and management. Consequently, scholarships or other facilities for training, further education, personnel exchange and research all need to be introduced.

However, perhaps the most important factor is to bring about a sense of responsibility in the community as a whole for its children. This is vital if we are going to cope successfully with the problem of crime prevention and the just treatment of offenders and victims, in order to achieve justice and well-being.

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THE SPECTRUM OF CORPORATE CRIME IN INDONESIA

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CORPORATE CRIME IN INDONESIA HAS ONLY RECENTLY ATTRACTED BROAD attention, although Law No.7/1955 on economic crimes stipulated a criminal responsibility for corporate crime. By that stipulation, in criminal cases a corporation is legally considered to be the doer of the crime and is designated as a legal subject to whom criminal responsibility should be charged. The inconsistency of legislation and law enforcers in regulating and enforcing this stipulation and the lack of attention paid to it by criminologists has led to a tendency to overlook the problem of corporate crime.

The cases of charging the corporation as a perpetrator in a trial are very rare—one exception being the case of Oei Tiong Ham Concern in 1950s. Moreover criminologists have paid too little attention to corporate crime. A study of over 100 Indonesian criminology books published between 1970-1980 shows that none of them discusses corporate crime in depth (Susanto 1988).[1]

Crime and Social Construction

Crime is not the only phenomenon whose realisation needs to be observed clearly, but it is the product of construction—the image created by the social doer—which constitutes people's interpretation of a certain phenomenon toward an interaction in a certain context.

Interpreting an event or a phenomenon as a crime is determined by the knowledge and perception of crime. One problem is the general knowledge or perception of crime. My study shows that people's perceptions as well as their knowledge is biased, meaning that they mostly concentrate their attention on conventional crimes and rarely on white-collar crimes (Susanto 1990). Another problem is how a person's perceptions are formed and how their knowledge is acquired. The study shows that people's knowledge or perception

[1] This does not mean that white-collar crime and corporate crime are absolutely ignored by scholars in Indonesia; there are some articles in newspapers, as well as some seminar papers and discussion, but only a few. In addition, there have only been very few scientific activities on corporate crime held recently. The National Seminar on Corporate Crime was held for the first time in November 1989 in Semarang.

of crime is particularly acquired through the legal official action toward crime, as well as through the mass media, especially newspapers.

The way in which a person's knowledge or perception of the reality of crime is formed is known sociologically as social construction. What is meant by reality is the quality of the phenomenon which we receive as something, the existence of which does not depend on our own will but on the social meaning and subjective product of mankind (Berger & Luckmann 1981). Therefore, the social reality of crime could be accepted as conceptual reality, as well as visible reality. On the other hand, social knowledge and social phenomenon are formed through a collective process namely externalisation, objectivity and internalisation (Berger 1967).

Police View of Crime

It has been shown that the crimes which the police very often take action against are conventional crimes not corporate crimes (Susanto 1990). The following factors can be seen to influence this:

Crimes reported by society: The crimes reported by society are only conventional crimes. Research findings show that the activities of the police in law enforcement are 80-90 per cent based on crimes reported by members, so that the crimes handled by the police are merely conventional.

Society's view of corporate crimes: The ambiguity of society's views toward white-collar crimes (often influenced by the lack of knowledge of corporate crimes) tends to see them as not dangerous events, and stemming from the crime doer's social status.

Criminal law: The behaviour which becomes the object of criminal law.

The philosophy of seeming to be different: The purpose of regulating corporate crimes is for improvement or indemnity, which is very different from the purpose of regulating conventional crime, which is to arrest and to punish. This is evidenced by the form of legal sanctions given in corporate crimes, which are civil and administrative sanctions, whilst criminal sanctions are considered as an insignificant addition, if the civil or administrative sanctions cannot be taken into action. A further result of this view is that the institutions which carry out the Corporation Acts are administrative institutions, for example the Drug and Food Controlling Bureau (Ministry of Health); the Department of Manpower and the Department of Industry. The orientation of these institutions is totally different from that of other law enforcers.

Lack of knowledge of corporate crime: The lack of law enforcers' knowledge of corporate crimes often makes them ignorant of reporting corporate crimes to the court.

The crime doer's social status: Corporate crimes are committed by high level society members; and therefore they will influence the action of law enforcers.

Crime Reported by the Press

Nowadays, hardly any event occurs in society without it being published in the newspaper. So most events occurring in society, including crimes, become known through the mass media. This means that the mass media provide the knowledge of the existing crime

situation to society. Thus, through newspapers, society develops its views of crime (Berger & Luckmann 1981, p. 68).

It can be shown that the crime news published in the newspaper is conventional crime, not corporate crime (Susanto 1988), the main reason for this being that most crime news published was obtained from the police, and as mentioned above, the crimes investigated by the police are conventional crimes.

A Changing Society

The development of social life in recent decades, influenced by science and technology, follows the changes in society, from the agricultural to commercial and industrial society. Some of these changes are:

- a great increase in the amount of capital needed, which in turn causes an increase in efforts to accumulate money in institutions. This is clearly observed by an increase in the number of banks, reaching 250 private banks in 1990, compared with the not more than 30 banks in the 1970s; and an increasing number of public companies (in an effort to accumulate large amounts of capital);

- the changes of the ownership patterns, from the visible things (a piece of land) to the invisible things (shares and accounts);

- the changes of ownership, from personal property to corporate property; and

- the economic activities oriented towards the market.

A further result of these changes is the increasing power of corporations in the economic life of society.

The Goal is Earning Money

The main purpose of corporate establishment is to earn as great an amount of profit as possible. To achieve this purpose, a corporation is supposed to maintain its continuation by marketing its product. The impact of extreme competition to get into the market, the need to be successful (without caring how it obtains success), and business practices which are impersonal and exploitative can lead to law-breaking behaviour. Therefore, it can be inferred that the motive of gaining as many benefits as possible can be seen as the beginning of a corporation's personnel's compulsion to commit crimes.

Various kinds of corporate behaviour which are really harmful to society are as follows:

- misleading advertisements. These phenomena are found daily in the newspapers, magazines, private broadcasting, etc.

- industrial pollution. The news of pollution due to industrial disposal of dangerous chemical solutions can be found almost every day in the newspaper.

- products such as food, drink and cosmetics that are dangerous to the health and safety of human beings. The news of using forbidden materials as well as chemical solutions such as saccharin can be found in the newspaper.

- breaches of the Employment Act especially in relation to the minimum wage rate. Although the minimum wage determined by the Government is the lowest (Rp. 1,000 per day) among the ASEAN countries (Thailand: Rp. 6,400 per day; Singapore: Rp. 31,200 per day), there are still factories which pay wages lower than that (Diolah dari Warta Ekonomi No. 25/11/7 Mei 1990).

A study concerning these problems in Indonesia shows that the breaking of the minimum wage rate still frequently occurs, for example a study of 368 factories in North Jakarta shows that 72 per cent of them pay under the minimum wage rate (Diolah dari Warta Ekonomi No. 25/11/7 Mei 1990). It is estimated that more than 30 per cent of the factories in central Java, pay their employees under the minimum wage rate (Suara Merdeka, tanggal 13 Maret 1990, p. VIII).

As for the cases outlined above, hardly any corporations have been taken to the Criminal Court, and as to the problem of misleading advertisements, there appears to be no sanction against them. The criminal prosecution of environmental pollution relating to dangerous chemical disposal occurred once in 1989 and ended in a verdict of not guilty (which perhaps is the reason for sending twenty judges abroad to learn how to assess pollution cases).

The one case of food production taken to trial was one of poisonous biscuits causing thirty persons to die in 1989, while cases relating to dangerous food and cosmetic products are never put to trial, because they do not directly cause death.

Most of the corporate crime cases brought to court in 1990, concerned breaking of the minimum wage rate. The role of the Minister of Manpower in encouraging his staff to take every case of breaking the *Manpower Act* to trial, cannot be ignored.

The 'Take Off' Period

Nowadays, it seems that corporate development in Indonesia is increasing with wealth and size, influencing both society and the country as a whole. Millions of people depend on corporate activities: trillions of rupiah in income stems from a variety of corporate activities including industry, electronic goods, medicine, food and drink, cosmetics, wood, clothing, plantation products, cars, construction and the banking sector. Corporations are, therefore, a large source of employment and seen to be of positive help to the community. People never think that certain kinds of medicine are dangerous to their life, they never ask whether or not certain food products are harmful to their health, nor that a certain make of car is very often the cause of traffic accidents—the only causative factor is seen to be the driver not the car. Employees never care about the working conditions in factories which can be very harmful to their lives.

During the 'take off' period, the direction of the Indonesian economy became clearer, namely towards an industrial and commercial society. Consequently, there are an increasing number of corporate activities harmful to society.

The Criminal Responsibility of Corporations

The criminal responsibility for offences by a person is already recognised, and even the Criminal Code places personal criminal responsibility on the offender. However, the Criminal Code does not yet stipulate the criminal responsibility for a corporation. Clinard & Yeager (1980) stated that 'a corporate crime is any act committed by a corporation that is punishable under administrative, civil or criminal law'. In addition, it has been stated that

'corporate crimes are the offences committed by corporate officials for their corporation and the offences of the corporation itself' (Clinard & Quinney 1973).

As mentioned previously, since the enactment of Act no.7/1955, criminal responsibility of corporations has existed but in practice the Criminal Court has never recognised or applied the legislation. There has been a tendency to assume that only human beings who handle and organise a corporation can be viewed as offenders against the stipulations (Reksodiputro 1989).

The reasons for that are:

- the general principles of the Criminal Code still assume that an offence can only be committed by a natural person, therefore, a corporation which is not a natural person cannot legally be seen as an object of criminal responsibility;
- the inconsistency currently existing in the legal system concerning the criminal responsibility of a corporation (Reksodiputro 1989);
- the lack of attention by criminologists and criminal law scholars in developing theoretical approaches to the criminal responsibility of a corporation.

Conclusion

Considering that the harmful and dangerous impact of corporate crimes to the individual, society and environment is serious, more so than conventional crimes, there should be consistency in the law providing for the criminal responsibility of corporations. In a development program based on industrialisation, economic development (particularly 'deregulation') there must be appropriate regulations to prevent corporate crimes.

Furthermore, additional attention by academics, especially criminologists and criminal law scholars, is needed to develop a theoretical framework for the criminal responsibility of corporations.

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ENVIRONMENTAL PROBLEMS IN INDONESIA: A REVIEW

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The Scope

THE ENVIRONMENTAL ISSUES OF THIRD WORLD COUNTRIES HAVE BEEN described by a seminar on the problems of environment and natural resources in Asia-Pacific as having reached a critical point. In fact, this crisis is likely to endanger the development programs of these countries unless immediate measures are taken to rectify these ecologically destructive trends (Environmental Crisis in Asia-Pacific 1984). One of the manifestations of this critical situation is environmental pollution in its various forms.

In Indonesia, environmental pollution is defined by Act No. 4 of 1982 on the Basic Provisions for the Management of the Living Environment (henceforth referred to as Act No. 4) as:

> the entry or introduction of living organisms, matters, energy, and/or necessary components into the environment, and/or changes in the environmental system due to man's activities or natural processes, resulting in the decline of the environmental quality to such a level which causes the environment to function insufficiently or to lose its proper function.

In the narrow sense, environmental pollution is a criminal act regulated in articles 202 and 203 of the Penal Law, and further in article 22 of Act No. 4/1982, and widely associated with the violation of the rights of the individual to a good and healthy living environment (article 5 of Act No. 4/1982). In this connection, rights can be classified into five different, yet inter-related, levels (Canada 1985, pp. 8-10).

First is the right not to have one's life or health harmed or endangered as a result of environmental pollution, the health effects of which are known, predictable, serious and relatively immediate.

Second is the right to a reasonable level of environmental quality, even when a specific pollutant or pollution source cannot now be identified with certainty as the cause of specific health damage or risk, on the grounds that sooner or later serious pollution of the

environment will threaten human life and health as well. (Here, it is explicitly assumed that there are particular victims, identifiable ones, though the form of the process of victimisation is yet unknown.)

Third is the right to a level of environmental quality which is not violated by pollution depriving one of the use and enjoyment of the environment, even when there are no health effects or dangers.

Fourth is the right of the environment to be protected from serious pollution for its own sake, even if pollution incidents should result in no direct or indirect risk or harm to human health or limitation upon the use or enjoyment of nature.

Fifth is the right to have one's private property protected from damage by pollution caused by others.

Crime against the environment—pollution, in particular—includes acts that may range from carelessness to criminal acts that may endanger the safety of the public (Danusaputro 1981).

A number of issues have arisen in connection with these matters, particularly because of the failure to pinpoint the presence of social injury. An example is the case of water pollution which directly affects the lives of so many Indonesians; a specific definition is needed here to determine whether or not pollution occurs.

So that pollution acts can be defined, says a paper of the Centre for the Study of the Criminal Law and Jurisdiction System of the Faculty of Law of the University of Indonesia (1980), it is necessary to determine all the effects that are detrimental to the public that can be prevented through criminal sanctions. In general the conceivable losses are health hazards, economic and social injury and sanitary hazards. Economic and social injury needs to be given special attention, because usually it is more difficult in such cases to prove a causal relationship.

A Picture of the Occurrence of Environmental Pollution

At present, no comprehensive data are available in Indonesia on environmental pollution and damage. Nevertheless, from a study of environmental pollution that can be harmful to man undertaken by a team from the Institute of Criminology at the University of Indonesia and a team from the National Legal Development Board of the Ministry of Justice, the following picture emerges (Ministry of Justice 1985).

Pollution by Mercury

Some of the cases of pollution by mercury that have led to the victimisation of the public in Indonesia are as follows:

Battery factory in Cimanggis

Water below the plant proved to contain mercury poison. The water had been used for drinking by the factory workers, and this had caused more than half of them to suffer from kidney diseases. The sample showed that the water contained 0.014 PPM, which was three times the permissible limit.

Muara Angke

In the fishing-village of Muara Angke, of five families with a total of 30 children, 15 died before they reached the age of three. The mortality figure for this age group country-wide is 13.7 per cent. The mercury content of the Muara Angke neighbourhood has been shown to be very high.

Muara Karang

Three children in this village who had been suffering from physical disability were discovered to have eaten a lot of 'tongkol' fish, which had high levels of mercury.

From these cases it is apparent that mercury in the water has been victimising the public; it is feared that the number of victims will continue to increase.

Carbon-Monoxide pollution

A number of studies of the carbon monoxide content of the air in Yogyakarta indicated high levels: in the downtown area and the bus-station the CO content was 99 mgr/lt; around the post office it was 56 mgr/lt and near the rail-road crossing it was 78 mgr/lt (Warta Konsumen 1985).

Pollution by pesticides

In Indonesia, records of the Secretariat of the Commission for Pesticides of the Ministry of Agriculture showed that there are now available 352 brands of pesticides with 150 types of formulation; in 1980 there were only 286 brands with 75 types of formulation. The pesticides industry has been growing rapidly because agricultural development is a priority in Indonesia's development program. There are now 50 licence-holders representing pesticides companies abroad, and some of these represent more than one company.

Some cases resulting from pesticides are as follows:

- 12 persons died because the food they ate at a traditional feast held in Plaeng, Klaten (Central Java), contained DDT.
- 3 persons in Bojolali died because the food they ate was contaminated with DDT.
- 18 transmigrants in North Lampung became the victims of rodent poison.
- In both East and West Java, thiodan pesticide killed fish on farms.
- 36 persons died in Tulungagung because the flour and frying oil they used were contaminated by pesticides.

The Execution of Environmental Legislation

The fact that environmental legislation is now being put into effect does not at all mean that cases of environmental pollution and damage have been directly and completely solved. One of the problems faced in the execution of this legislation is the constraints found in the procedural technique for the penal law, particularly as related to such matters as proof that require skill in data analysis. Some of the problems are indicated by the following cases.

The case of the Birds of Paradise (Cendrawasih Bird)

This case concerns the smuggling of 163 Birds of Paradise. This was the first environmental case tried in court, and was adjudicated by the State Court of Sorong in November 1984. The accused was charged with damage to the environment under environmental legislation, known as UULH. He was found guilty of committing a criminal act and was sentenced to 4 years and 6 months imprisonment, and fined twenty million rupiah. However, the High

Court of Irian Jaya later amended the sentence to six months imprisonment and surrender of the birds. Nevertheless, using the UULH as the legal basis for this case represented a breakthrough in the law enforcement of the UULH in court.

The case of the 'Tahu' (soybean cake) waste

This case was brought to trial as an environmental offence, namely the pollution of the Surabaya River. The judge decided that the accused was proven to have committed the offence, but that it was not a criminal act, that is it did not cause environmental pollution. However, the public prosecutor appealed against this verdict. In the meantime, a study of the files of the case revealed that the case did not belong to the environmental offence category based on UULH legislation because violation of the quality of the environment is not identical with environmental pollution; rather, such violations should be subject to administrative sanctions.

The case of Sibatuloting

In October of 1988 the WALHI (Indonesian Environmental Forum), lodged a complaint against the Government of the Republic of Indonesia before the State Court of Central Jakarta on the grounds that it had issued a licence for the establishment of a pulp factory and a concession for the exploitation of forests at Sibatuloting, North Sumatra, without regard to established legislative procedures for environmental management and assessment of environmental impact, resulting in the destruction of the forest at Sibatuloting and landslides around the area.

In response to the charge, the public prosecutor, on behalf of the Government of the Republic of Indonesia, appealed to the court to reject the complaint of the WALHI on the grounds that the WALHI had no legal standing to submit its complaint.

In reply, counsel for WALHI argued that the provisions of Act No. 4 explicitly recognise the environment as a legal subject. The environment with all its elements such as mountains, rivers, lakes and forests, function to provide life and welfare for man; it is, therefore, the right of the environment to be preserved and protected from threats of pollution and damage.

It was further argued that the Government as a public body is obligated to represent the interests of the environment. However, if the Government neglects or intentionally fails to carry out such obligations, then a non-government organisation that has proven itself to have been continuously active in the development and preservation of the environment has the right to represent its interests. Ultimately, the State Court of Central Jakarta accepted the WALHI as the claimant representing the interests of the public.

Conclusion

In Indonesia, the application of Act No. 4 is a new thing. This represents a challenge to law-enforcers—police, public prosecutors, judges and lawyers.

The strategy of development without damage or pollution of the environment, in combination with the efforts to develop organisations protecting the environment, is a theoretically appropriate one for preventing and dealing with criminal acts against the environment.

Nevertheless, the success of this strategy, especially in dealing with corporate crime, lies in taking into account structural and cultural aspects. Clinard & Yeager (1980) state:

> in studying crimes that are related to businesses it is necessary to consider the presence of a 'sub-culture of industrial deviance' and a 'sub-culture of violence' that affect the people engaged in the businesses in facing particular situations.

They also state that violations by companies are affected by such factors as the pursuit of profit and weakness in the execution of legislation. In respect to the latter point, they refer to the attitudes of companies and legal bodies which do not look upon violations by companies as 'crimes or criminals', at least from the moral point of view (Clinard & Yeager 1980).

Based on the above description of the nature and the scope of the problems of crime against the environment, it can be said that in principle the determination of the criteria of such crimes must be judged by considering the following aspects: first, the social impact of the offence and second, the physical impact on the environment. Both these aspects can be assessed as crimes.

The process of criminalisation of such actions is bound to proceed amidst difficulties, because violations of rights to a good and healthy living environment cannot in principle be disconnected from the issue of the 'privileges' of the violators, who are usually the ones who enjoy the benefits in the existing power relations.

For success, the following steps are necessary:

- clear formulation of the definition of crime against the environment;
- application of that definition by the authorised apparatus with a juridical basis;
- communication with the public so that it will be possible to expect popular support for the enforcement of the law on crimes against the environment.

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THE PROSPECT OF ALTERNATIVE SANCTIONS IN INDONESIA

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BECAUSE OF THE HARMFUL EFFECTS PRISON USUALLY HAS ON THOSE WHO ARE incarcerated, more attention has been given recently to alternatives to confinement as a sanction. Attention has been focused on the community because it has been recognised that crime and delinquency are failures of the community, as well as of the individual offenders.

The task of corrections is seen as one of reintegrating the offender into the community; restoring his family ties, getting him involved in education or a position of employment, and in general, securing a place for him in the normally functioning society. That requires changes in the community, as well as in the offender's attitude (Reid 1976).

Discussion about alternatives to imprisonment is an old theme of criminal policy. At the first congress of *Union International de Droit Pénal*, which was held in Brussels on 7 and 8 August 1989, a resolution was passed in which an urgent appeal was made to the legislatures of relevant countries to develop alternatives to short custodial sentences (Stolwijk 1986).

Alternative sanctions to custodial sentences should be found. These kinds of sanctions are acceptable only if they serve more or less the same purpose as the custodial sentence would have done had it been imposed. Custodial sentences are targeted because they are not effective (that is, they do not contribute to the set goals). In other words, we are talking about 'alternative' means (Stolwijk 1986, p. 280). Whether we like it or not, the custodial sentence is still the backbone of the Indonesian criminal justice system to a certain extent.

The idea of alternative sanctions as alternative goals, could be accepted into the Indonesian criminal justice system according to the existing system of the treatment of prisoners in Indonesia. In 1963, the late Minister of Justice Sahardjo, in his speech at the Presidential Palace while receiving his Doctor Honoris Causa in Law, declared the need for a new and more appropriate approach to the treatment of prisoners.

The culmination of these efforts was reached in April 1964, when at the Fourth National Conference on Corrections in Lembang, West Java, a new concept known as the Pemasyarakatan System (Socialisation System or Reintegration System) was accepted. The specific objective of this new system is to restore the fundamental order of relationship

between the individual offender and society. The overall objective is to create a just and prosperous society based on the Principles of the Pancasila Philosophy (Belief in God, Just and Civilised Humanity, Unity of Indonesia, Democracy led by the Wisdom of Deliberation among Representatives of the People and Social Justice for all Indonesian People).

The principle of social reintegration was also mentioned in the Presidential message on behalf of the above conference. This new approach is to replace the outmoded Prison Regulation of 1917, which is partially still in use (BPHN & UNAFEI 1984).

This paper will not discuss another movement, which proposes alternative sanctions with a view to achieving alternative goals. This involves achieving objectives in a different way, which are unattainable with custodial sentences. Custodial sentences are targeted because they aim for the wrong objective. The ultimate goal is replacement of custodial sentences by a system of non-punitive measures. Here, we are concerned with 'alternative' objectives. This radical movement would be rather unrealistic.

The implementation of alternative sanctions (that is suspended sentence or fine), has many advantages which are briefly outlined as follows.

From the offender's standpoint:

- it gives the offender a better chance to rehabilitate himself in society;
- it allows the offender to continue his usual life obligations such as his work, meeting family obligations, participating in recreational activities and any other pursuits that concern him in the community. A prison sentence interrupts these most important values and makes it doubly difficult for them to be renewed after a sentence has been served;
- it averts the stigma of a prison sentence. The shame connected with a prison sentence is quite real, and frequently innocent family members must bear it to an even greater degree than the offender;
- it can avoid the process of prisonisation, which has been defined by Clemmer as the taking on, in greater or lesser degrees, of the folk ways, mores, customs, and general culture of the penitentiary (Reid 1976, p. 592).

From a community's standpoint:

- it can be assumed that the community has a definite interest in well-adjusted individuals who are carrying on a constructive life plan. This includes participation in an economically useful job that makes a contribution to community life an asset instead of a liability;
- economically, alternative sanctions are much less expensive than institutional treatment.

From the government's standpoint:

- the governmental officer-in-charge can resort to the use of all community facilities for rehabilitation.

The creation of a New National Penal Code to replace the present Codification of Penal Code which derived from the Dutch colonial period is still in progress. The present Codification is largely a copy of the Penal Code of The Netherlands 1886 with some modifications to suit the different conditions in Indonesia. Historically, a code of substantive

criminal law for Europeans came into effect in 1867. This was followed in 1873 by one for non-Europeans. From 1 January 1918 all inhabitants of the East Indies (now, Indonesia) were subject to a uniform Criminal Code without regard to their cultural group.

The New Penal Code drafting team of the National Law Development Centre of the Department of Justice agreed to try to adapt to universal trends without departing from the basic socio-cultural values based on the National Ideology (Pancasila). Some of the universal trends are: limiting the utilisation of imprisonment, finding new alternatives to replace imprisonment, and amending the laws concerning fines and non-custodial punishment and improving the measures system (Muladi 1988).

The Implementation of Alternative Sanctions Based on the Present Penal Code

It is very difficult to draw a conclusion about the factors that have produced the present criminal justice situation in Indonesia. The author supports Professor Hulsman's view that several environmental factors deserve particular attention here. Firstly, the country maintains a comprehensive range of social services, covering not only financial benefits, but also such provisions as special schemes for those who experience difficulty in adjusting to employment. Secondly, there is an extensive network of youth centres, whose activities are determined to a large extent by young people themselves. Thirdly, hundreds of welfare and social service agencies exist, employing some eight thousand professionally trained social workers whose approach is more client-oriented than in many countries, and fourthly, the mass media plays a relatively important part in breaking through any isolation felt by minority groups. The media also devote a considerable amount of attention to the criminal justice system as a social problem in itself and in so doing help to counteract stigmatisation of detainees and their families. Finally, the social service agencies (including the probation service) and the league for penal reform constitute an influential pressure group advocating change along the lines indicated above (Hulsman 1978).

Special provisions in Indonesia relating to the environmental factors mentioned above, have been very disappointing. On the one hand, fines have been rarely imposed because the maximum fine was very low. It is very clear that Indonesian people do not consider fines important. They are not really seen as a punishment, nor have they succeeded in deterring criminals in Indonesia (Lokollo undated). On the other hand, a suspended sentence is regarded as equivalent to an acquittal.

There is a growing dissatisfaction with the problems in the present system of conditional sentences as stipulated in Art. 14A-14F of the Indonesian Penal Code. Whereas the suspended sentence (conditional sentence), if effectively enforced, could become an instrument for the protection of society and the offender as well.

The utilisation of conditional sentences in Indonesia has not yielded a satisfactory result because of the following (Muladi 1988, p. 368):

- constraints in connection with the supervision and treatment system;
  - there have been no improvements in the status of the private socialisation agencies, which are important instruments in the application of supervision and treatment of offenders under conditional sentences;
  - Art. 280 (4) of the Indonesian Code of Criminal Procedure which regulates the role of supervising and controlling judges in the application of conditional sentences is not functioning properly.

- constraints in connection with legislation;
  - there is no clear guiding regulation for the enforcement of conditional sentences, which outlines the nature and desirability of that type of sentence, as well as the criteria for granting it;
  - the absence of guiding regulations pertaining to the enforcement of these conditional sentences tends to create subjective value judgments among sentencers, in imposing them.

- constraints connected with technical and administrative factors;
  - the offenders do not always stay at home;
  - the offender's domicile cannot be reached without notifying the authorities.

- constraints connected with infra-structural factors;
  - there is a lack of transportation vehicles for the purpose of supervision;
  - there is a limited number of supervisory officials.

- constraints connected with the sentencing process;
  - there are no guiding standards for granting a conditional sentence which contains objective factors (relating to the offence or to the person);
  - the judge does not always receive a pre-sentence investigation report which could assist the court in determining the appropriate type of sentence.

The reasons why enforcers of Indonesian criminal law consider a sentence of imprisonment to be the fundamental sanction, compared with a non-imprisonment sentence, is because of the influence of the Classical School (a copy of the Penal Code of The Netherlands in 1886) on the criminal law system in Indonesia. Even though the Modern School has had some influence on this philosophy, the doctrine of 'let the punishment fit the crime' is still dominant.

These views are incompatible with universal trends, especially in the feeling of dissatisfaction towards the short-term prison sentence. The short-term prison sentence can be damaging, because it does not effectively serve any incapacitative or preventive function. But we have to be realistic, because in fact, criminal law characterised by prison sentences for the serious criminal will still exist to protect public order. What needs to be done is to develop the alternative sanction for the non-serious offender.

Alternative Sanctions Stipulated in the Draft Proposal of the Indonesian Penal Code

There is an assumption that the penal system is the central part of every penal code. That is why the penal system is formulated very carefully in the Draft, and is based on humanitarian

criminal law. Its orientation is on the prevention of crime, the criminal offence and the criminal (The Doctrine of Daad-daderstrafrecht), social welfare as a primary aim, a prospective outlook and the scientific approaches used in promoting criminal policy and criminal law enforcement. The function of the criminal law and its operation should be to protect the public and to promote justice for all (The Doctrine of the Daad-daderstrafrecht, p. 372). This utilitarian or humanitarian approach is intended to replace the spirit of retribution which dominates the present Indonesian Penal Code.

Based on the philosophy mentioned above, the goals of sentencing have been stipulated as follows:

- Punishment will seek to prevent the commission of criminal offences by enforcing the laws to protect society; resocialise convicts by providing guidance so as to make them into decent and useful people; settle conflicts arising from criminal offences, by restoring the equilibrium and fostering a sense of peace in society; and free convicts from their sense of guilt.

- Punishment is not intended to cause suffering, nor is it permitted to lower human dignity.

Although there is some criticism levelled at sentences of imprisonment, there is still a need to preserve this kind of penalty with the additions of conditional release (parole), or supervision, or fine, or community service order.

The supervision penalty is expected to supplement a suspended sentence, stipulated in Art. 14A-14F of the Indonesian Penal Code 1915. The penalty of supervision shall be imposed on a convict for whom—after consideration of all the circumstances—guidance is adequately given by supervision. A judge in ruling on a person accused of committing a criminal offence punishable by a maximum imprisonment of seven years or less, may impose the penalty of supervision.

A fine is also a very important alternative to imprisonment. There are research findings which show that the fine is as least as effective if not better than imprisonment, because it does not cause any social stigma. Some of the rules in the Draft make it easier to enforce a fine and hopefully, to base it within the capacity of the offender to pay.

In cases where the judge considers imposing a penalty of imprisonment for not longer than three months, he may impose a fine, even though the criminal offence concerned is not punishable by a fine. In imposing a fine, the judge shall carefully observe that the fine imposed is not beyond the offender's means. In estimating the capacity of the offender to pay, the judge shall take into account their personal and social circumstances. The judge may stipulate in his judgment that the convicted person may pay his fine by instalments for no longer than two months. Categorisation of the maximum fines is considered to be the best method of overcoming the rupiah inflation rate.

Following intensive discussions and meetings of experts across varying disciplines, the Drafting Team adopted the community service order as an alternative to the short prison sentence. The Drafting Team was hopeful that this adoption would contribute to the meaningfulness of the doctrine of socialisation in Indonesia. The Drafting Team looked for possible advantages of this kind of sanction, namely, for the offender to make amends by doing community service, and for the community to contribute actively to the rehabilitation of the offender by accepting his cooperation in voluntary work (Tak 1986).

The requirements for community service orders are as follows:

- In cases where the judge considers imposing a penalty of imprisonment for not longer than six months or a fine not exceeding the first category, he can replace that penalty by imposing a community service order (that is unpaid labour).

- Before imposing a community service order, the judge should consider the following factors:
  - a community service order is only possible if the defendant confesses;
  - whether the defendant is of suitable working age;
  - that the person has consented:
  - the social history of the defendant;
  - that it would not interfere with the defendant's religious or political beliefs;
  - that the activities performed may neither be paid for, nor be carried out in a commercial way;
  - that there is an assurance of working security;
  - in the case where the community service order is instead of a fine, the defendant has requested it because he cannot pay;
  - the number of hours amounts to a minimum of seven and a maximum of 240 (for an eighteen-year-old offender and above) and 120 hours (for offenders under eighteen years old);
  - the maximum period within which the community service order must be completed is twelve months; and
  - that non-fulfilment of a community service order leads to the implementation of the original penalty.

Meanwhile, the sanction system in the Draft Proposal of the National Penal Code also introduces another kind of sanction (instead of punishment) called the measure system. The use of both kinds of sanctions—punishments and measures—simultaneously show that the Draft adheres to the double track system.

The legal measures may be imposed by judgment of the court either independently (treatment in a mental hospital and commitment to the Government), or together with a penalty such as revocation of a driver's licence, confiscation of gains obtained from a criminal offence and rehabilitation, job training and supervision in an institution.

Another way of shortening the imprisonment sentence is also stipulated in the Draft, namely, conditional release. In the case where a convict has served half of his imprisonment term—at least nine months—he may, with good conduct, be granted conditional release by the Minister of Justice at the recommendation of the Head of the Corrections Institution where the convict is serving his sentence.

Conclusion

In many countries of the world, including Indonesia, there is growing dissatisfaction in society with the problems of the present system of prison sentences. Research findings have shown that this kind of sentence is damaging to the offender as an individual as well as to society. Consequently, it is necessary to find some other alternatives to prison sentences, by

utilising alternative sanctions such as fines, the suspended sentence and community service orders.

The utilisation of the alternative sanction in Indonesia (at present and in the future) will achieve a satisfactory result, if the following constraints can be overcome: legislative constraints; constraints in connection with the supporting infra-structure; constraints relating to professional supervising officers; and finally, constraints involving society's participation.

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ATTACHMENT AND DELINQUENCY IN JAVANESE SOCIETY

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THE DATA ON JUVENILE DELINQUENCY IN INDONESIA SHOWS THAT QUANTI-tatively speaking, the phenomenon is not a serious problem, but qualitatively it can create feelings of fear in society (Kompas 1989, hal. IV-V).

Academic activities concerning juvenile delinquency can be viewed as an indication of those feelings. There were important activities dealing with the problems of juvenile delinquency in 1989. They included the dialogue between Unika Soegijopranata Semarang and Senior High School Students of Central Java, the theme of which was 'The Role of Family in Preventing Juvenile Delinquency'; the seminar on 'The Functionalisation of Academic Institutions in Preventing Juvenile Delinquency', held by IAIN Wali Sembalan, Semarang and the seven day seminar on 'The Family and Youth Culture in Urban Society' organised by the Inter-university Centre of Social Sciences FISIP UI, Depok.

There is a similar view among scientists that the problem of juvenile delinquency should be studied in the context of social conditions. Also, the problem of deviance should be considered in the context of socio-cultural aspects of society.

This view is supported by Nye (1958) who studied family relationships and delinquency and Hirschi (1969) who researched the relationship between the four elements of social bonding and delinquency. These theoretical perspectives are classified as the social control theory.

The Hirschi concepts of control theory are very interesting. Many scholars have applied Hirschi's concepts as a tool of analysis in their studies of juvenile delinquency in different societies.

Merton writes that concepts constitute the definitions (or prescriptions) of what is to be observed . . .' (cited in Sahetapy 1983, p. 12). Naisbitt writes that, 'in the face of growing homogenisation, we all shall seek to preserve our **identities**, be they **religious**, **cultural**, **national**, **linguistic** or **racial**' (Naisbitt & Aburdene 1990, p. 147). Sahetapy (1983) also states that 'the concepts of crime (deviances) should be conceptualised and studied in the context of SOBURAL' (social, cultural and structural aspects) of our society.

Based on the above, this paper discusses a study of juvenile delinquency in the context of Javanese culture. The objectives of the study were:

- to examine the concept and its application of 'attachment' in the Javanese culture context; and
- to seek an alternative perspective in studying juvenile delinquency in a Javanese cultural context.

Social Control Theory

In order to examine the concept of attachment, it would be better to briefly outline the theory. The control theory of crime and delinquency has its roots in social disorganisation theory. The sociological theory of crime and delinquency typically assume that people are 'good', unless they are driven to become 'bad'. In contrast, control theory takes a more neutral view of the human condition. Control theory assumes that most people have an equal propensity for both 'bad' and 'good'. Under this view, people become 'good' because society makes them so. The underlying question of this theory is 'why don't we all do it?' (Hirschi 1969, p. 10).

The theory assumes that delinquent acts result when an individual's bond to society is weak or broken (Hirschi 1969, p. 16). It is the social bond that keeps people from deviating, so it is necessary to understand what it is that constitutes this bond, and how the absence of its binding character is associated with deviance. Hirschi outlined the four elements of the social bond as:

- an attachment to others;
- a commitment to an organised society;
- an involvement in conventional activities; and
- a belief in the community's values or legal values.

An attachment to others is defined as arousing in one a sensitivity to others' wishes and expectations. To be attached to parents or teachers is to be concerned about their feelings. An act of delinquency is an act against the wishes and expectations of such people. Conversely, to be unattached is to be unaffected by constraints, thus detachment provides the freedom to deviate.

According to control theory, commitment to an organised society keeps most of us 'honest'; the problems of delinquency involve those who feel they really have 'nothing to lose'. The first element tends to describe the emotional side of human beings, while the second tends to focus on the rational side of someone to deviate or not to deviate.

Involvement in conventional activities means that to be involved is to be busy. If a person is busy doing conventional things, then there will be little time to think of, or do any act of, deviance.

Belief in legal values under control theory signifies that deviance is not caused by a belief requiring such behaviour, but rather that deviance is made possible by the absence of a belief that forbids deviance. The less people believe they should obey the rules, the more likely they are to deviate from them.

These ideas were tested by Hirschi (1969) in a questionnaire study of some 4,000 high school students in California. The result showed that self-reported delinquency was associated with lack of attachment to parents, as assessed by measures of intimacy of communication, affectional identification and closeness of mother's supervision, and that this relationship held across social classes. The results also showed that the presence of delinquent friends was strongly associated with delinquency, irrespective of levels of attachment to parents, that delinquency was associated with poor scholastic performance and with low aspirations. Delinquency was more frequent in boys who expressed a lack of respect for the police and a view that it was all right to get around the law if you could get away with it.

Empirical Experience

Having briefly discussed Hirschi's control theory, this paper will now focus on the empirical experience of applying those concepts in analysing juvenile delinquency in Javanese society.

The study of delinquency in 1989 was a self-report study. It was done by distributing questionnaires to 210 senior high school students in Surakarta. The study tried to describe analytically the degree of relationship between juvenile delinquency (Y) and attachment to parents (X-1); attachment to peer group (X-2); belief in legal norms (X-3) and belief in religious norms (X-4). The findings of this study are as follows:

Preliminary analysis tables

Table 1

Juvenile Delinquency
(N = 210)

Delinquency	No.	Frequencies
1. Delinquent	99	47.15%
2. Not Delinquent	111	58.85%
Total	210	100.00%

Table 2

Attachment to Parent (X-1)
Attachment to Peer Group (X-2)
Belief in Legal Norms (X-3)
Belief in Religious Norms (X-4)
(N = 210)

No.	X-1		X-2		X-3		X-4	
1. High	87	41.42%	62	29.52%	87	41.42%	94	44.76%
2. Low	123	58.58%	148	70.48%	123	58.58%	116	55.24%
Total	210	100.00%	210	100.00%	210	100.00%	210	100.00%

Ancillary analysis tables

Table 3

Delinquency and Attachment to Parent

	Delinquent	Not Delinquent	Total
High	43	44	87
Low	68	55	123
Total	111	99	210

Chi-square (X^2) = 0.68
Phi = 0.06

The score of Chi-square (X^2) = 0.68 was not significant at the level of significance 0.05 (3.841). The coefficient of correlation Phi 0.06 means that there was no significant correlation between X-1 and Y.

Table 4

Delinquency and Attachment to Peer Group

	Delinquent	Not Delinquent	Total
High	41	21	62
Low	70	78	148
Total	111	99	210

Chi-square (X^2) = 6.20
Phi = 0.17

The score of Chi-square (X^2) = 6.20 was significant at the level of significance 0.05 (3.841). The coefficient of correlation Phi 0.17 means that there was a significant correlation between X-2 and Y.

Table 5

Delinquency and Belief in Legal Norms

	Delinquent	Not Delinquent	Total
High	55	32	87
Low	56	67	123
Total	111	99	210

Chi-square (X^2) = 6.39
Phi = 0.18

The score of Chi-square (X^2) = 6.39 was significant at the level of significance 0.05 (3.841). The coefficient of correlation Phi 0.18 means that there was a significant correlation between X-3 and Y.

Table 6

Delinquency and Belief in Religious Norms

	Delinquent	Not Delinquent	Total
High	41	53	94
Low	70	46	116
Total	111	99	210

Chi-square (X^2) = 5.83
Phi = 0.17

The score of Chi-square (X^2) = 5.83 was significant at the level of significance 0.05 (3.841). The coefficient of correlation Phi 0.17 means that there was a significant correlation between X-4 and Y.

Based on tables of analysis above, the results of this study can be summarised as follows:

- there was no relationship (not significant) between delinquency and attachment to parents;
- there was a relationship (significant) between delinquency and attachment to peer group. The more youths were attached to their peer group the more they were involved in delinquency;
- there was a relationship (significant) between delinquency and belief in legal norms. The more youths believed in legal norms the less they were involved in delinquency.
- there was a relationship (significant) between delinquency and belief in religious norms, the more youths believed in religious norms, the less they were involved in delinquency.

Discussion

Attachment to parents

The attempt to measure attachment to parents within the Javanese culture was unsuccessful. The measurement of attachment by using the indicators 'affectional identification', 'intimacy of communication' and 'supervision' by parents of their children was not an appropriate one. To Javanese youths, those concepts appeared to have little, if any, meaning. The outcome appeared to be a consequence of cultural incompatibility between the measures of attachment and Javanese norms. In all probability Javanese youths are attached to their parents. The extended family plays as important a part in childrearing and supervision as do parents. Thus it is reasonable to assume that Javanese youths have a wider array of persons to whom they are attached.

Self-report study

Empirical experiences showed that the application of a self-report study by distributing questionnaires to Javanese youth is not a good one. The key requirements of fair and honest reporting seems difficult to realise. It is not common in Javanese culture to express such feelings as required easily, and in the case of sensitive areas (for example scholastic performances, delinquencies and crimes) communication of those would not usually be verbal. Those kinds of feeling would be expressed by 'sanepa' or 'sasmita' (gestures). So if someone wants to know of other feelings and requires a response (especially in the case of sensitive areas) he should be 'tanggap ing sasmita'. One would be 'tanggap ing sasmita' only if he knows the person well. In other words, a close relationship should exist between the one who asks for a response and the one asked to give the response.

Therefore, an alternative approach should be used to obtain a 'true' response from Javanese youths. In my opinion, observation of the participant should be used. By this approach, it would be possible to get 'true' information, even though the response was not verbally expressed by the respondent.

In addition, a quantitative approach should be used, otherwise information gathered from the interaction process could be lost.

Western Construct and Javanese Reality

Peter Berger and Thomas Luckmann (1981, p. 13) suggest that reality is not a fixed, objective condition, but rather a social construct which occurs within the context of human interactions). Theoretical constructs likewise, are social in nature and can exist only within the context of a given social definition of reality. Theories then, which seek to explain events constructed around a specific set of assumptions about social interaction may not be applicable when used to explain interactions which are based on an entirely different set of assumptions.

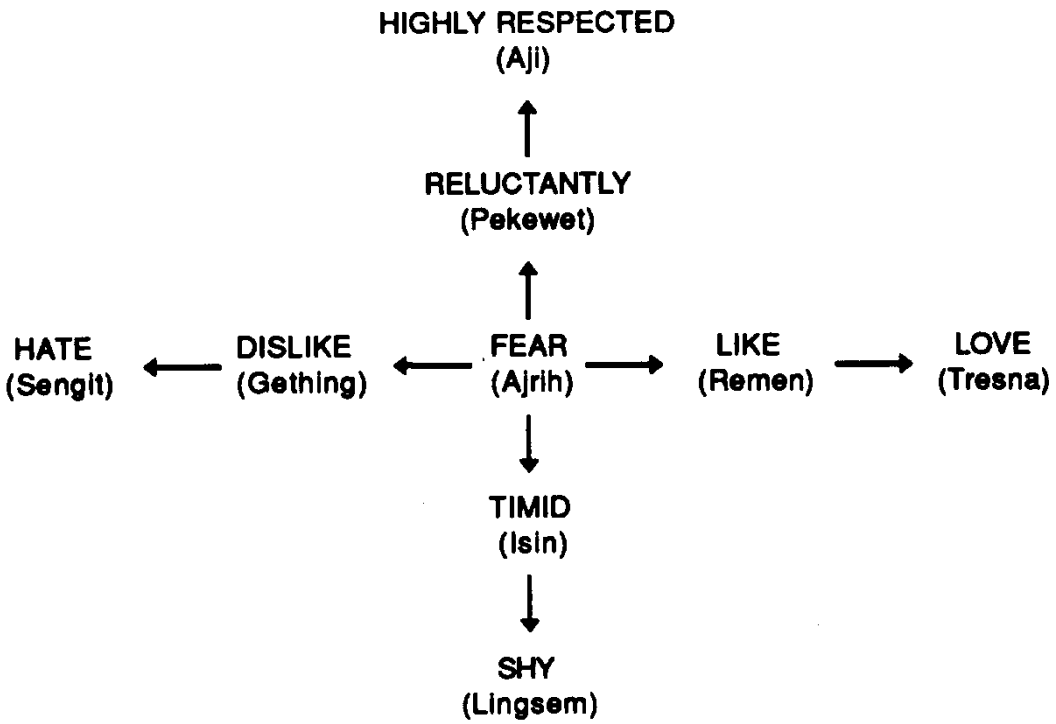
Hirschi's formulation of the control theory involves fairly explicit and interrelated constructs in both the western and Javanese cultures in question. The way in which these are expressed and the functional significance which they hold for each culture should vary markedly.

The concept and expression of attachment in Javanese culture is quite likely based on norms of interaction that are non-existent in Western society, as beliefs are internalised through attachment to and interaction with significant others.

As mentioned above, the expression of feelings, attitudes and responses of a Javanese child to others, happens through the process of interaction. Those expressions can be performed by 'sanepa' or 'sasmita' and also through the kinds of language used. In order to understand the kinds of interaction in Javanese culture, the matrix could be presented as follows:

Figure 1

The Expression of Attitudes and Responses in Javanese Culture in the Process of Social Interaction



The matrix above shows that 'fear' is the starting point for a Javanese to communicate with others. From that point, one learns the position of others (upper, same or lower level) with whom he communicates in order to adapt his behaviour appropriately. The adapted expression of behaviour could be studied from the kinds of language and the performance which varies, depending on the position of the person communicating and the other with whom he communicates. Berger & Luckmann (1981, pp. 36-7) state that:

> crime or deviance is a reality of everyday life which further presented itself to me as an intersubjective world, a world that I share with others .. . The everyday life is organised around the 'here' and 'now' of my present . . . what is 'here' and 'now' presented to me in every day life is the **realissimum** of my consciousness.

Based on that statement, thus, every kind of concept (delinquency, crime, social bond and attachment) is raised from the interaction process (matrix). In order to understand those

concepts deeply, self-report study would be difficult to explore in the case of delinquency studies in the Javanese cultural context. The participant's observations, which are generally applied in the ethnomethodological studies, should be provided in that case. Instead in my opinion, where delinquency is to be studied in a Javanese cultural context, qualitative approaches should be used in collecting data relating to the Javanese cultural background of delinquency.

Conclusion

- The concept of 'attachment' and its indicators should be modified in the study of delinquency in the context of Javanese society;
- Self-report studies should not be applied in the study of delinquency in the context of Javanese society;
- Participant observation as a method of data collecting should be used in the study of delinquency in Javanese society;
- Qualitative approaches should be used in an effort to understand the phenomenon of delinquency and its background in Javanese society.

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SERVICES FOR JUVENILE DELINQUENTS IN INDONESIA

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THIS PAPER WILL DISCUSS SERVICES FOR JUVENILE DELINQUENTS AVAILABLE IN Indonesia, with illustrations on how they are implemented in government institutions under the Department of Justice and the Department of Social Affairs.

A juvenile delinquent is a child under the age of sixteen who commits any act against the criminal law. One course of action in dealing with such offenders is to proceed through the courts, where the judge can decide between several available alternative punitive measures However, it might well be decided that to proceed in this way would not be appropriate because the process might have a negative effect on the child's future. The Police Department social worker, therefore, is often faced with a critical decision: first, whether the case should proceed to the court or the child be sent back to his family or to an institution; second, whether the police have the authority to decide the case, or whether this authority rests with the court, as regulated in Article 45 of the Indonesian Criminal Law.

There are services available for juvenile delinquents both inside and outside institutions, based on a consideration of what is best for the child. Services are offered both by government and non-government organisations. The latter concentrate on dealing with juvenile delinquents and deviant behaviour as part of a community participation effort. In dealing with juvenile offenders, there are two kinds of policies: depending on the seriousness of the offence and the assessment of the offender, he may be processed through the court or may be referred to a government or non-government social institution.

Two government institutions in Jakarta have been chosen for our purpose to illustrate the implementation of these two policy approaches. One concerns services for juvenile delinquents inside social institutions, and the other concerns services outside. Before turning to these illustrations, however, the legal basis for policies concerning juvenile delinquents will be discussed briefly.

Legal Basis for Policies on Juvenile Delinquents

The legal basis in dealing with juvenile delinquents is concerned with Articles 14, 15, 45, 46, and 47 of the Indonesian Criminal Law. We do not have a juvenile act yet, although the

need for it has been realised since 1956. Some regulations have been promulgated since then and services and prevention activities have been implemented.

According to Article 45, the judge has three alternatives in dealing with a child who commits crimes: the child may be sent back to his parents or family without any sanction; he may be sent to a government institution without any sanction; or he may be found guilty and punished.

In relation to the second option, Article 46 elaborates that the child can be sent to a reformatory or placed under the guardianship of a suitable foster family. In relation to the third option, Article 47 states that the maximum penalty for juveniles is two-thirds of the punishment which would be given to an adult; in the case of an offence where the death penalty would be appropriate, for a juvenile the maximum sentence is 15 years imprisonment.

For the child who commits a minor crime, a suspended sentence under Article 14 could be imposed. He would be placed on probation under the supervision of a social worker who works for the Bimbingan Kemasyarakatan dan Pengentasan Anak (BISPA)—the Probation Office under the Directorate General of Corrections, Department of Justice.

The child may be granted conditional release after he has finished two-thirds of his sentence. He is then on probation for the remainder of his sentence, plus one year. During this period he is under the supervision of a BISPA social worker.

The rights of the child are set out in Law No. 6/1976 on the Basic Provision of Social Welfare and Law No. 4/1979 on Child Welfare:

- Article 4 (1C) of Law No. 6/1976 states that the Government's responsibilities in the field of social welfare cover the provision of social guidance and rehabilitation. Further, Article 8 states that extensive opportunities should be given for the community to be involved in social welfare activities, provided such activities are in line with overall government policy.

- Article 2 of Law No. 4/1979 states that children have the right to adequate care to enable them to grow and to develop normally, and to be protected against anything which may endanger or hamper their normal growth and development. Article 6 states that a child who has a behavioural problem shall be given adequate social services, by way of guidance and rehabilitation, to help him to overcome those obstacles to his growth and development. This Article also relates to children who have been assessed as a delinquent by virtue of a court verdict.

Social services based on these laws for delinquent children are set out in a Decree of the Minister of Social Affairs, entitled the Basic Design for Social Welfare Development. This statement is intended to provide clarity on the position, role and direction of social welfare development as an integrated part of national development, with the objective of creating social welfare conditions which are desired in the phases of the Five Year Development Plans (Repelita).

Within the Basic Design there are several programs relating to juvenile delinquency. The preventive functions of social welfare services in this regard are described in relation to the organisation and promotion of the youth organisation, Karang Taruna. In its implementation, Karang Taruna has many activities based on the needs of youth within their community. Its objectives are the growth of the Karang Taruna organisation as a vehicle for the guidance and development of the younger generation, with a view to realising the Pancasila society.

The rehabilitation function is described in the policy relating to the handling of the social problems of delinquent children. Its objectives are the guidance and care of delinquent

children to enable their personality to grow and develop properly, so that they may assume their proper social functions within their family and community. Its targets are young children and teenagers classified as delinquent, who functionally are wards of the Department of Social Affairs, and the parents of client children.

In general, policies in regard to juvenile delinquency are directed towards:

- Enhancing the standard and widening the scope of community based services, and ensuring their proper integration.

- The creation of a favourable atmosphere within the family and the community, enabling children to develop properly and perform their social function.

Programs under the Basic Design include: accumulating data on juvenile delinquency, providing information and social guidance, improving the standards and extending the scope of the relevant services and resocialisation.

The Decree of the People's Consultative Assembly No. II/MPR/1988 concerning the Guidelines of State Policy determine basic policy on social welfare. One of its points is that social rehabilitation for delinquents should be implemented through both government and community channels.

The Fifth Five Year Plan on the Social Welfare Sector, states that juvenile delinquency is growing not only in big cities but also in small towns. The appropriate policy to overcome this problem is rehabilitation through mental and social guidance and assistance with employment. With reference to the Probation Office, it observes that during the Fourth Five Years Development Plan a number of activities had been implemented directed at those in prison and reformatory institution. These included school education, religious guidance and vocational training. It was agreed that these programs should be further developed during the Fifth Five Year Development Plan.

Implementation of Policy concerning Juvenile Delinquents

The activities of two government institutions in Jakarta will be discussed in relation to the implementation of services for delinquent children.

BISPA (Probation Office)

As mentioned before, the Probation Office is under the Directorate General of Corrections. Juveniles who are the responsibility of the Probation Office, that is, who are outside institutions, have been through the legal process. That means that the police have evidence that the child has committed a crime and the Probation Office social worker has recommended that the case should proceed to court.

The social worker has an important input in assisting the judge in deciding the best alternative for the treatment of the child. During the court process, the child is supported by the social worker. If the child is on probation or sent back to his parents or family, they are all under the guidance and supervision of the Probation Office. The clients of the Probation Office are juveniles who are on conditional release or probation or who have been sent back to their families, and adults on conditional release, or serving a suspended sentence.

In Jakarta, there are three major regional probation offices. They offer both direct and indirect services. The direct service is provided to those who are outside institutions and takes the form of guidance and supervision both to the clients and their families by the social worker, usually in the office, but as necessary through home visits. The indirect service is implemented in relation to planning and administration.

The guidance process consist of three phases—first a preliminary phase when the social worker contacts the client and explains his status, rights and duties; second, an advanced phase when, based on the result of the first phase, the Board of the Probation Office decides the best program for the guidance process; and third, the final phase when there is an evaluation by the Board of the result of client guidance. If there is no problem, there will be termination of the process, but if the client still faces difficulties, then there will be a further program undertaken. Whether guidance succeeds or fails depends on factors such as the quality and attitude of the social worker/probation officer, the motivation of the client and the attitude and support of the family and the community.

Social rehabilitation centre, Wisma Handayani

This is a social rehabilitation centre for deviant children, especially for boys between ten and seventeen years of age. It is a technical unit under the Jakarta Regional Office of Social Affairs, whose task is to implement the policy of the Department of Social Affairs in handling the social problems of juvenile delinquents. The direct targets of this social institution are children who cause family and social unrest, but whose acts are not classified as criminal, and former juvenile delinquents who have been treated in a reformatory institution. In other words, this institution provide services for delinquents who have not gone through the court process.

This Centre has several functions:

- observation, identification and program planning;
- mental treatment and social guidance;
- school education;
- vocational training;
- after care;
- community consultation.

The objective of this institution is to rehabilitate and develop the child's functions and roles in the society. At present it houses 47 boys from Jakarta and its surroundings. They all attend a special school which offers both elementary and secondary education. Schooling is compulsory, and there are also activities such as physical training, health, hygiene and music.

Implementation of the rehabilitation process can be divided into five steps:

- The intake process, which consists of an initial interview; a psychological test; observation by the teaching staff; a case conference by the professional team involved in the case; discussion with the parents.
- The process of identification of problems via interview, home visits, observation, psychological testing and evaluation. This is followed by the setting out of a rehabilitative program based on this information.
- The process of rehabilitation consists of three elements: a physical element consisting of health education, sport and recreation activities; schooling and religious education; finally, vocational training where trade and farming skills are

learned. This stage concludes with a case conference in preparation for the last stage.

- The termination process consists of consultation with the family or foster parents, preparations for further education elsewhere, followed by discharge from the institution.

- The final stage is assessment of after care needs, including a home visit and the offer of material assistance if needed, followed by an evaluation of the after care provided.

The length of time the child spends in this institution depends on the results of social rehabilitation and the preparation of the family, foster parents and others who will take care of him. At present, most of the children in this institution are from relatively poor families. The preparation of the family to receive their child back is a difficult process both for the institution and the family. From the point of view of the institution, this is because of limited home visits and lack of resources, while from the point of view of the family, they frequently would prefer to avoid their children because of their troublesome behaviour or because of the additional economic burden.

Conclusion

This paper has described services for juvenile delinquents in Indonesia, which consist of both legal and social services. These have been illustrated by reference to activities within the Probation Office (BISPA) and a government-run rehabilitation centre for juvenile delinquents. A government institution was chosen because non-government involvement in this area is patchy—some deal with specific problem areas such as single mothers, others with delinquency counselling and prevention strategies—and not well developed.

The process of social rehabilitation concerns not only the child but also his family and the broader community. It is a difficult job because of limitations on both staff and budget. Some efforts have been made to overcome this problem through cooperation between the School of Social Work, the Department of Social Welfare, the Faculty of Social and Political Sciences, and associated departments and institutions. The lack of staff, especially for home visiting, can be met by employing students, provided they are adequately supervised by senior staff of those government institutions; as students on field practice, their task is to learn social work skills and they cannot be expected to take total responsibility for such cases.

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CRIME DEFENCE STRATEGY: AN INDIRECT APPROACH IN WEST JAVA

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WEST JAVA IS A PROVINCE IN JAVA WITH A POPULATION OF THIRTY MILLION people. It is an area behind Jakarta—the capital of the Republic of Indonesia. But like any other province throughout the entire Indonesian archipelago, the crime rate in this area is high. There are a number of reasons for this. Firstly, West Java is geographically located near a metropolitan city. Thus, if crime prevention is increased in Jakarta, criminals displace their criminal activities to other areas in West Java. Other factors which influence this displacement—and thus the area's crime rate—include demography—an increasing population, urbanisation and unemployment, as well as social conditions—econo-mic and cultural aspects, and the security enforcers' ability to carry out their tasks successfully in the city.

In view of the above trends, West Java is facing a serious threat of increasing crime. Moreover the ratio of security enforcers to population and targets needing protection is low. Therefore, West Java needs to maintain a defence strategy towards criminal activities in a broad sense (President's Commission on Law Enforcement and Administration of Justice 1967).

The background to crime prevention initiatives in West Java, has stemmed from the West Java regional government which is trying hard to create orderliness, safety and prosperity in its community. With this purpose in mind, the regional government has built its social defence force mainly to counter various crimes such as felony, robbery and environmental destruction by mobilising and utilising an integrated power group involving members of the government and enforcement agencies and, in particular, the region's own community, where a sense of security in maintaining environmental safety is being encouraged. This is also supported through the utilisation of law and legislation including use of regional rules, mainly to overcome non-conventional crimes such as: environmental and corporate crimes, tax evasion and so on.

The strive for integrated social orderliness, security and prosperity by emphasising an environmental defence aspect in the regions, through community members themselves and by the West Java Regional Government, is formed into a defence strategy (against various disturbances) by an indirect approach.

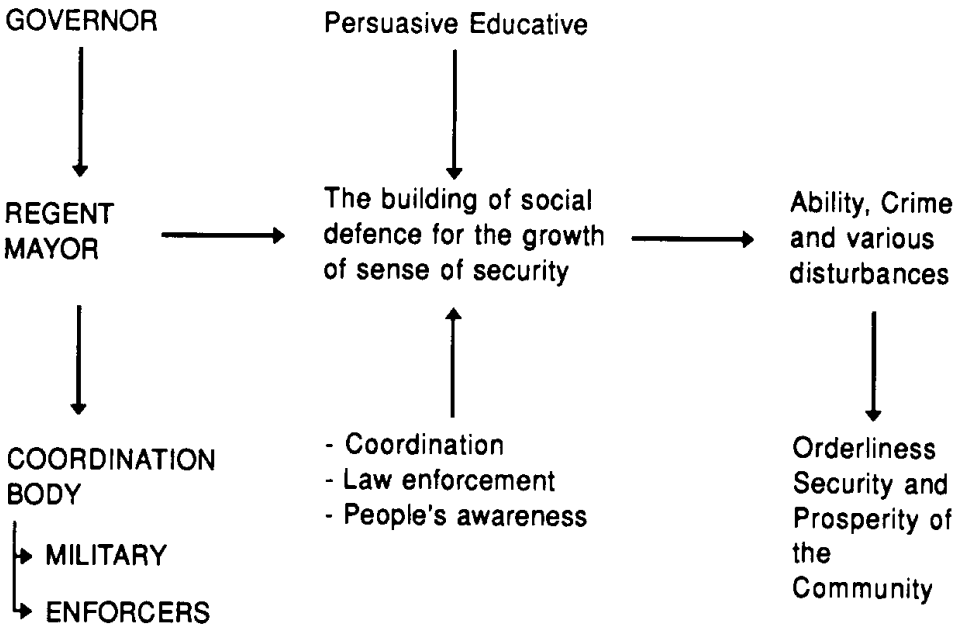
The defence strategy against criminal disturbances through an indirect approach differs from crime prevention actions such as police patrols, round watchmen, criminal pursuits and raids which directly target the crime and the criminals. The indirect approach is mainly aimed at escalating a resistance force which grows in the social environment starting from either the suburban or the city regions and extending to the rural areas.

The resistance power is maintained by fostering a sense of responsibility within the community to safeguard its homes, environment and its property. By using persuasive and educative approaches towards community members, through well-planned and guided communications, the resistance power, as an indirect defence strategy against crime, should become a culture for individuals in their respective areas. In other words, the defence strategic target is the growth of a sub-group culture to maintain orderliness, safety and prosperity. While on the other hand, the government and its security agencies will fight violence, corruption and other destructive sub-culture groups to prevent crime as early as possible.

The Indirect Defence Strategy against crime is illustrated in Figure 1.

Figure 1

The Indirect Defence Strategy



The aforementioned scheme can be simply explained as follows:

- The Governor, being the head of government administration and development, as well as community building, in his duty to protect the community conducts and maintains a social defence strategy to perform and maintain orderliness, security and prosperity in all the regions of West Java. He is responsible for putting into action all his subordinate leaders in West Java, inter alia, the regents and mayors. This is related to a coordinative body known as Muspida (Regional Leaders Assembly) involving the Police, Military, and other law forces. Similarly, other government bodies are involved such as public service departments and institutions, including the Departments of Information, Religion, Education and Culture, Social Affairs and Manpower.

- The Governor provides special funds to assist in the provision of law enforcement and security by the regional police and military. Through the regional development planning body various research is conducted, including research analysis for the defence by means of a periodical indirect approach.

- The field work is conducted by the regent/mayor in coordination with the Regional Leaders Assembly (Muspida), who besides their various governmental and developmental tasks have prepared themselves to conduct community building and an indirect defence strategy.

    - The regent/mayor, together with the regional military units and law enforcers, strives for orderliness, security and prosperity in the community using not only the security force (that is the police assisted by the military in coordination with other law forces), but also the growing sense of a need for security in individual members of the society. The building of a sense of security in the community is done by means of persuasive and educative methods—called the regional security system—which places emphasis on the force of the communities. In rural areas, this environmental security system runs effectively.

    - The regent/mayor, through input from the police and other security units, also predicts security disturbances, including patterns of crime, according to conditions in the regions. In West Java, there are big cities, suburbs, small towns and rural areas (villages) each with different patterns of crime. For that purpose, the development of defence operations should be adjusted to the need for overcoming the disturbances in these areas (Foster 1990).

    - In connection with the defence efforts to overcome crime, the regent/mayor also seeks to provide education, sports, recreation and other youth activities in order to stop the influence of destructive sub-culture groups, such as gangs.
    - The regent/mayor is also studying the possibility of reforming various regional rules and regulations aimed at community security in such areas as environmental crime, corruption and computer crime. The basis of the strategy is for the community to realise that crime is the problem of the community rather than the responsibility of the law enforcers alone.

The indirect operational defence strategy to resist various security disturbances in West Java operates through the various phases described below:

- Situation

  In each region/city the crime growth and other crime indicators are observed, either from the criminal's or potential victim's perspective. These predictions form the basis of possible disturbances which are then used to determine the steps to be followed in carrying out the strategy.

- Tasks

  Each region performs and maintains orderliness, security and prosperity in its community through various efforts, motivated by the 'sense of security' in the individual member of the community, as well as in the enforcers themselves.

- Operation Performance

  This is done by building up the community defence and enabling it to face various disturbances. Community defence is built up through persuasive and educative approaches utilising community leaders, such as religious scholars, social organisations and other scholars. If crimes do occur and the community succeeds in overcoming them, the offender is then transferred to the law enforcer through the existing criminal law procedure.

- The administration is carried out by the agency or service, as well as the department within the regional government. Nevertheless, it is controlled by the special secretary in the regency/city who maintains and manages the data of the defence strategic performance against the indirect crime. In the First Class Province a secretary is also provided, who controls and collects data from the Second Class regions (regency)/city. The processed data which is then reported and distributed to the agencies and law enforcers who determine the further steps to be taken.

- The Central Management Command is in the hands of the Governor who gives directions to the government apparatus either vertically or horizontally. While to the other members of the Regional Leaders Assembly (Muspida), coordination is maintained by mutual input to achieve the same mission, that is: orderliness, security and prosperity for the community of West Java.

Conclusion

The defence strategy against criminal disturbances by means of an indirect approach is one of the effective efforts in facing crime, in a community where the law enforcement agencies and security units are relatively small in number and the facilities are inadequate, whilst the population and the objects to be protected considerably outnumber the capacity of the law enforcers. Therefore, the power in the community as a resistance source should be developed and supported. The result of this indirect defence strategy is being realised and deeply felt by individuals in West Java. Accordingly, the central government has handed out various tokens of appreciation to several regents/mayors for their ability to resist various disturbances (including crime) and their great success in carrying out development projects in the West Java Province during the Fourth (4th) National Development Program (1983-1988). The defence strategy against crime by means of an indirect approach should, therefore, be further studied and analysed, examined and completed in order to enable us to

follow the social development and to handle the increasing number of security disturbances that the communities always have to face.

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REFORMATIVE OR RETRIBUTIVE: A PRELIMINARY STUDY OF THE 'PEMASYARAKATAN' SYSTEM

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THE HISTORY OF CORRECTIONS IN INDONESIA INCLUDES THREE DIFFERENT correctional systems. First, the 'Kepenjaraan system' that developed during the Dutch colonial government; second, the prison system which existed under the Japanese military government; and third, the 'Pemasyarakatan system' which has developed since 1964, when the Indonesian government began to abandon the system that it had inherited from the Dutch.

The word 'Pemasyarakatan' relates to 'Pengayoman'—the Banyan tree—and means resocialisation, that is, healthy re-entry into the community (Directorate General of Correction 1980).

The Pemasyarakatan system as a symbol of the new era of the treatment system in Indonesia differs from the Kepenjaraan system in that the latter is based on the classical, or retributive, philosophy of punishment. The Pemasyarakatan system, by contrast, is based on the utilitarian philosophy which has three basic elements: prevention, deterrence and reform (Cross 1981). However, among Indonesian leaders and scholars, it is popularly known as the correctional system based on the Indonesian state philosophy, Pancasila, which lays down five basic principles: belief in God, humanity, nationality, democracy and social justice.

The Pemasyarakatan system introduced 'treatment' into the Indonesian corrections system. It consists of ten principles (Atmasasmita & Soema Di Pradja 1974):

1. To provide prisoners with the ability to perform proper and useful roles in the community.

2. To refrain from maltreatment of prisoners in deed or words. Prisoners shall be subjected to no heavier suffering than the temporary denial of freedom to move in the community.

3. To guide prisoners towards reform and rekindle in them a positive sense of community living.

4. The state shall not be instrumental in prisoners' deterioration from pre-admission circumstances. This principle requires strict segregation of adult from juvenile prisoners and felon from misdemeanant.

5. Loss of freedom must not mean the total isolation of prisoners from the community.

6. Prisoners shall not be given jobs that benefit only the institution or the state. Their employment should develop their skills so that they may play an active role in national development.

7. The educational aspect of correctional treatment must be Pancasila-oriented.

8. Prisoners must be treated with respect as human beings.

9. Prisoners shall suffer punishment only in the form of loss of freedom.

10. All physical facilities of corrections must conform to the rehabilitative and educational function of the Pemasyarakatan system.

The founder of the Pemasyarakatan believes that by those principles, the system would achieve its main goals which are:

- to develop prisoners as fully integrated persons or 'manusia seutuhnya' who will refrain from reviolating the law;

- to encourage prisoners to become active, productive and useful to the community;

- to allow prisoners to pursue temporal as well as spiritual happiness (Directorate General of Correction 1980).

However, scholars and most prison officials seem sceptical concerning its ability to achieve these goals. In my opinion, this view is reasonable for the following reasons.

First, the 'gestichten reglement' (Ordinance 1971 No. 708) of the Dutch colonial government has not been revoked, despite the fact that it does not comply with Pemasyarakatan principles. The Pemasyarakatan system is deeply influenced by humanitarian principles and tries to apply the treatment approach in handling prisoners. By contrast, the 'gestichten reglement' that still applies at present is based on the retribution principle and its purpose is principally to maintain law and order within the prison. Accordingly, the 'gestichten reglement' approach involves harsh sanctions in achieving its purpose (Atmasasmita 1981).

Second, the enforcement of the 'gestichten reglement' brings about ambiguity and inconsistency, especially among prison officials, owing to the issuing of the many 'Surat Edaran', or directives, from the Directorate General of Correction. Many prison officials are confused in using the 'Surat Edaran' and one reason is that they have not been systematically ordered.

Third, after forty-five years of independence, Indonesia's criminal justice system still lacks an integrated criminal policy. Police brutality, unfair treatment to the defendant or

excessive treatment by some prison officials are all factors to be dealt with. In addition, the 'Surat Edaran' of the Minister of Justice (No. 01 HN.02.01/1978) Article 9 states:

> Recidivists who were granted remission before the Keputusan Presiden No. 5/1987 was promulgated, are no longer eligible for remission.

This article is obviously contrary to the standard minimum rules for the treatment of prisoners and has raised serious questions about how criminal policy is implemented in Indonesia.

Based on all these facts, the main purpose of my paper is first, to describe the practices of the Pemasyarakatan system in Indonesia and secondly, to analyse its practice within the context of punishment theory.

Present Practices of the Pemasyarakatan System

The process of Pemasyarakatan

The Pemasyarakatan system and its practice in Indonesia, especially in the West Java region, has partly been regulated by the Prison Ordinance 1917/708 and partly by the 'Surat-surat Edaran' of the Director General of Prisons or the Minister of Justice. The most helpful 'Surat Edaran' to implement this system is the 'Pemasyarakatan process', which is comprised of four procedural stages.

The first stage is the observation process. As soon as new prisoners are admitted to prison, they are placed in a maximum security block, and during this placement, interviewed by the prison official in charge.

The second stage is provided for prisoners who have served one-third of the sentence and shown 'good behaviour'. This stage gives more privileges and freedom to prisoners than the first stage. If prisoners earn 'good behaviour' during this stage, then they are moved into the medium security block.

The third stage is provided for prisoners who have served one-half of the sentence and shown 'good behaviour' as recommended by the Board of Pemasyarakatan (Dewan Pembina Pemasyarakatan). At this stage prisoners may enrol in some study outside the prison, or work in the community near the prison. However, they are still supervised by a social worker. After the study or work is over, prisoners must return to prison.

The fourth stage provides for prisoners who have served two-thirds of the sentence and demonstrated 'good behaviour'. Entry to this stage means that parole will be granted and prisoners are permitted to serve the rest of the sentence in the community. The only obligation is to make a routine report about their activities outside. If prisoners commit a crime or violate the prison regulation, they will be forced to return to prison and serve the rest of the sentence.

Facts about Pemasyarakatan

Establishing facts about Pemasyarakatan practices in Indonesia is not an easy task. However, I have taken the West Java area as the object of my survey and selected two big prisons, Banceuy and Sukamiskin which are located in Bandung. Banceuy has a capacity of 750 prisoners and Sukamiskin has 552 prisoners.

The sources of information in the survey are first, the statistics of prisons in West Java area in the year 1989 and documents such as the 'surat edaran' from the Director General of Prisons and the Ministry of Justice from 1984 to 1990. The second source was interviews conducted with some of the prison officials, including the heads of the prisons of Banceuy and Sukamiskin.

1989 statistics disclose the following facts:

- There were an average of 200 to 250 prisoners per month in Banceuy and 400 to 450 prisoners in Sukamiskin.
- Among these prisoners there were twenty-six recidivists. By way of comparison, there were a total of 208 recidivists in West Java, or ten per cent of the total number of prisoners.
- Of the 2,989 prisoners, only three prisoners escaped.
- There were 419 prisoners who had been convicted of special offences such as subversion, smuggling, corruption, gambling and narcotic crimes who needed special treatment different from that for other prisoners.

In the survey of Banceuy and Sukamiskin, it was found that the Pemasyarakatan process was mainly comprised of three activities—pre-release, parole, and assimilation. In 1989, statistics showed that there were thirty parolees and three prisoners who obtained pre-release treatment.

Pre-release treatment is a process whereby prisoners are allowed to conduct their activities outside before their release. Prisoners who have served two-thirds of the sentence or who have a short sentence are eligible for pre-release treatment. The authority to give such process is the responsibility of the head of the prison.

Parole is available to prisoners who have served two-thirds of the sentence. The authority to give parole is the responsibility of the head of the regional office of the Department of Justice. The procedure of parole is very complicated because of the number of conditions that prisoners must meet before release on parole.

The assimilation process is undergone by prisoners who have served half of their sentence. It allows prisoners to conduct activities such as studying or working outside the prison. These activities are accomplished by cooperation between the West Java regional office of the Department of Justice, the Department of Social Welfare and the Department of Manpower. In the period 1986-89, there were more than 300 prisoners who participated in training in various activities such as farming, repair work, plantation and furniture processing.

Based on the practice of Pemasyarakatan in West Java, it can be concluded that the treatment process for prisoners in Indonesia is developing favourably. Nevertheless, procedures in obtaining parole, pre-release treatment and assimilation seem to be an obstacle course for most prisoners today. Besides, most prison officials feel that it is difficult to take any action or decisions concerning the assimilation process because they are afraid of being blamed by their superiors for any failure. By the same token, they have an obligation to reform prisoners and, if necessary, take any security action required, for example, in case of riots or escapes.

The Pemasyarakatan Setting

The description of the process of Pemasyarakatan given above indicates that the purpose of Pemasyarakatan is to resocialise the prisoner—the regaining of a prisoner's skills, ability and motivation (Atmasasmita 1981). But, within the context of the correctional setting, resocialisation implies change relative to the group (McKorkle & Korn 1970).

Western sociologists have developed the concept of 'prisonisation', introduced first by Donald Clemmer (1940). Clemmer stated that prisonisation means 'the taking on in greater

or lesser degree of the folkways, mores, customs and general culture of the penitentiary' (Garabedian 1970).

In my opinion, prisonisation essentially means socialisation within the prison walls. There is no reason to believe that socialisation within the prison is more coercive than socialisation within society at large. It seems rather that the reverse is true. Societal circumstances where some people become criminal is much more coercive than the prison situation. It can be concluded that socialisation is a process of interaction towards becoming a law abiding citizen. On the other hand, prisonisation is a process of interaction to become criminally accultured (Atmasasmita 1981).

It is commonly believed that there is a dependent interaction between prisoners and prison guards. In certain situations, such interaction could hamper the success of Pemasyarakatan to resocialise prisoners. Efforts have been made to prevent such an obstacle, such as the release of the 'surat edaran' by the Director General of Correction (number E-05.PK.01.10.90/ 1990). This guides prison officials in using the 'kekeluargaan' approach in taking action to settle riots or other violent conduct in prison, by showing how the interaction process between prisoners and the official can be accomplished harmoniously.

In the context of the theory of punishment, the concept of Pemasyarakatan could be deemed to follow the resocialisation theory. But, in fact, it also follows the retribution theory since a strict security approach is also implemented towards prisoners. Based on these observations, my judgment is that today Indonesia's criminal policy, especially the policy in corrections, takes a position between the retribution and resocialisation theories.

The concept of resocialisation, as a fundamental aspect of Pemasyarakatan, means 'healthy re-entry into the community'. There are three subjects that are pre-eminent in the Pemasyarakatan setting—the prisoners, the prison officials and society at large. Therefore, one could define resocialisation as a process of interaction between the prisoners, the prison officials and society which implies altering prisoners' value systems, so they will be able to readapt to the norms and values of society easily (Atmasasmita 1981).

Since society plays a dominant role within the Pemasyarakatan setting, to some extent it has a controversial character. In practice, even though a prisoner has a good reputation during his confinement and is released into society, there is no guarantee that he will find 'a good society' to live with. Our society believes that a deviant is someone that constitutes risk to other members of society. This phenomenon is consistent with the concept of labelling (Schur 1971).

A more explicit statement about this is found in Becker's paper entitled 'The Outsider' (Schur 1971) where he states that:

> social groups create deviance by making the rules whose infraction constitute deviance . . . deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant is one to whom that label has successfully been applied. Deviant behaviour is behaviour that people so label.

Based on the description of the Pemasyarakatan setting within the context of the punishment theory and Becker's theory of labelling, it is concluded that, first, resocialisation, as the purpose of the Pemasyarakatan today, is nothing but a Utopian objective. Second, the position of the Pemasyarakatan system as a policy on corrections is neither retributive nor reformative. It represents a mixed policy, based on both concepts.

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LEGAL CONSCIOUSNESS*

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THIS PAPER WILL FOCUS ON LEGAL CONSCIOUSNESS IN A JAPANESE CONTEXT. IF one attempts to examine public perceptions of the legal system and practices in a particular country, it is necessary to look at both its social and cultural backgrounds. This will be attempted here.

The Value System in Japan

Japan has been a densely populated country since its medieval period; a large number of people have lived on an island nation with limited terrain and generally poor natural resources. Those circumstances have generated in the Japanese people not only habits of diligence in all their endeavours, but also a highly-disciplined mentality; antisocial activities have an enormous impact upon such a society.

Consequently, informal control asserted within the family and local community, augmented by that manifested in work groups and other forms of private associations, have played a vital role in promoting and maintaining peace and order within Japanese society. Harmonisation and a well-balanced combination of formal and informal social control is a characteristic feature of Japan's crime prevention mechanism.

These predominant aspects, with some modifications inevitable in a modern nation with a highly developed economy and industrial base, have continued to the present day. Values like personal dignity, morality in personal relationships and self-effacement and modesty for the sake of society seem to have prevailed over simple material interests on the part of individuals, at least until recently. These characteristic aspects of Japan's social and cultural conditions have, to a considerable degree, contributed to a social environment against crime and to a public attitude of paying respect to fairness and justice. Furthermore, the spread of education has advanced the social adaptability of the Japanese people as a whole.

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Socioeconomic development, which has been achieved after World War II, has generally had a favourable impact on the prevention of crime in Japan.

However, rapid economic development has brought about certain changes in the societal structures and living environment of Japan. A marked rise in the industrial activities of the secondary and tertiary sectors has brought about corresponding changes in the population of industrial centres in comparison with rural areas and small cities and towns. Nuclear families have replaced extended families in the new industrial metropolises. Rapidly advancing urbanisation has increased anonymity in society.

Thus, strong ties and favourable relationships among family members and the community have been much weakened by the changes in society. It seems that modern education, which places emphasis on democracy and individualism, has begun inevitably to affect the traditional value system, be it desirable or not. Individual-oriented thinking is dominant particularly among the younger generation. In other words, Japanese society is presumably shifting away from a group-oriented society towards an individual-oriented one, although the characteristic feature of the former still remains prevalent in many spheres of Japanese society. Such individualistic thinking predominant among young people today may be of relevance in examining the legal consciousness of people in modern Japanese society.

It seems that in Japanese society, materialism has, in recent years, gained overwhelming popularity over spiritualism which was accorded great importance in the decade before World War II. This is evident by the results of advanced economic development which Japanese people successfully accomplished by their own untiring day-to-day efforts. Spiritualism is not necessarily more conducive to moral enhancement than materialism in every aspect. But, excessive materialism will lead persons to commit themselves to money making, thereby increasing the likelihood of them ignoring or disregarding morality in some cases. Since Japanese society has reached a stage of affluence, evidenced by the variety and abundance of consumer goods, some of its members have revealed a weakened ability to distinguish their own possessions from those of other people, and so have committed property offences. The recent increase in stimulant drug abuse appears to reflect a pursuit of pleasure by those who have benefited from improving living standards.

The Perception of People Towards Crime and Treatment of Offenders

Of course, to attempt to clearly state human thought is impossible due to its vague and elusive nature. Human thinking is constantly in a transitional state, being influenced by the progression of time and changes in social conditions. There are also difficulties in extracting from the transitions of human thought, a sense of reality comparative to the reality of our daily lives. For this reason, it would be difficult, even dangerous, to clearly state human perception on any topic.

It is generally said that we are in a time in which individual citizens have their own personal concepts of values. However, it is necessary for researchers to conduct research to discover the attitudes of people towards crime and the treatment of offenders, keeping in

mind the difficulty of such a task, and for those who are in the service of criminal justice administration to be aware of the results of the research in serving their work.

The Research and Training Institute of the Ministry of Justice, Japan, in accordance with these views, carried out research on the recognition, perceptions and expectations of people towards crime and treatment of offenders, as well as their evaluations of various agencies in charge of criminal justice administration such as investigation, arrest, trial and treatment.

It should be noted that the research involved not only a public opinion poll in 1986, but also a survey on the same subject with prisoners and their family members. In these three research surveys, the following questions were asked.

- Have you ever encountered any offences?
- What ideas do you have upon the release or treatment of offenders, mainly for those who commit ordinary offences likely to happen nearby?
- What do you think about having the offenders' real names publicised?
- What do you think about the roles of the agencies charged with administering criminal justice and their treatment of offenders?

A few examples of the evaluations and analyses of the results of these researches are given as follows:

Shoplifting by juvenile delinquents

Larceny comprises the majority of juvenile delinquencies, among which shoplifting is the most common accounting for 36.6 per cent of all larceny cases in 1986.

Table 1 shows the answers to the question 'What do you think is the most appropriate measure to be taken, in general, for junior and senior high school students who shoplifted goods of about 5,000 yen in value?'

When these answers are categorised into two groups, that is handling the cases without the intervention of criminal justice agencies, and referring the cases to the criminal justice agencies; the former was chosen by 76.3 per cent of ordinary citizens, 80.6 per cent of prisoners, and 72.9 per cent family members of prisoners. The latter was supported only by 15.6 per cent of ordinary citizens, 12.6 per cent of prisoners, and 12.8 per cent of family members of prisoners.

Violent acts by citizens

As for violent acts, there seems to be two kinds of opinions. One a rigid attitude with a view towards eliminating violence, and the other a tolerant attitude accepting that any citizen has the potential to commit violent acts.

Table 2 shows the answers to the question 'What measure do you think ought to be taken, in general, against a person who, in a bar-room quarrel with another patron sitting

next to him, struck his neighbour with a beer bottle causing him to suffer from a bruise which takes ten days to heal completely?'

Table 1

How to Treat Shoplifting by Junior or Senior High School Students (what would you think is the most appropriate measure to be taken, in general, for junior or senior high school students who shoplifted goods of about 5,000 yen in value?)

	Ordinary Citizens	Prisoners					Family Members of Prisoners		
Choices		Male	Female		Male	Female		Male	Female
Total	100.0 (2,392)	100.0 (1,067)	100.0 (1,325)	100.0 (2,648)	100.0 (2,537)	100.0 (111)	100.0 (727)	100.0 (206)	100.0 (521)
Giving warning	19.5	21.9	17.6	38.9	39.1	35.1	16.1	17.5	15.5
Reporting to school authorities or parents	56.8	53.5	59.4	41.7	41.5	45.9	56.8	57.8	56.4
Reporting to police	14.8	16.8	13.2	11.5	11.4	12.6	12.4	9.7	13.4
Adjudication by Criminal Court	0.8	1.0	0.7	1.1	1.1	0.9	0.4	1.0	0.2
Others	0.6	0.4	0.8	1.4	1.3	1.8	0.6	--	0.8
Do not know	7.4	6.4	8.3	5.4	5.4	3.6	13.8	14.1	13.6

Note: Figures in parentheses show actual numbers.
Source: The Public Opinion Poll, Prime Minister's Office for Ordinary Citizens: Research and Training Institute, Ministry of Justice for Prisoners and Family Members of Prisoners.

Twenty-seven per cent of ordinary citizens thought it appropriate to fine the offender, whereas 27.5 per cent of the total thought it appropriate either to 'suspend the execution of sentence' or to 'imprison him' after a formal trial.

Reliance on and the Expectation of Actions of Judicial Agencies

Table 3 shows the answers to the question 'Do you agree with the opinion that crime control and apprehension of offenders has generally been conducted well?'

The response given by 33.6 per cent of ordinary citizens was 'I think so', far exceeding those who responded 'I don't think so' (18.0 per cent). Thus, it may be inferred that people generally rely upon investigation agencies.

Table 2

Views on Dispositions Given to Those Who Acted Violently (The case of the person who struck a man with a beer bottle at a bar)

Choices	Ordinary citizens	Prisoners	Family members of prisoners
Total	100.0 (2,392)	100.0 (2,648)	100.0 (727)
Forgiving without punishment	21.7	54.4	33.1
Fine	27.0	22.6	17.6
Suspension of execution of sentence	17.8	8.2	10.3
Imprisonment	9.7	5.9	3.6
Others	4.3	2.0	2.9
Do not know	19.5	7.0	32.5

Note: Figures in parentheses show actual numbers.
Source: The Public Opinion Poll, Prime Minister's Office for Ordinary Citizens: Research and Training Institute. Ministry of Justice for Prisoners and Family Members of Prisoners.

Table 3

Expectation of and Reliance on Activities of Judicial Agencies (Have crime control and apprehension of offenders generally been conducted well?)

Choices	Ordinary Citizens	Prisoners			Family Members of Prisoners				
		Male	Female		Male	Female		Male	Female
Total	100.0 (2,392)	100.0 (1,067)	100.0 (1,325)	100.0 (2,648)	100.0 (2,537)	100.0 (111)	100.0 (727)	100.0 (206)	100.0 (521)
Agree	33.6	38.4	29.7	31.2	31.7	20.7	30.5	43.6	24.6
Disagree	18.0	20.4	16.1	17.2	17.5	10.8	12.9	8.7	14.6
Undecided	34.1	31.8	35.9	38.7	38.3	48.6	23.2	24.3	22.8
Do not know	14.3	9.4	18.3	12.8	12.5	19.8	33.3	21.4	38.0

Note: Figures in parentheses show actual numbers.
Source: The Public Opinion Poll, Prime Minister's Office for Ordinary Citizens: Research and Training Institute. Ministry of Justice for Prisoners and Family Members of Prisoners.

Perceptions on How to Deal With Offenders

Treatment of offenders

Table 4 shows the answers to the question 'How do you think offenders should be treated?'

All three categories of respondents most frequently chose 'Sympathy is necessary as well as severity', followed by 'severity is most effective'.

Usage of offenders' real names in the media

Table 5 shows the answers to the question 'What do you think about the media's reporting the real names and photos of criminals, often together with their residence and criminal records?'

Table 4

Views of Treatment of Offenders
(Please choose the one which is the most similar to yours from among the following options on the treatment of offenders)

	Ordinary Citizens			Prisoners			Family Members of Prisoners		
Answers		Male	Female		Male	Female		Male	Female
Total	100.0 (2,392)	100.0 (1,067)	100.0 (1,325)	100.0 (2,648)	100.0 (2,537)	100.0 (111)	100.0 (727)	100.0 (206)	100.0 (521)
Severity is most effective	25.2	26.4	24.2	7.1	7.3	1.8	10.0	12.6	9.0
Affection (sympathy) is necessary as well as severity	57.8	57.1	58.4	80.6	80.2	89.2	75.8	72.8	77.0
Assistance is more necessary than punishment	5.6	6.1	5.2	7.1	7.3	2.7	4.0	5.8	3.3
Others	1.3	1.7	0.9	0.8	0.8	--	1.1	1.0	1.2
Do not know	10.2	8.7	11.3	4.4	4.4	6.3	9.1	7.8	9.6

Note: Figures in parenthesis show actual numbers.
Source: The Public Opinion Poll, Prime Minister's Office for Ordinary Citizens: Research and Training Institute, Ministry of Justice for Prisoners and Family Members of Prisoners

If the responses, 'As a matter of course', 'Not to be avoided' and 'Not to be allowed' about residences and criminal records were counted as approval of usage of real names in media reports, those who positively, reluctantly or conditionally approved accounted for 76.4 per cent of ordinary citizens, 65.8 per cent of prisoners and 49.3 per cent of family members of prisoners respectively.

Public Opinion About the Question of the Death Penalty

The Prime Minister's Office conducted a nation-wide public opinion poll in 1989 to inquire into peoples' perceptions of whether the death penalty should be abolished or retained.

The results of the survey showed that 66.5 per cent were 'against the abolition of the death penalty'; 15.7 per cent were 'in favour of the abolition'; 17.8 per cent were 'unable to answer to the question'.

Table 5

Views on the Usage of Actual Names in Crime News
(What do you think about the usage of real names in crime news?)

	Ordinary Citizens			Prisoners			Family Members of Prisoners		
Answers		Male	Female		Male	Female		Male	Female
Total	100.0 (2,392)	100.0 (1,067)	100.0 (1,325)	100.0 (2,648)	100.0 (2,537)	100.0 (111)	100.0 (727)	100.0 (206)	100.0 (521)
As a matter of course	24.5	25.2	24.9	18.0	17.8	22.5	18.2	21.4	16.9
Not to be avoided	31.9	34.2	30.0	22.0	22.1	19.8	19.1	21.8	18.0
Not to be allowed about residences and criminal records	20.0	19.0	20.8	25.8	26.2	17.1	12.0	7.8	13.6
Should keep anonymity	15.0	14.9	15.0	23.9	23.6	30.6	28.2	29.6	27.6
Others	1.3	1.3	1.4	2.6	2.6	1.8	2.8	2.4	2.9
Do not know	7.3	5.3	8.8	7.7	7.6	8.1	19.8	17.0	13.9

Note: Figures in parenthesis show actual numbers.
Source: The Public Opinion Poll, Prime Minister's Office for Ordinary Citizens: Research and Training Institute, Ministry of Justice for Prisoners and Family Members of Prisoners

Those who were against the abolition of the death penalty were so on the following grounds:

- an offender should compensate for his atrocious offence with his own life (59.0 per cent);
- the abolition of the death penalty would lead to an increase in heinous offences (53.1 per cent);
- should the death penalty be abolished, the resentment of victims and their bereaved families would never be mitigated (39.7 per cent);
- offenders of such heinous offences would likely recommit the same crime (37.9 per cent).

(Plural answers were allowed for these questions). The question of whether the death penalty should continue to be retained or should be abolished in the future was asked to the same retentionists in order to further examine their views. While the former opinion is supported by 76.8 per cent, the latter is supported by only 7.5 per cent.

Recently, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held in Havana, Cuba from 27 August to 7 September 1990. During the Congress, a draft resolution relating to the question of the death penalty was proposed by the Italian Government for discussion and adoption at the Congress. The draft resolution entitled 'death penalty' included, a provision saying that the:

> Eighth United Nations Congress invites those states which have not abolished the death penalty to consider the possibility of establishing, within the framework of their national legislations, a moratorium on its application, at least on a three-year basis, or creating other conditions under which capital punishment is not imposed or executed, so as to permit a study of the effects of abolition of the death penalty on a provisional basis.

Extensive and fervid discussions took place between abolitionist and retentionist countries as to whether or not this draft resolution should be adopted as it is. However, consensus was not reached and eventually the voting took place. The result of the vote was forty-eight for the resolution, and twenty-nine against with sixteen abstentions. The draft resolution was thus rejected. Those countries which voted in favour of the draft resolution were mainly European countries and Latin American countries. It should be noted that the Soviet Union voted for it, although it retains capital punishment at the present time.

Meanwhile, those countries which voted against the resolution were mainly Asian countries such as Malaysia, India, Indonesia, China, Thailand, Korea and Japan, as well as Islamic countries such as Saudi Arabia and Jordan. The question of capital punishment still remains a most controversial issue of criminal policy in the international community. The rationales for retention vary from country to country, depending upon the different social, cultural and religious conditions prevailing in the respective countries. It is noteworthy that views or perceptions on capital punishment are split explicitly between the East and West in a broad sense as was observed at the Eighth Congress.

Legal Consciousness of Japanese People

Although it would be very difficult to give a general explanation with respect to Japanese people's legal consciousness, several characteristic features could be safely pointed out on the basis of the results of the aforementioned survey supplemented by my limited knowledge and experiences.

Law abiding spirit

Generally speaking, Japanese people are accustomed to group-oriented behaviour and thinking, paying due regard to their surroundings. They attach much importance to families and communities to which they belong. Work groups and other forms of private associations also constitute an integral part of their life. Social ties and relations among the local communities and the neighbourhoods still remain in various forms of associations. These associations organised in the communities have played a vital role in integrating and solidifying community members through administrative and friendship activities. There still exists a general tacit consensus on neighbourhood cooperation and mutual assistance in daily life in the community.

Meanwhile, in Japan, a majority of workers are permanent employees and the life-long employment system has survived not only in government offices, but also in the private sector, although there have been exceptions in recent years. Workers have long been dependent upon their employers under the seniority system. Employers can also benefit from employee loyalty in return for warm and humane treatment towards their employees.

Indeed, managers of superiors in companies often treat their subordinates like family members.

Interdependent relations thus created between individuals and communities naturally affect people in behaviour and thinking. Each community member has an individual responsibility for his or her behaviour and at the same time the community also bears a collective responsibility for its members. Consequently, an individual may feel a responsibility to the community as its member. Such a consciousness of affiliation with the community has significantly contributed to people's general attitude of observing community rules. It can be said that a common way of thinking among ordinary citizens is that any misconduct or deviant behaviour would be a shame for the person involved, as well as for the community or association with which they are affiliated. These aspects of human relations and moral consciousness, still observable in modern Japanese society, could be considered to have been working as an informal social control to enhance the law-abiding spirit among citizens in general. In this context, reference should be made to the result of 'an opinion poll on national life' conducted in 1984 by the Economic Planning Agency on the question of social order versus individual rights. According to the poll, those who believe that social order is more important than individual rights constitute 65.6 per cent of those polled and those who think that individual rights and opinion should be given priority constitute only 24.7 per cent. Moreover, special attention should be made to the fact that 71.6 per cent think that individual rights should be restricted for maintenance of social order.

Public perception of the criminal justice system

In Japan, law enforcement agencies exemplified by the police have enjoyed high esteem and public confidence in the police administration as well as active public cooperation in criminal investigation. This is partly because of the close and continual presence of police officers in the community and the high clearance rate of crime. Japanese police are not remote and feared symbols of government power. Japanese neighbourhoods are served, in larger cities and communities, by police assigned to police boxes (koban), and in rural areas by officers who, with their families, live in residential police stations. Police allocated such assignments are effective in crime prevention, apprehending offenders and aiding crime victims. But they also discuss with local citizens all sorts of problems and complaints, whether or not they involve criminal matters. As a result, particularly in areas other than urban ones, police officers and the police boxes or residential police stations they occupy are an integral part of the life of the community and its denizens. Police officers are strongly motivated to maintain complete integrity in the performance of their duties, as are other categories of criminal justice personnel. For these reasons, police have received the cooperation and support from the citizenry essential to its effective functioning. Police investigations have maintained a high clearance rate of crime through both the commitment of well qualified and trained personnel and continued cooperation from citizens in general. Prosecuting officials also generate public confidence in the way the county's criminal justice system operates. They place much emphasis on promoting redress for injuries and damages inflicted by perpetrators on victims. Some of these efforts are informal in character, for example, recommendations by prosecutors to offenders that they make voluntary restitution as a sign of sincere repentance and a desire to be integrated into the community. Restitution supports the belief on the part of victims that justice is being done, while at the same time contributing to the effective rehabilitation of offenders. Use of the system of suspension of prosecution at the discretion of public prosecutors contributes to the same results.

Due to its traditionally high conviction rate, the idea of prosecution has a gravity similar to conviction. Thus in Japan, prosecution is instituted very carefully and moderately, as is manifested in the high suspension rate of prosecution. Extensive use of suspension of execution of sentences and parole after serving part of a sentence also confirms citizens'

beliefs that the criminal justice system affords them adequate protection without inflicting unnecessary harshness on criminal offenders.

In Japan, the high clearance rate of crime in criminal investigation and high conviction rate (99.9 per cent) in criminal courts also represents effective functioning on the part of the criminal justice system. The ingrained attitude of criminal justice personnel and their unrelenting efforts to make their performance of duty ever better are the foundation for public confidence in the system.

Awareness of legal rights and duties

Education has been given the highest national priority as a means of contributing to the strength of the nation. People in Japan are given an education as an individual right and duty as necessary for members of the democratic society from the earlier stages of their education. In particular, in the educational system after World War II, greater emphasis has been placed upon democracy and individualism enshrined in the new Constitution. Rule of Law has also been established in every sphere of government administration as a constitutional state. A variety of campaigns have, from time to time, been undertaken by the governmental agencies involved, as well as professional associations of lawyers with a view to promoting programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. People have thus been increasingly aware of their fundamental rights guaranteed by the Constitution.

This is also true in terms of criminal justice administration. In Japan, an offender's right to be assisted by lawyers is guaranteed at all stages of criminal proceedings. Offenders are entitled to have the right to be assisted by lawyers of their own choice. Those lacking means to pay for legal services provided by lawyers have the right to be assisted by state assigned lawyers at no cost to them. Although such state assigned lawyers are available only at the trial stage of proceedings, a substantial number of offenders under investigation provide for lawyers at their own expense.

Poor offenders who cannot afford lawyers are not necessarily left in a disadvantageous position because of this. In this respect, the public prosecutors are expected to and really do play an important role as representatives of public interest, whenever the interest of justice so requires. That is to say, prosecutors try to collect all the information and evidence deemed necessary for the proper disposition of a particular case, whether the evidence is incriminating or not, or whether it is aggravating or mitigating evidence. Such a fairness as demonstrated in the manner of prosecutor's investigation can be said to have led to public confidence in the prosecutors' work.

The same may be said of police investigators because they are subject to the direction of prosecutors. Police officers do not always appear to be confronted with offenders in the course of investigation. Rather, police officers make every effort to come into close contact with offenders so as to get them to confess voluntarily their commission of a crime, being motivated by sincere repentance. These efforts by police officers are based upon their belief that voluntary confessions motivated by sincere repentance would lead offenders to rehabilitate themselves as law-abiding citizens. Such a police officer's attitude as described above is naturally reflected in those offenders. In most cases, offenders state willingly, or in compliance with the suggestion of investigators, the details of their commission of a crime and make their confessions to investigators when interviewed. It is yet to be noted that these confessions have been made on the understanding of their Constitutional rights guaranteed in Article 38 of the Constitution which says that 'no person shall be compelled to testify against himself' and despite the fact that suspects are, in advance of questioning, notified of that right. Defence lawyers involved also do not appear to urge or strongly recommend that their clients refuse to answer questions by investigators, except in special

cases such as those connected with ultra-leftist groups or any other anti-governmental movement.

While offenders' confessions can generally be assessed as mitigating factors which indicate their repentance for crimes committed, both in a prosecutor's disposition of the case and, in sentencing at the trial, an offender's refusal to answer questioning would actually be taken as an unfavourable factor subsequent to the commission of the crime. Offenders and defence lawyers have two choices. However, they are well aware of the capability of investigating authorities and of a possible adverse effect resulting from exercising the right to refuse to answer. It seems that these factors have largely contributed to the high confession rate of offenders observed in all criminal proceedings (and have also characterised criminal justice administration) in Japan. Thus, court proceedings become less disputed, particularly regarding an offender's guilt in standard cases, and greater emphasis is put on the sentencing procedure where defence lawyers make every effort possible to substantiate mitigating circumstances.

In Japan, victims of crime play a key role in the administration of criminal justice as is the case in many countries of the world. One does not exaggerate in saying that a successful investigation depends largely upon the continual cooperation of victims of crime. This is also true of trial proceedings on the prosecutor's part.

Victims need to become involved as a core element in criminal proceedings. They are compelled to devote much time to cooperation with the investigation activities and in some cases, are summoned as witnesses to testify in court. They may fear various forms of retaliation action by offenders or criminal organisations involved in the case. Some witnesses' actual situations would, therefore, be very serious and uncertain. Under such circumstances, some victims might decline to report their victimisation to the police.

In spite of these possible obstacles to victims' cooperation, the investigating authorities have so far enjoyed adequate cooperation and support from victims in the performance of their investigative responsibilities.

In Japan, incidences of offenders or criminal organisations threatening or taking illegal action against victims in an attempt to prevent them from testifying or to retaliate against them for having already testified, have been reported. However, such incidences are very rare. Should such an unfortunate case occur, the police would make maximum efforts to arrest the criminal involved and take all necessary measures to protect victims from further victimisation. The court would certainly impose the severest possible sanction on those offenders as well.

Thus, the rule of law and the realisation of justice have been given top priority as the basic principles underlying criminal justice administration in Japan. The public at large have full trust in law enforcement activities and the administration of justice with particular emphasis on these established principles.

Public Participation in Crime Prevention and the Treatment of Offenders

The responsibility of crime prevention and treatment of offenders primarily rests in the hands of the government. However, it is also obvious that the government agencies could not effectively function in the performance of their responsibilities without full-scale public participation and cooperation with various programs undertaken. The government has encouraged a variety of ways for the public to participate in this field by mobilising voluntary human resources in the community.

An exemplary group of organisations for crime prevention are the Crime Prevention Associations which are volunteer community organisations dedicated to the prevention of crime and delinquency and sound development of youth in the community. They promote public awareness campaigns and provide public information services.

The system of volunteer probation officers can be said to demonstrate a characteristic feature of public participation in the field of treatment of offenders in Japan. There were 48,547 volunteer probation officers commissioned by the Ministry of Justice as of 1 July 1989. The most important role of a volunteer probation officer is to supervise and assist probationers and parolees assigned to him. He also inquires into and makes adjustments to an inmate's living environment once he is released from prison.

Another duty of a volunteer probation officer is to locate a probationer or parolee who has moved from another area and to take over his supervisory case work. In addition, he conducts preliminary investigations into the cases of candidates for pardon. In the promotion of crime prevention, volunteers carry out many forms of activities pertaining to the concept of community organisation. Among others, they collaborate with public and private organisations in exploring and coordinating social resources in the community. They spread rehabilitative philosophy and effort to individual neighbours and to the public as a whole, as well as attempt to eradicate crime-precipitating conditions in cooperation with community residents. There is no incentive for a volunteer probation officer in terms of material benefits. As in any other fields of voluntary work, what constantly motivates him is a sense of mission and gratification from helping others. A variety of people from almost all fields of society such as government officials, company employees, manufacturers, shopkeepers, schoolteachers, medical doctors, social workers, and private lawyers, are involved in volunteer probation officer work.

This enhanced public participation in crime prevention and treatment of offenders indicates that people are fully aware of the importance of the role they are expected to play as members of the community with the aim of ensuring human welfare and a tranquil society.

Conclusion

In Japan, various forms of informal social control are considered to have more dominant and effective functions than in other advanced countries. Such social control effectively works together with the modern legal system to control and prevent crime. Well regulated informal and formal social control might be a unique point of criminal justice administration in Japan. Yet people in general appear to have the highest regard for a sense of justice and adhere to community rules. These favourable aspects have presumably been supported by many factors involving economic, social and cultural conditions still observed in Japanese society.

However, one cannot be so optimistic about the future of Japan, since some indications exist suggesting that social values are beginning to change gradually. Examples of the changes include an increasing number of nuclear families, a weakening traditional sense of morals, an increased desire for wealth resulting from an affluent society, the transition of people's interest and concern from social areas into personal areas, changing living environments, especially in urban areas, and so forth. These factors are likely to affect people in their behaviour and thinking, thereby exerting adverse effects on the moral and legal consciousness of people, if some of those factors have become conspicuous and deteriorated so as to transform the infrastructure of society.

Japanese society appears to be in the course of a transition, if not visible, then steady, from the viewpoint of the value systems and social structure.

CRIME AND VICTIMISATION OF THE ELDERLY IN JAPAN*

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Japan's Ageing Society

ACCORDING TO THE WHITE PAPER ON CRIMINALITY 1989, IN 1959 8 MILLION or 8.7 per cent of the Japanese total population of 92 million were 60 years or older. This proportion increased to 10.5 per cent in 1969, 12.6 per cent in 1979 and reached 16.9 per cent in 1989. It is notable that women of 60 years or more account for 19.2 per cent of the total population compared with 14.6 per cent for men. By the beginning of the 21st century the elderly segment of society is expected to exceed 25 per cent.

Crimes of the Elderly

In 1989, the number of elderly individuals apprehended by the police stood at around 12,000 or roughly 3.9 per cent of the total apprehended by police. This ratio is low compared with the percentage of the elderly among the total population, but represents a considerable increase over the 1977 ratio of 3 per cent.

Offences most often committed by the elderly are property offences—for the most part theft, followed by embezzlement and fraud. By sex, women overwhelmingly—at over 92 per cent—commit theft. Among men, this offence accounts for 63 per cent, with fraud and embezzlement being relatively higher.

As to the proportion of elderly offenders in each crime category, the highest proportion is found in murder/manslaughter, although the actual figure is very small. This result might be because of a high number of attempted murder/manslaughter and attempted double suicides, in which only one partner succeeds. By sex, males represent 4 per cent compared to 7.7 per cent female of elderly offenders.

Theft shows the second highest proportion of elderly offenders. Breaking and entering, which require some skill and physical agility, represents only 1.3 per cent of the elderly,

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while shoplifting and bicycle theft, offences which can be committed relatively easily, also comprise a relatively high proportion of elderly offenders.

Treatment of Elderly Offenders

The elderly in the criminal justice process

A look at the actual number of elderly offenders and their proportion at each stage of the criminal justice process indicates how the agencies involved attempt to solve the problem of elderly offenders.

Police statistics contain no age categories for the various ways of dealing with offences, such as forwarding to the prosecutor or disposal as a misdemeanour, but the fact that more then 90 per cent of the shoplifting and bicycle theft cases are dealt with without detention indicates that a large proportion of the offences committed by the elderly are disposed of without a trial.

At the level of prosecution, in 1989, 12,400 criminal code offences were dealt with by indictment or suspended indictment with elderly offenders accounting for 3.7 per cent. In total, the rate of suspended indictment was 35.8 per cent. The corresponding rate for elderly offenders, however, was much higher, that is 50.6 per cent. For 31.2 per cent of males indictment was suspended, compared to 42.8 per cent of elderly offenders. For women, the rates were 72.4 per cent in total and 80.3 per cent for the elderly. This shows how the instrument of suspended indictment is applied to a great extent to elderly offenders, especially women.

In 1988, approximately 43,000 individuals were found guilty in a trial at a district or summary court. Of these, 1338 or 3.1 per cent were elderly. This ratio has also been increasing gradually. Among the almost 25,000 new convicts in 1989, 849 or 3.5 per cent were elderly. This indicates a fair increase over the last 20 years: in 1967, the elderly accounted for 1.3 per cent and in 1977, for 1.4 per cent. The changes for elderly female new convicts are especially noteworthy: twenty years ago, they accounted for 2.2 per cent, and reached 3.9 per cent in 1986.

Elderly convicts, in accordance with their physical and mental condition, are given special consideration in their treatment and, if necessary, are subject to a reduced workload or undergo medical treatment.

In probation and parole as well, the ratio of the elderly has been increasing steadily. A recent problem is that the increasing number of released elderly prisoners have no place to live and, therefore, have to enter welfare institutions. Thus, the resocialisation within society of elderly ex-convicts without any family ties is faced with numerous obstacles.

Crime prevention and resocialisation among the elderly

Offences committed by the elderly are minor and for the most part property related. While large-scale embezzlement and fraud also occur, these offences are limited to a small number of offenders able to take advantage of their social status and position. The majority of offences committed by the elderly, such as theft, involve items of relatively low value and take place in the close environment of the offender amidst a life of narrow confinement. Frequently, reference is made to the prevalence of sexual offences, especially child molestation, among the elderly. This assessment, however, can probably be attributed to prejudice or misinterpretation rather than actual fact.

Why do the elderly turn to criminal behaviour?

- The elderly are forced to retreat from social life against their will, which leads to resentment and further, for many means a serious economic and psychological deprivation. The result may be deviant behaviour.

- The elderly, still in possession of their physical and psychological capabilities, have to maintain a way of life appropriate to their age. However, if the loss of work due to retirement is not compensated for by another energy outlet, this energy may be directed towards deviant behaviour.

- Those with a long criminal career and a history of recidivism, who have been alternating between life in prison and outside, have lost contact with their families and in their old age are without any social ties. These individuals face numerous problems when released into society. Women offenders in particular have little chance of resocialisation as they increasingly have no relatives to turn to once they reach middle age. Here extensive help is necessary in order to provide satisfactory living conditions to released elderly recidivists in combination with measures of resocialisation.

Victimisation of the Elderly

There are few data available on elderly victims of crime. The mass media frequently report on large-scale fraud cases involving elderly individuals living by themselves, particularly females. It seems necessary to clarify the actual incidence of victimisation among the elderly.

In 1988, 1,632,795 criminal cases involving damage to individuals were registered. Of these, 117,018 or 7.2 per cent of the total involved elderly victims. The so-called intellectual offences (fraud, embezzlement and forgery) accounted for 123,675 cases. Of these, 12,715 cases, that is 10 per cent, involved elderly victims. Thus, the proportion of elderly victims in this crime category is twice that for criminal offences in total. In this context, it is interesting to note that in 7.1 per cent of the theft cases in 1988 the victims were elderly, while among persons detained for theft 5.2 per cent were elderly. This shows that the elderly are more like to be victims than perpetrators.

Offences where the elderly are most likely to become victims are connected with unlawful business practices such as sales of counterfeit goods, multiple sales, investment fraud, etc.

This high level of victimisation might be due to several factors. The elderly, having accumulated savings over the years, depositing their retirement allowance and living off the interest, have a considerable amount of money at their disposal. As well, in addition to declining health and reduced living options the elderly are prone to feelings of financial insecurity, fear that inflation will diminish their savings, etc. Furthermore, they often have no close relatives such as children or siblings living nearby to turn to for advice owing to the increasing number of nuclear families. Parallel to this, the prevailing overall financial situation with its unstable interest rate resulted in an investment boom. Interest in this was fanned further by the mass media, which also directed interest to the elderly as likely targets for fraudulent activities.

Victimisation Prevention

To protect the elderly from fraudulent schemes, detailed preventive measures are necessary. Advancing urbanisation and industrialisation and the influx of new residents have weakened the feeling of community in residential neighbourhoods and diminished their informal crime

control and mutual support function. This facilitates victimisation of citizens, especially of the elderly. On the perpetrators' side, business morale has declined to the extent that even exploiting the socially weak such as children and the elderly for profit is no cause for embarrassment. In terms of counter-measures, unlawful business practices must be strictly controlled and offenders must actually be punished, not given suspended sentences. Further, penalties close to the upper legal limit should be imposed in order to be effective with respect to general prevention. In order to protect victims, the following measures should be implemented:

- the creation of comprehensive crime prevention activities involving the residents in the neighbourhood;
- local networks to distribute information and offer advice in case of problematic incidents;
- a coordinating agency to analyse the accumulated data and distribute information on those incidents to citizens via a nationwide network, making use of counselling centres, consumer advice centres, neighbourhood crime control posts etc.;
- special supervision, using high-grade information systems, of households with elderly and handicapped individuals living by themselves.

The prevention of victimisation among the elderly is not a problem of criminal policy alone. It has to be examined from an all-encompassing point of view that takes the welfare and safety of the population sufficiently into account.

Further, suicide among the elderly is a serious social problem. To solve this, policies that enable the elderly to lead a meaningful life by actively participating in society are needed.

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NEW FRAUD: A WESTERN POINT OF VIEW REGARDING AN EVER-PRESENT CHALLENGE FOR EAST AND WEST

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AS A CRIMINOLOGIST COMING FROM THE SO-CALLED WEST, I SHOULD LIKE TO stress the relativity of the models and standards dictated by geographically or historically located cultural frameworks.

In his inaugural lecture at the 10th International Congress on Criminology (Hamburg 1988), Professor Horst Schüler-Springorum has shown that criminology is far from being a 'One World' discipline. As a benefit of his various visits to East Asian countries, he brought home the understanding that, on the ground of their specific national culture and tradition, some of those methods of solving social conflicts are still alive and practised there, the vitalisation (or re-vitalisation) of which we in the West are trying to propagate at the cost of expensive programs (Schüler-Springorum 1989). Let us think for instance of the re-discovery of the negotiation process in America and Europe (Duffee & McGarell 1990), whereas musyawarah seems to be so traditional in Indonesia.

This paper deals with a topic of global interest which will be examined from a western stance, firstly, examining the permanence and development of criminal law as regards the revival of fraud.

A kind of cat and mouse game takes place between the legislature and the fraudulent party:

- The legislature amends texts. Thus, within the space of twelve years, the French legislature drew-up three statutes intended to combat computer fraud: the statute of 1987, the so-called Computers and Liberties Act which comprises the duty of company bosses to inform themselves about the security aspects of computer systems, the statute of 1985 which extended the right of copyright to computer programs and the statute of 5 January 1988 on computer hacking which punishes illegal intrusion into a computer system as well as entering into it by mistake and remaining there (Vincent 1989). The legislature tries, with all its force, to plug the holes left by the law.

- The courts apply a progressively developing interpretation: for instance, the Belgian Supreme Court has admitted the application of the concept of 'lottery' to that of 'sweepstake', and the Brussels and Antwerp jurisdiction accepted as 'theft' the copying of a computer program (Ost & van de Kerchove 1989).

The discussion here will be limited to two points: the first, whether modern-day fraud is a new phenomenon requiring more urgent needs as regards the adaptation of law; the second, as to the role and efficiency of criminal law in the regulation of fraud.

The Fraud Phenomenon

'Panta Rhei' said Heraclites: everything flows-by whilst at the same time being permanent and self-renewing. There is nothing older than the creation of an appearance and in some ways, appearance guides the world.

Jean Cosson (1974) suggests a fine general definition of fraud:

> Fraud, whether it be fiscal or more generally, financial, tends to create an appearance, to lead into error those who deal with the fraudulent party and those who judge him. Knowing (. . .) now the shell companies, the men ready to act as vehicles for fraud, as well as the men of straw, phantom company directors who have their real master operating in the shadows, will we decide as did Roman law, that fraud negates everything (Fraus omnia currumpit) and will we attempt, before passing judgment, to re-establish the truth by all available means? or will we latch onto the security furnished by official deeds to base the decision solely on the documents submitted to the judge?

'She has got eyes enough to make you forget that she is bald . . . '! (Alphonse Allais, quoted by Lascoumes 1986). Fraud is eternal. Quoting the book of Proverbs and Deuteronomy, the Californian Professor Gilbert Geis showed-up the timelessness of the maxim 'caveat emptor' which translates the natural double dealing of the market and the precautions that the buyer must take against 'dolus bonus' (Geis 1988).

In the 'Divine Comedy', Dante described Hell as being like an immense corne or rather like a gigantic up-turned funnel, divided into nine concentric circles getting progressively smaller as they approached the centre of the Earth, whilst the gravity of the tortures inflicted on the damned got ever worse as one passed from one circle to the other. The eighth circle was reserved for fraudsters, that is to say ruffians, seducers, adulterers, sellers of their soul, corrupt officials, hypocrites, thieves, treacherous advisers, sowers of discord and forgers, who were subdivided into four groups: falsifiers of metals or alchemists, impersonators, that is, those who usurped the identity of another, counterfeiters and the falsifiers of words, double-dealers and liars.

Dante reflected religious morals which regarded fraud and abuse of intelligence, much more severely than violence, abuse of strength or unrestrained or misplaced passion. He reserved the hideous picture of the Geryon for fraud, that terrifying beast with the razor sharp tail 'which plagues the whole world . . . Its head was that of a just man, and its exterior benign but the rest of its body was that of a serpent's' (Constant).

A new element was introduced in nineteenth-century Europe which led to the arrival of modern fraud. At that time, tortious activities within *commercial companies* (abuse of common property, fraudulent bankruptcy) or by companies created with a directly tortious activity in mind, acquired specific visibility. Today, these various forms exist side-by-side, being complemented by others of a highly heterogeneous nature and ranging from individual practices using new technology (computer fraud) to grandiose operations conducted on a

world scale by hyper-organised groups sometimes connected to 'organised crime', the 'underworld' (Lascoumes 1986).

Modern day fraud depends on two particular ingredients. The first is internationality, the second is technology.

- Internationality presents various advantages for the fraudster. A border is, first of all, a rampart. A border allows the traditional scenario of second-hand cars being sold to imaginary garage owners and then the imaginary foreign companies allowing the fraudster to recover Value Added Tax which was never paid by the first 'garage owner' or by the 'exporter'. Borders allow fraud to be perpetrated against foreign governments, as is shown with the new breed of suppliers of illegal manpower. Secret money finds refuge in the multiple shelters that internationality offers (Walter 1986).

  To tell the truth, borders were already good business in days gone by. Thus, Andre Zysberg found amongst a population of galley slaves, that there were numerous cases of salt and tobacco smuggling by taking advantage of the existence of internal 'diplomatic' boundaries, imposed by true provincial customs, to carry-on a highly profitable smuggling trade.

  > The game consists of going by foot, on horse-back, by carriage, or even by boat, alone or in great company, in families, in groups, with or without arms, to carry prohibited goods from the free or tax-free provinces where it was sold at market prices to high tax pressure zones or areas where tythes or dues were claimed (Zysberg 1987).

  One is reminded in the present day of the fraud arising out of the difference in the Value Added Tax rates for gold in The Netherlands, Belgium and Luxemburg.

- Technology is the second ingredient in the efficiency of modern fraud. Thus, just as the French legislature has presumed the driver's responsibility for a vehicle by virtue of kinetic energy, in the same way modern technology allows the efficiency of fraud to be multiplied, thereby making its detection more difficult. It cannot be stressed enough that data computerisation has resulted in considerable delay in the detection of fraud.

The Role of Criminal Law

Three aspects of the role of criminal law in the field of fraud will now be discussed in detail: efficiency, artificial structures and morality. However, some other points need to be mentioned first.

Let us consider 'understatement', in cases which ought to be dealt with by the criminal law, but for which the law seems inadequate, as for example with crimes against humanity. A colleague from Antwerp, Chris Vandenwijngaert, has transformed an old maxim by saying *De maximis non curat praetor*: certain phenomena are beyond the scope of criminal law. Let us imagine, for instance, the possibility of General Pinochet being put on trial before a Criminal Court in one of our countries. As a consequence of this understatement, we experience feelings of impotence and it may translate into disarray as regards the classic means of dealing with criminal activity, because the crimes out-stretch them.

Secondly, let us refer briefly to the theme of seeing the 'criminal law side-of-life' in every human action, which is a frequent feature of academics and practitioners. The citizen

does not have the Criminal Code as a bedside book. He does not permanently model his conduct on the Criminal Code. Did the former Japanese Prime Minister, Nakasone, have the criminal model permanently in mind when he allegedly became involved in financial scandals? Lieutenant Colonel Oliver North, explaining his conduct before the American Congress Commission in the 'Irangate' case, said 'I never in my wildest dreams or nightmares envisioned that we would end up with criminal charges. It was beyond my wildest comprehension' (Geis 1988). It is not criminal law which leads someone to refrain from acting criminally; it is for example the personal links which were the subject of Hirschi's criminological theory, that is, bounds to conventional society: criminal law is but an extra contribution which often is considered too late; even a murderer does not think of the criminal law risks until it is too late.

Finally, there is a conflict between criminal law logic and economic logic. Classic criminal law sanctions past mistakes. Economic logic is mindful of future efficiency; it wishes to avoid the problems to come. It is economic logic which prevails throughout all kinds of agencies which occasionally or frequently have to deal with economic or financial fraud. As between these bodies and the judicial bench mutual misunderstanding may arise. Preventative bodies often do not see the utility of criminal law and the judicial bench do not always perceive the seriousness of technically complex conduct denounced by certain of these bodies. It is a lot more difficult in these areas than in that of ordinary misfeasance to combat the problem with a united front.

Let us now examine the three points mentioned earlier in relation to the functions of criminal law: efficiency, artificial structures and morality.

Efficiency

This concept has been studied in depth by such writers as Mireille Delmas-Marty (1979). To what extent are charges effectively followed up? Charges in a theft case are often followed-up whereas irregularities in a company annual general meeting are rarely pursued. In order for the weapon of criminal law to be put into action in the case of fraud, one must first of all perceive the fraud.

In a study I carried out a number of years ago on the subject of collusion in credit-based sales, concerning, at that time, the sale of knitting machines to poor people looking for some 'easy after-hours work', I noted that it took some one hundred formal complaints for the criminal judicial bench to deem it necessary to take action in a structure which was 'a priori' commercial (Kellens 1967). On a world-scale and in a very big way, the I.O.S. case is highly representative in this respect: using investment monies by way of pyramid finance, Bernard Cornfeld was able to build-up a financial empire of some two billion dollars without anybody suspecting any element of fraud for a number of years (Raw, Hodgson & Page 1971).

Once fraud has been detected, it has still to be judged. There are numerous traps on a procedural and legal level, in particular in countries which have an accusatorial system where criminal procedure resembles an obstacle course guaranteeing the due process of law and not control. Cullen et al. (1987), in their book recounting the course of the 'Pinto' case, show us the difficulties in controlling economic cases in the USA. Mann's book (1985) shows the peculiarities of defence in 'white-collar crime' cases. The net result is a process encapsulated in the criminal law system and serving as a discouragement and disorientation when faced with a lot of effort for very little return, much ado about nothing . . .

Artificial Structures

As already mentioned in relation to galley slaves, fraud delights in legal complexity. All artificial structures bring problems with them. Tax fraud mechanisms come out of complex tax systems, as successful smuggling of alcohol followed the Volstead Statute in the United States of America, and at the present time enormous profits are to be made out of the outright prohibition on drugs rather than enlightened control. Likewise, non-exportable currencies create multiple blackmarkets. The problem is whether, in all these various sectors, to create armies of inspectors, or as Sulitzer suggests (in Walter 1986), to gravitate towards a truly free market, whilst contemplating at the same time its enormous inconveniences.

Morality

For Kant, morality represents a categorical necessity. When squeezed, morality becomes adjusted in terms of vocabulary, as we saw earlier in Colonel North's statement.

Cosson (1974) uttered prophetic words when speaking of fraud:

> Fraud and the indulgence from which it benefits, as much for those whose task it is to combat it as for the population at large, reflects the decline of public morality. In spite of technical and scientific progress, moral strength remains the decisive element of success, whether for men on an individual basis or for societies as a whole, whether in war or in times of peace, when it slowly conditions the ascent or decline of nations. As regards these nations, the greatest are those who are intransigent in upholding the rules of the game, the *fair-play* of the Anglo-Saxons .. . The examples of history and of current values show us that the degeneration of moral values comes from on high, from the ruling and owning classes, who are also the most educated and, in many places, the only ones educated. The scholars' betrayal means the loss of a civil sense amongst those who should set an example to the less well-off.

Ralph Nader, the father of American consumerism said 'like fish, societies go rotten from the head downwards'.

Somewhat alarmingly, recent publications reveal a general consensus as to the role that good faith plays in morality. John Braithwaite, a specialist on white-collar crime, recently developed a general theory dealing with the root-causes as well as the prevention of delinquency, focused on reintegrative shaming, in which practices such as advertising the sentencing of an individual plays a part in the reintegration of the misfeasant. He writes in his book 'Conscience (the sense of social responsibility) is a more important safeguard against organisational crime, than fear of formal punishment' (Braithwaite 1989).

In the same way, Jean-Paul Brodeur (1990), commenting on the work of the Canadian Commission on Sentencing, pointed out that this Commission intended to establish a distinction between two notions regarding the sentence passed by the magistrate.

> According to the first notion, the sentence is considered as the expression of a positive will to punish; according to a second version, it is merely the limited display of a refusal to bestow impunity on certain aspects of the conduct of a victimised person. The CSC sided with this second notion, affirming that the function of the sentence is to avoid the demoralisation of the public body, constantly showing that laws cannot be transgressed without consequences. This substitution of a negative function—the sentence presents an obstacle to the social generalisation concerning irresponsibility—to a will to control exercised

> against individuals implies .. . that the sentence stems rather from an anti-impunity than the necessity to punish.

In his book on corruption in seventeenth and eighteenth century Florence, Waquet (1984) refers to the danger of:

> an arbitrary causal link between corruption and certain structural aspects of the society. This relationship could well have existed. It would not have sufficed to condition the individual's conduct radically since they too have a conscience. It is this conscience which forms the main subject of the history of corruption. Does this fact mean that corruption is without remedy? No, because history teaches us that between the end of the eighteenth century and the beginning of the twentieth, a small part of the world was, little by little, won-over by integrity.

Waquet (1984) finishes his book with the observation: the state is always threatened by plague.

The press has setup ethical juries to filter advertising. To what extent should we protect victims against themselves?

Morality is ever present in current events. The Hamburg Chaos Computer Club justified computer hacking by ethical standards designed to show the fallibility of data systems in listed companies (Erneux 1989).

For the victims of Bhopal, the American multinational Union Carbide agreed, at the start of 1989, to pay by way of 'total and final compensation' the sum of half a billion dollars. The next day the New York Stock Exchange, which was expecting the worst, registered a 10 per cent rise in Union Carbide's shares.

In the French insider trading cases, the Pechiney boss, Jean Gandois had a fit of anger on the radio. He said: 'If you only want to do business with people who go to confession and take communion every day, you should not frequent the business world!' (Cordy 1989).

Probably, the picture of César Birotteau, a former bankrupt reinstated in his rights described by Balzac in his *Histoire de la grandeur et de la décadence de César Birotteau*, is the most reassuring. César knew what it was like to be on the top, then the bottom, and finally triumph. 'Here is the death of a just man', says Abbot Loraux, pointing to César with one of those divine gestures that Rembrandt knew how to conjure up: 'Jesus commanded the Earth to render its prey. The holy priest pointed to Heaven, a martyr of commercial honour decorated with the eternal medal of honour.'

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CORPORATE CRIMES IN EAST AND WEST: IN SEARCH OF 'COLLUSION'

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THIS ARTICLE EXAMINES SOME RECENT TRENDS IN THE STUDY OF GOVERNmental control of corporations in East and West. In the continuous debate between criminalisation and cooperation as instruments of control, between deterrence and compliance as purpose, between the criminal and the administrative or civil procedure as most suitable legal enforcement institution, between the police and the regulatory inspector as controlling agent, there is no winner.

Governments in East and West make themselves strong for better deterrence, but at the same time their controlling agents 'collude' with the organisations they have to control. This collusion is not identical with bribery, fraud or corruption. It comes ahead of and facilitates them. It is a basic requisite for certain types of corporate crime. For insiders, collusion is a normal interaction pattern. Its undemocratic character is not seen by the participants as a signal of its potential danger: on the contrary, it is seen as an opportunity structure. Comparing cases from East and West, one lesson seems to be that collusion is a universal phenomenon, posing the classic question of democratic power: who controls the controllers?

Criminalisation and Cooperation

Since Sutherland's study of 1938, we know it is difficult to control corporate crimes by criminalisation. Dozens of studies from many countries document the reluctance to invoke formal procedures against corporate offenders (Comer 1977; Levi 1981; Clarke 1990). There are problems with the responsible body; problems with the investigating agency and/or the public prosecution; incompetence; lack of money and time; and sometimes a lack of will and belief; problems with the construction of evidence; malicious intention or not,

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problems with the trial; problems with the sentence—whether imprisonment or fine, who and how much, and what are the likely side effects on the well-being of the company and its workers.

Facing these problems, few authors plead for longer imprisonments and higher fines as the remedy (Levi 1984), and most are modest concerning the effectiveness of the criminal law in these cases. Full enforcement is seldom either the goal of regulatory agencies or the reality; penalties tend to be handed out in inverse proportion to offending firms' size and power—the largest and most powerful organisations are frequently the least sanctioned (Carson 1970; Edelhertz 1970; Stone 1975).

In the 1970s, interest in corporate crime shifted from the offender to the offence, and from the offence to the organisation and the consequences. Crimes in and from all kinds of organisations were described, but in regard to only one aspect there was harmony: direct criminalisation does not work to control corporate offenders. Better results are achieved with administrative rules and measurements which are made in close cooperation with the involved organisation or industry (Reiss 1984; Hawkins & Thomas 1984; Grabosky & Braithwaite 1986).

A fundamental difference between control by 'criminalisation' and control by 'cooperation' is the relationship between industry and the controlling agency (Stone 1980). In the case of criminalisation, the controlling agency is formally a higher authority that can enforce obedience. This relationship is ultimately based on mutual distrust. In case of cooperation, two equal-level authorities are working together for a common purpose, based on mutual trust. The government agency and the representatives of the industry or organisation together make the new regulations and its control structure (Kagan & Scholz 1984).

A prominent protagonist of the cooperation approach is Braithwaite. His cooperative proposals represent his continuing efforts to surmount the weaknesses of criminalisation models and to find a more effective sanctioning mechanism for corporate crime. In 1982, he suggested government-enforced 'self-regulation', whereby all organisations would be required to file, and have approved, their own proposals for policing potentially troublesome areas of operation (Braithwaite 1982). A year later he elaborated his idea with a model of 'informal social control, restraint by means other than those formally directed by a court or administrative agency' (Braithwaite & Fisse 1983), and in 1988 he spoke about a 'Benign Big Gun Theory of Regulatory Power' (Braithwaite 1988). This describes the whole field of influencing industrial behaviour, starting with the request for self-regulation and informal control, via official warnings and compulsory civil charges, up to criminal prosecution with mandatory sanctions ranging from prison sentences for executives to removal of the operating licence and plant shutdown. Here, criminalisation is really the 'ultimum remedium', if nothing else works. To strengthen this ultimate remedy, he pleads for the use of police covert facilities as a strategy for combating corporate crime and rectifying the structural injustice between tough criminal enforcement against blue-collar criminals and the relative immunity of more powerful and elite offenders (Braithwaite, Fisse & Geis 1987).

In his recent study *Business crime, its nature and control*, Michael Clarke illustrates, with many case studies, the correctness of Braithwaite's argument that the most effective way to control private enterprise starts with cooperation (Clarke 1990). His critics, on the other hand, say that, in spite of the effectiveness of this strategy, it is uncontrolled cooperation, with all its attendant dangers. Governmental administration belongs under political control, but when instrumentalism is the dominant ideology, the opposite is the case. The administration controls the politics, and the industry controls the administration.

These critics make sense but they do not start from a practical level but from normative conceptions about the Rule of Law, Full Democracy and the Division of Powers. For them, all types of cooperation between state and industry are suspect. They ask for strict and

independent control agencies armed with repressive authority. The cooperation paradigm, as a workable solution to redress this type of crime, cannot work satisfactorily for the simple reason that it lacks control and facilitates unlawful behaviour. It is like asking the thief to steal half as much, in exchange for an honourable place in society.

A strong protagonist of this type of criticism is Laureen Snider, who realises very well that the question is ultimately a political one (Snider 1987; 1990). The reception accorded cooperative models in the public arena in the 1980s must be understood in the declining light of liberalism and the dramatic rise of the New Right. These conservative forces, quiescent during the prosperous 1960s and 1970s came into their own during the 1980s with the election of Reagan in the USA and Thatcher in Britain. The capitalist class and its allies in government have promoted an economic agenda that favours austerity capitalism and monetarist policies, according to Snider. The goal, to legitimate a smaller share of national wealth for the working and lower classes and a larger one for the corporate sector, is sold by reason-based appeals to remain competitive, combined with emotional appeals to religion and nationalism. On traditional crime, the New Right reacts very repressively: corporate crime, however, is treated differently. Here they advocate deregulation and the removal of government 'fetters' over business (Snider 1990).

This is a serious point but Snider's argument lacks, regretfully, a workable alternative. Besides, there are no indications that there was less corporate crime during the 1960s and 1970s. In the days of the New Left, the uncontrolled cooperation between state and industry was widespread, visible and accepted as a normal phenomenon, at least in The Netherlands. It was a rich source of all kinds of new regulations, which created new complexities in everyday life. It was called 'Neocorporatism' and it lacked the negative 'undertones' of blame, or at least such undertones were extremely vague and predominantly found in the rhetoric of liberals, especially when they, as a party, were not in government. In that respect Watergate and Lockheed were important. They marked the end of neocorporatism as an innocent way of politics.

The control theory based on criminalisation and with distrust towards cooperation between state and industry recently received an unexpected, strong empirical support. The following examples, from East and West, show why.

United States of America

Four hundred and fifty Savings and Loans (S&L) companies were taken over recently by the Resolution Trust Corporation (RTC) or the Federal Savings and Loan Insurance Corporation (FSLIC). Up until now, official estimates of the cost of the rescue effort to bail out insolvent savings and loans are placed at $200 billion over the next decade, and range from $300 billion to $473 billion by the year 2021. There are strong suggestions that criminal activities play a crucial role in 70 to 80 per cent of these insolvencies (Calavita & Pontell 1990). How could this happen?

The federally insured S&L system was established in the early thirties to promote new house building during the Depression and to protect financial institutions against the chaos that followed the panic of 1929. The Federal Home Loan Bank Board (FHLBB) was the primary regulatory agency. Its chairman and two members are appointed by the President. This agency oversees twelve regional Home Loan Banks that serve as the conduit to the individual S&L banks that comprise the industry.

In 1985, the FHLBB delegated to the district banks the task of examining and supervising the S&L industry within their regional jurisdiction. So before, as well as afterwards, the FHLBB and the district banks had a double function: both to promote and to regulate the S&L industry.

The first crisis of the S&L industry was in the mid 1970s when the official inflation rate was around 13.3 per cent while the fixed mortgages of the S&L industry were no more than 5.5 per cent. Not surprisingly, 'thrifts', as these institutions were commonly known, found it difficult to attract new money. A strong lobby of the US League of Savings Institutions started a campaign in Washington to change the strict regulations. However, it was not until the deregulatory fervour of the early Reagan administration that the campaign gained political acceptance as a solution to the escalating S&L crisis. In 1980, the Depository Institutions Deregulation and Monetary Control Act began to cut restrictions on interest rates paid by the S&L industry. Additionally, the FSLIC insurance was increased from a maximum of $40,000 to $100,000 per deposit. That had nothing to do with deregulation, but with the sympathy and trust of the Washington administration for the S&L industry. What happened was predictable. The industry attracted new money at higher interest rates, but widened the gap between these high rates they had to pay to attract short-term deposits and the low rates which they had invested in long-term home mortgages. The law's primary effects were larger losses on more money.

New deregulations were asked for and given. In 1982, they got more freedom concerning consumer, commercial and industrial loans. One hundred per cent financing was permitted and no down payment from the borrower was required. This worked well for the wrong people. The S&L industry moved away from its original role concerning home mortgages, towards the money speculation market.

Because the limits on 'brokered deposits' were also 'deregulated', the percentage of brokered deposits increased between 1982 and 1984 by 400 per cent. 'These brokered deposits turned out to be a critical factor both in creating pressure to engage in misconduct and in providing unprecedented opportunities for fraud'. Calavita and Pontell, on whose analysis I heavily lean, summed up much more deregulation measures on both federal and state level. They spoke about a deregulatory competition. Anyone could charter a new S&L bank. The deregulation was an 'invitation' to fraud, which they divided into three types: the 'unlawful risk-taking', the 'looting' and the 'covering-up' (Calavita & Pontell 1990).

A strong dependence on brokered deposits works like a narcotic. The more you are dependent, the more you need them whatever the price. It is a risky business, but when federally insured, it looks like a no-risk business. Once into this business the distinction between safe, unsafe, unsound and illegal fade away. And best informed about those crime-inviting possibilities are the owners, or as a commissioner of the California Department of Savings and Loans put it: 'The best way to rob a bank is to own one'.

Looting refers to the abuse of institutional money for personal gain with the agreement of the bank's management. Normally embezzlement is a secret act of an individual employee towards the company, or a secret act of the company toward the state tax laws. But here, as Calavita and Pontell point out, we can speak about 'crime by the corporation against the corporation', or as they call it: collective embezzlement.

As a result of all this, the covering up seems to be a normal activity. Insolvency and fraud need manipulation of books and records. Ironically, they were aided and sometimes encouraged in these efforts by the same agencies from which they were presumably hiding. The FHLBB devised and encouraged the use of new accounting procedures. These procedures entailed a complex formula that allowed for the understating of assets and the overstating of capital (Calavita & Pontell 1990; Eichler 1989). The Bank Board realised the problems the S&L industry was in, but believed that a 'grey area' could help to overcome these problems.

Calavita and Pontell (1990) illustrate with several examples the close relationships between controllers and controlled at federal and state level: former controllers became deputy commissioners in S&L banks with a double salary; the US League of Savings

Associations had virtual veto power on the nomination of the head of the FHLBB and its members were drawn directly from the industry itself; and Danny Wall, head of the FHLBB, was responsible for a delayed closure of an insolvent thrift for two years. That delay is estimated to have cost the FSLIC insurance fund $2 billion.

All in all, the S&L fraud reached epidemic proportions. Systematic embezzlement of company funds became company policy, allowed by the controlling agencies. Deregulation permitted the entrance of the S&L industry into the casino-economy. In contrast to industrial capitalism, where profits are dependent on production and sale of goods and services, profits in finance capitalism increasingly come, as one commentator has put it, from 'fiddling with money'. Corporate takeovers, currency trading, loan swaps, land speculation, futures trading—these are the 'means of production' of finance capitalism. Only one thing is missing: nothing is being produced but capital gains.

The *Los Angeles Times* (4 October 1989) quoted the French economist Allais, who underlined the differences between those two types of capitalism. In the money business itself more than $400 billion is exchanged every day on foreign exchange markets, while the flow of commercial transactions is only about $12 billion a day. Capital gains, based on speculative ventures, are negative to the welfare of the general population because they destroy more than they can build. Calavita and Pontell (1990) speak about the illusion of the casino-economy, an illusion that must be preserved at all costs. Of course, ultimately the illusion will have to face reality, but with high costs for society as a whole.

Indonesia

Let us make a jump. The whole board of directors of the Duta Bank of Indonesia, and the chairman from the board of control, were fired on 6 September 1990. Two days before, the Central Bank of Indonesia had put the Duta bank in ward. The dismissed board explained immediately thereafter that wrong calculations had been made and that some mistakes had happened. The bank speculated in dollars at the wrong moment and had put a lot of money in the National Bank of Kuwait, which since August had been blocked by the United Nations resolution relating to the invasion of Kuwait by Iraq.

A few days later the governor of the Central Bank of Indonesia, Adrianus Mooy, was more specific. Almost all money speculations were done in secret. Duta had a large black bank inside a white one. On 13 September 1990 the vice-chairman of the board was arrested. Other members of the board declared they knew nothing about these speculations. The vice-chairman disagreed. The total costs are still unknown but fellow bankers estimate losses at $300 billion. For Indonesia as a developing country, these losses are enormous.

This affair made clear that the fast growth of the Indonesian banking business has its side effects and, as in the USA, it started with deregulation measures from the national authorities. The deregulation of the Indonesian financial business, started in October 1988, occurred at the request of the business itself. It had some similarities with the S&L deregulations in the USA, the aim being to obtain more opportunities in the 'casino' economy of finance capitalism. The new rules made it easier to lend money to entrepreneurs and industry and it became easier to start a bank. But as in the case of the S&L industry, the result was an increased inflation rate (with 20 per cent the highest in Southeast Asia), and the growth of risky money and high risk investments. To lure savings, many banks in Jakarta organised lotteries for new clients, symbolising that risk immediately. The deregulation stimulated valuta speculation, a traditional challenge for Third-World banks, in an extreme way (*NRC* 4 October 1990).

Duta is one of the most successful Indonesian banks with strong ties to the international banking world. The chairman of its board of control was a former minister and a personal

friend of Mr Suharto, the President of the Republic of Indonesia, who embodied—as in the USA—the central power. This former minister symbolised also the trustworthiness of Duta. He was in favour of the deregulations and with it the finance controlling administration in Jakarta (Budiman 1988; Robison 1986). The deregulation rules were introduced in an atmosphere of mutual trust between the state and the banking industry, but they had their own dynamics. Formally, banks are allowed to keep only one-quarter of their capital in foreign currency, but most go beyond (*NRC* 4 October 1990). The Central Bank has only marginal control. These factors invited unlawful risk taking and speculation.

Another similarity with the S&L case concerns fraud. Personal profit by abuse of power is commonplace in developing countries (Clinard & Yeager 1980), and in this case clearly inherited from the former colonial state. But that does not legitimise it. It is a social disease difficult to tackle by the government because the banking industry facilitates it (Thee & Kunio 1987). The existence of a black money bank inside a white money bank is not surprising; the surprise is the open accusation by the director of the Central Bank. This is a new approach in contrast to the informal view which existed for so many years that such activity should not be considered as criminal fraud (Clad 1989).

Discussion

In both cases, the controlling agencies realised that deregulation was in favour of the organisation. They knew lenient, new rules create hidden agendas, hidden opportunities, and provoke some unlawful behaviour. But they believed in it, for the best interest of the organisation. Why? Because they are part of the organisation (Silbey 1984). In both cases, the new rules were prepared in close cooperation with the banking organisation.

The administration considered it normal to involve the organisation by regulatory measures. The FHLBB was dominated by the organisation, and also in the Indonesia case the organisation made the initial proposals for deregulation. The central authority was incapable of keeping control. The authority and its administration were dependent on information controlled by the organisation itself.

For these insiders, however, there was no control-problem at all; the relationship between state and the organisation was based on harmony and mutual understanding, but it has its own hidden agendas in favour of new opportunity structures for the private business on certain issues. The administration had no problems with that for two reasons. First, the victim was anonymous: if by chance things went wrong the damage was suffered by the state or the taxpayer—which looks like harm to nobody. Secondly, there was the genuine impression that the success of the enterprise was in the best interest of the national economy as a whole. And, of course, they trusted the members of the organisation.

The two cases cited appear to support the criminalisation hypothesis of Snider. She covers the dangers of cooperation extensively; control by cooperation is suspect. However, even though these cases stress her argument, I do not agree with her general point of view. The crucial concept in the discussion here is not 'cooperation' in general, but a very special type of cooperation, namely 'collusion'. The discussion between Snider and Braithwaite was focussed on 'cooperation', but that is as a concept too neutral to blame. It can be a good starting point for effective regulation as well as the start of a decline into unlawfulness. It is only where cooperation shifts into collusion that the borders of justice are crossed. Let us reconsider some particular dimensions of that shift into collusion.

Legitimation

In general, cooperation can strongly assist the creation of an attitude of acceptance by those involved: it can legitimate. To get things done—for example, new regulations for industrial

environmental behaviour—one has to convince industry and to negotiate with them. That works best in an atmosphere of cooperation (Braithwaite 1984; Clarke 1990). Only then are these regulations legitimised by those whom they concern and only then can the agency tackle the incidental violator. Then the agency has authority in the organisation. In the same way, the desires of the organisations are worked out, for instance in regard to deregulation. Here, legalisation of authority is indirectly involved in a negative way. Deregulation means a decrease of legitimised state-control.

I believe the deregulation in neither of the two cases cited were set up maliciously, with clear criminal purposes in mind. In both cases, it was carried out in the best interest of the economy as a whole and the banking industry in particular. But afterwards, it became clear they were the cause and the core of serious corporate crimes; only afterwards is it clear that their cooperation was collusion.

Normality

This brings me to a second aspect concerning the shift into collusion. Collusion or collusion-like cooperation seems to be, sociologically speaking, a rather normal phenomenon in the cooperation between state and industry. The relationship has, so to say from its own nature, a tendency towards collusion. That tendency on its own is a symptom of having a good relationship. Of course, what is normal or good for the relationship does not mean good for public interest or the nation.

In these banking examples, the shift from cooperation into collusion had to do with a particular kind of regulation, namely deregulation. Most literature on corporate crimes is focussed on the enforcement problems associated with existing or new regulations. Therefore, we shall now consider two other examples, one from the West and one from the East.

Japan and The Netherlands

On 20 March 1973, the district court of Kumamoto, Japan, found Chisso Industries guilty of the consequences of mercury poisoning. Sixteen years previously, a strange disease first appeared, the so called 'Minamata disease'. It was thirteen years since its discovery as a discrete set of symptoms, eleven years since the Ministry of Health and Welfare had first secretly identified Chisso as the probable cause, ten years since organic mercury's scientific identification as the causative agent, and seven years since the Kumamoto professors' conclusive demonstration of Chisso as its source (Upham 1987).

In disregard of all this, the Ministry of International Trade and Industry (MITI) supported Chisso all those years. MITI helped to cover up the truth and to blame the victims. People died, fishermen lost their jobs but the MITI continued their support of Chisso Industries. The company disregarded juridicial decisions and tried several times to influence the public prosecution. In his book *Law and Social Change in Postwar Japan*, Frank Upham explains how MITI constantly maintained the pattern of bureaucratic concern for the preservation of the procedural informality in the face of judicial intrusions, in favour of Chisso, but not 'why'. Even the verdict of the Supreme Court, which blamed MITI's decisions, was interpreted by the MITI employees themselves afterwards as at least a support of their informal policy as strategy in general.

The interdependency between state regulators and private enterprises was considered a natural fact, so obvious that the participants believed in it as good per se. No one saw the risks of violating public interest. As said before, the interest of the organisation is for many administrators identical with the public interest itself, but in this case they went far beyond that.

In The Netherlands, several years ago, we also had a fishermen's case. But here the fishermen were the criminals. Most of the fishermen in those days violated the strict quota regulations of the European Economic Community which has governed the fishing-quota since 1983. The over-fishing came out when a retired control agent was interviewed by the newsdesk of a television network. Parliament became interested and the government promised better control. But this better control was set up in cooperation with the organisation. So two years later, the problem turned out to be the same. Then parliament started a real investigation. During the hearings, the administrators explained that they knew all the time that the quotas were exceeded, but that they were thinking about a new and better control system in close cooperation with the organisation. They thought that was the best way to get out of the problem, and no one considered himself as an accomplice to a crime, however, often illegal fish was brought on the market. They worked for the nation's best interest, they explained publicly. They considered real control as a real crime—a crime to the nation.

In Japan, a small group of public interest lawyers held on for many years, in Holland a former administrator felt remorse and a television journalist picked it up. Alertness for small suspect signals and tenacity seem to be important ingredients in the search for public control.

Control has a double function, detection and prevention, which are two different matters, as we can learn from the Snider-Braithwaite debate. The arguments of Laureen Snider were inspired by the detection side. Where things go wrong, equal treatment demands repression for this type of criminal. She is interested in the autonomous expressive dimensions of the Rule of Law. John Braithwaite is more interested in the prevention aspect, looking for a better world. Effective prevention is much more important for this former director of the Australian Federation of Consumer Organisations. Snider stresses the incidents where cooperation went wrong; Braithwaite sees the many cases where cooperation works, sometimes better, sometimes less well, but in any case, it works. And I would add to those arguments that it is not 'cooperation' in itself that is the problem, but where it shifts into 'collusion'. And also, it is not the industry or organisation that is 'the criminal', but the interplay between public and private enterprise that can be criminogenic, with shared responsibility.

East and West, Parallels and Crosslines

Modern organisational literature likes to stress the differences between East and West, but I find, in this respect, mainly similarities. The MITI employees have much in common with the Dutch administrators, as with the American and Indonesian banking control administration. They all love the organisations they are working for, and this love is mutual.

Where it went wrong, collusion was involved. It seems to be the central theme that occurs worldwide, if one investigates all the different patterns of serious corporate crime. There remains the question, are there any differences between East and West?

'Interrelated corruption in business and government increases, as a country becomes modernised, and it seems most prevalent during the intense phases of industrialisation.' These were Clinard's words concerning crime in developing countries, but he forgot the past (Clinard 1983). Speaking about collusion, my predecessors have built up a strong reputation in Indonesia. In the colonial system of The Netherlands East Indies, collusion was normal. Secret unlawful agreements between the colonial administration and the Dutch owners of factories, plantations and every other kind of business was the order of the day. Democratic control was a dirty word. Colonialism had nothing to do with the democratic system, which was governed at home (Breman 1981; Wertheim 1978). Nowadays the situation shows some similarities. The Indonesian government had in the past half of the century extremely different political ideological colours, but in its ways of solving problems,

of ruling the country and of dealing with the private sector, it shows a remarkable similarity in favour of secret agreements in a closed shop, that is, collusion (Lev 1964, 1972; Crouch & Zakaria 1985). Of course, it is easy to say that this is an inheritance of colonialism; that is always true but explains less if we look at eastern nations which were never colonised.

Let us turn to Japan. The government there also had very strong ties with industry, which were in a certain way out of democratic control (Van Bremen 1981). Of course, in Japan as in Indonesia, democracy does not mean one man, one vote and power to every individual; but every group one or more votes, and the strongest groups are controlling the nation (Reeve 1985). Collusion is normal—as in Indonesia—except it is a more open type of collusion. It looks the same as the early sixties in Holland. Industries manipulate political parties (who like to be manipulated by industries). They do not hide these practices: they consider it as normal (Van Wolferen 1989). Japanese politicians also consider their own position as regulators between industry and state capitalism on the one hand and local or private interests on the other. It is business in direct power, and only the most powerful are allowed into this marketplace. Citizens look unimportant, citizenship lacks status in western eyes.

But let us look at our own system. We give our citizens in the West the illusion of importance and influence. But we also know they are illusions (Edelman 1964; Lowi 1969; Van den Heuvel 1983). The parliament plays the controller of the government but its forces are shown rarely and even then it is unclear what the role of the administration is, and behind them, the powerful industrial and other economic lobbies, in regard to the outcome. In other words, the power of industry and administration, especially where they work together, is enormous.

The Japanese believe their system is honest. It expresses the power structures as they are recognised by the people. The same power structures rule their everyday order. This is their own world, so they themselves can feel at home. Democracy and the formal legal system as a source for individualistic power gives the Japanese strange feelings. They cannot understand its logic, as we—outsiders from democratic individualistic countries—cannot understand theirs. We from the West have lost the rich pallet of feelings correlated with the phenomenon 'to belong to' (Doi 1973; Nakane 1973).

What is the meaning of this for our discussion? Cooperation between organisation and administration, including collusion-like agreements, is normal in eastern societies. It can even be argued that the well-being of the society is based on these agreements and ties. This is not a new phenomenon—Japanese society was built upon it. Japan is also, from a historical perspective, a corporate society. What about the secrecy, that criminal landmark of collusion, wasn't that wrong ? No, the idea of a public sphere as an open forum does not exist. If citizenship is a group phenomenon more than an individual phenomenon, the information and its control problem shifts from the individual towards the leaders of the groups. That is Japanese reality. I use Japan only as an example: the same elements can be found in Malaysia, Korea, Indonesia and other countries (Clad 1989; Dewantoro 1967).

In the West, that dimension of 'normality' seems to be lost. Collusion is wrong, it undermines the Rule of Law. But it exists to the same extent as in the East. In other words, as a phenomenon it is universal, which is an important conclusion if one faces the disasters which it can create. Of course, in Japan as well as everywhere else, the damage collusion can create is regretted and felt as injustice, but this feeling seems differently interpreted, on face value, in East and West. In the East a good system had failed, in the West a bad one. But more important for both parties, the quality of authority is damaged. That's a second universalistic phenomenon. What about the consequences? In the West they want to restore this damage by measures and a stronger quest for control, in the East they want better leaders who will not disappoint them in their leadership. There is, on face value, a strong

difference here too, but if we look behind the measures and controls in the West, it is ultimately there a matter of better and more responsible leadership as well.

Democracy can be considered as a goal and as an instrument. Democracy as a goal ends up in self-governance, full citizenship and small is beautiful. Democracy as a set of means serves the quality of leadership over a pluralistic society. Every nation uses both functions in its own mixture. In general, the Western countries like to use more symbolic goal functions in its rhetoric, whereas Eastern countries prefer the instrumentalist use. But fundamentally, the political elite in both choose a pragmatic approach where democracy serves the economic well-being of the nation and their people. This explains why face value differences work out similarly in their consequences.

Speaking about collusion sounds negative. It is appropriate in the face of all the cases where things went wrong, and that's the ordinary decorum for students in corporate crime.

It was Braithwaite's merit to break with this tradition and to point out the many cases in which cooperation was doing a good job and where there was, in this 'legal twilight zone', no shift into collusion. In his latest book *Crime, Shame and Reintegration*, he elaborates his argument for the control of corporate crime, based on the cooperation principle, into the whole field of crime (Braithwaite 1989). The interdependency, so typical for the relationship between governmental agency and industrial organisation, had to govern all social spheres of everyday life, home, school, education, and so on. With communitarianism of this type, crime control by shame can work and create conformist behaviour by natural and legal persons. He talks about 'reintegrative shaming', opposite to the ineffective criminalisation processes which he called 'disintegrative shaming'. If punishment is used, he pleas for a 'family model of punishment', because only there shame can work reintegratively. Here we can recognise arguments from Montessori, Steiner, Tagore, Gandhi or for Indonesia, Dewantoro, but now applied in the criminological field. The strongest empirical evidence for this theory Braithwaite found in Japan.

Let us keep in mind that for the first time since Sutherland, a theory on corporate crime was used as an argument for a new vision on all crimes, and that the strongest empirical arguments behind it, came from the East.

Braithwaite's argument breaks not only with the classic prejudices of ethnocentrism, which still dominate very strongly all criminological thinking, but it also supports the arguments of the abolitionist movement to 'civilise' the criminal law (Bianchi & van Swaaningen 1986; Blad 1987). With these elaborations, however, his theory became more normative and, to a certain level, a threat for the West. A Dutch reviewer of his book was very sceptical. Braithwaite goes too far, he said, because he overstates his argument. Japan is a different nation, too different to learn from (Van Ruller 1990).

I do not agree with him. Like Braithwaite, I think the time has come for Western countries to learn from the East, with Australia as the bridging nation. For me, it was no accident that an Australian put this 'Taking Eastern Criminal Politics Seriously' on the Western agenda; in the same way as it is no coincidence that this conference is a joint cooperation between the Australian Institute of Criminology and the Indonesian Society of Criminology. Here we see once again the profitable side of a 'marginal' geographical situation (from a western point of view).

To end this paper, I admit Braithwaite was for me the most inspiring guide. Although he mentions nowhere the collusion phenomenon in particular, he brought me to put this phenomenon at the core of the corporate crime issue. In this paper I have referred to three recent cases and one classic, the Minamata case. It was easy to trace in all of them the collusion phenomenon as the core and cause. I made only some sociological and psychological remarks, which of themselves proved nothing. But by doing so, I came to believe that the sociology and psychology of collusion (between public and private

enterprise) in East and West can take us further towards a better understanding of the problems of controlling structural corporate and governmental crimes.

Collusion is unlawful but normal. In the eyes of the participants it even can be a grace and mercy, until—but this is extraordinary—they are confronted with the damage they cause. And what is damage? In the Minamata case the definition of damage as reported in the mass media was during many years controlled by the collusionists themselves. This defence was part of the collusionists' strategy.

My last remark concerns the juridicial dimension. The word 'unlawful' refers to the appreciation of the status of the Rule of Law. That status also is precarious as we saw, especially from a comparative point of view. All these arguments together make the search for collusion an intriguing challenge in East and West. But the most important message remains: people in power, worldwide, prefer collusion-like cooperations in private-public affairs. That has to be the zero-option in studies on corporate crimes in East and West. That brings us together, and—as Braithwaite's latest book on 'shame' shows—can turn the criminological world upside down; just what it needs

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ON THE USES OF LOCAL, NATIONAL AND INTERNATIONAL CRIME SURVEYS

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IN THE PAST TWENTY-FIVE YEARS, CRIMINOLOGISTS HAVE CONDUCTED SURVEYS among the public about experiences of crime in a great number of countries. Typically, such surveys also ask respondent's opinions about crime (fear of crime), the performance of the police, sentencing policies of the judiciary, victim assistance and so on.

The first wave of such crime surveys started with the first National Crime Survey in the USA in 1972 (Block 1984). This survey has been repeated annually ever since. Annual or biannual national surveys have also been executed in The Netherlands since 1974 (van Dijk, Steinmetz, 1980) and the United Kingdom since 1982 (Hough, Mayhew, 1985). National surveys were also held in Canada, Australia, France, Switzerland and Spain amongst others. In the Scandinavian countries, national surveys were conducted about the experiences of violent crimes in the eighties, the national crime surveys were followed by a wave of local crime surveys, usually commissioned by local government. For instance, in The Netherlands, at least a dozen large cities, as well as some smaller municipalities, mounted their own local crime surveys. In Amsterdam and Utrecht, such local surveys have already been repeated several times. Other exemplary local crime surveys were the ones executed in Barcelona (twice repeated), London (Islington), Epinay (France), and some German cities (Stuttgart, Göttingen).

In 1989, fifteen countries participated in a fully standardised multi-country crime survey. The same comparative study was also carried out in Surabaya (East-Java/Indonesia) by a research team under the leadership of Professor J. Sahetapy.

Crime surveys, then, have been executed at three different levels: at a national level; at the level of provinces, districts or cities; and finally, at an international level. Crime surveys have some basic utilities regardless of their geographical scope. In addition, crime surveys have additional uses when executed at a local or international level respectively. This paper will try to give an overview of the general and specific uses of crime surveys executed at the

three levels mentioned. The examples given are mainly derived from data of the Dutch crime surveys and the International Crime Survey of 1989.

National Crime Surveys

The agenda selling function of reliable social indicators of crime

The main objective of national crime surveys is to provide trend data about the rate of victimisation for selected crimes. Such data can be used as social indicators of the actual number of crimes (Skogan 1978; Walter 1984).

In many countries, less than a third of all conventional crimes are reported to the police. Acts of vandalism, small thefts and acts of violence often remain unreported. This is also the case with serious forms of violence and sexual abuse within the family. For this reason, police figures do not accurately reflect the true volume of crime. To make matters worse the readiness to report certain types of crime may increase or decrease over time. Moreover, not all reported crimes are formally recorded by the police. The recording rate may also vary over time. For instance, in The Netherlands, the percentage of thefts which are reported to the police went down slightly around 1980 as can be seen in Figure 1.

In later years, both the reporting rate and the recording rate of the police showed an upward swing, presumably in connection with a more dedicated and service-oriented police policy. Obviously, such trends in the willingness to report crimes to the police and recording practices of the police seriously affect the official crime statistics. An increase of registered crimes may be caused either by actual increases of the numbers of crimes committed or by increases of the reporting or recording rates. The results of crime surveys give invaluable information about both the actual crime trends and trends in the reporting and recording rates.

The sheer availability of reliable social indicators of crime cannot only give guidance to national policy makers, but it can also help to raise the interest of the mass media and politicians for crime as a structural social problem. Through the publication of national victimisation rates, the issues of crime and crime control are put on the same footing as other political and public concerns, such as inflation, unemployment or health. No longer will the public debate about crime be dominated by sensational stories about individual cases of homicide or rape. On the agenda will feature structural problems such as high rates of burglary, car or motorcycle theft, or armed robbery. In the past, claims about a rise in crime were often dismissed as artifacts of police recording. Crime surveys provide more credible indicators which cannot be so easily dismissed.

In Figure 2, indexed information about the trends of burglaries, thefts from a car and bicycle thefts according to the annual National Crime Survey of The Netherlands is presented.

Figure 1

Trends of Victimisation Rates, Reporting Rates and Recording Rates (percentages of reported crimes recorded by the police), according to findings of the Dutch national crime survey.

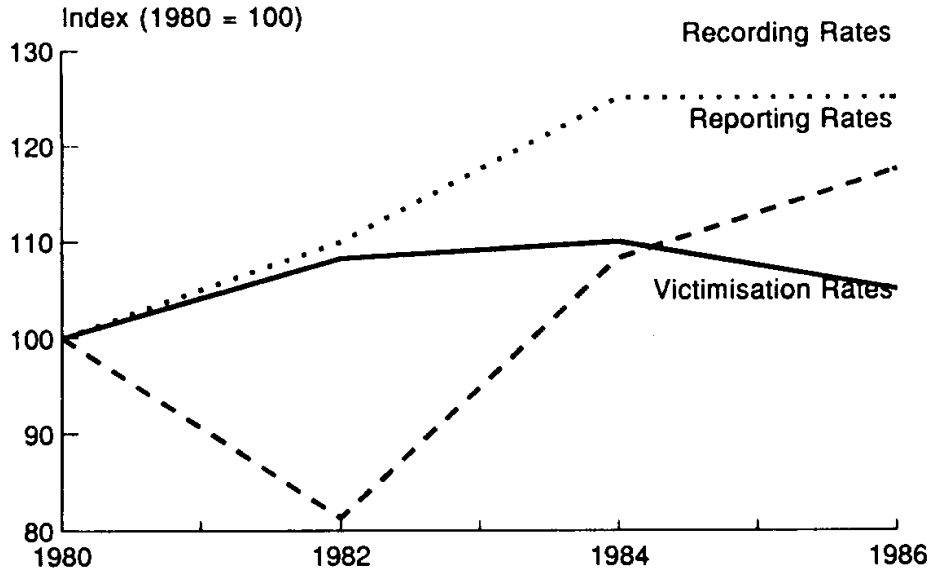
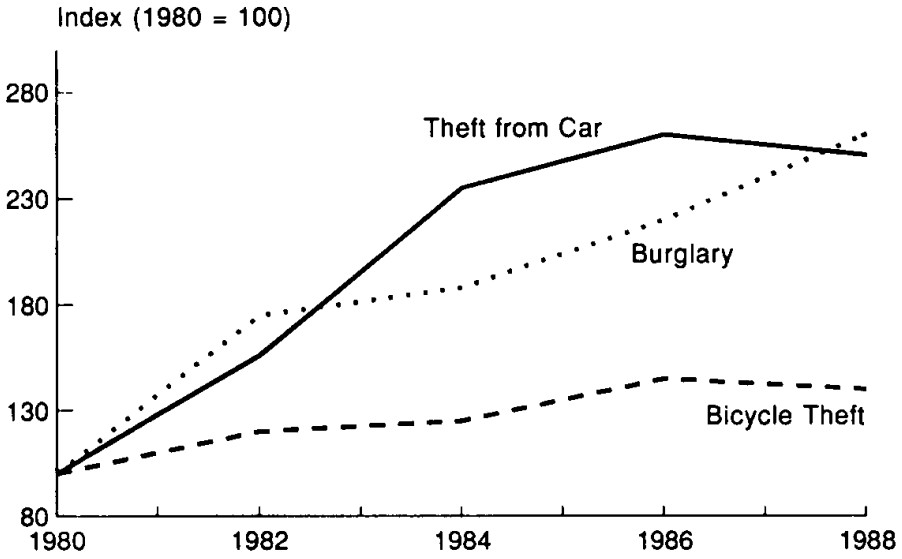


Figure 2

Trends of Victimisation Rates in The Netherlands



The burglary rate in The Netherlands went up from 1.8 per cent in 1980 to 3 per cent in 1988. A larger proportion of the households became a victim of a burglary more than once in 1988 than in 1980. For this reason the index of the total numbers of burglaries went up by 150 per cent. According to the police statistics, the number of registered burglaries went up by 200 per cent. The steeper trend of the police figures is caused by both the actual increase of burglaries and better recording by the police. The reporting rate has remained constant—around 85 per cent. On the basis of such detailed and accurate information, decision-makers can be persuaded that action ought to be taken to reduce the burglary rate.

In both The Netherlands and the United Kingdom, the publication of national victimisation surveys has brought into focus the magnitude of several forms of conventional crimes, such as theft, burglary and vandalism. Since these types of crimes can be tackled by means of preventive strategies—both of a technical and social nature—the surveys have done much to promote crime prevention policies in these countries (van Dijk & Junger-Tas 1988; van Dijk 1990).

Costs of Crime

National crime surveys can be used to collect data about the material (economic and medical) consequences of criminal victimisation. On the basis of such data estimates can be made of the total costs of crime. In The Netherlands, such estimates were made of the costs of crime inflicted upon households (van Dijk & Röell 1988). In 1989, a separate crime survey was carried out among a sample of Dutch businesses (Directie Criminaliteitspreventie 1990). A calculation was made of the total damage inflicted upon the various sectors of Dutch society using mainly survey data.

Figure 3

Estimated costs of conventional crime in The Netherlands (in million guilders)

	(x min guilders) abs	damage %
Public sector	1,433	17
- Central government	500	6
- Municipalities (incl public schools)	900	11
- Housing estates	30	0
Households	2,900	35
Commercial sector	4,057	48
Total	8,390	100

Note: A$1.00 = approx 1.39 guilders as at March 1992.

The overview presented in Figure 3 shows that business and local government bears a large part of the costs of crime. In these calculations, the costs of tax evasion/fraud and of security measures have not been included. According to other calculations, the total value of tax evasion and social security fraud is 10 to 15 billion guilders. Such calculations can help to persuade economically oriented politicians that the problems of crime merit their urgent and permanent attention. The money lost through criminal activities could be made available

for public policies or private investments when crime control policies are made a top priority of government policies.

Fear of crime

A second main purpose of national crime surveys is to gather information on the attitudes towards crime among members of the public. In most surveys questions are included about the perceived likelihood of victimisation by crime, and about the effective and behavioural aspects of such perceptions.

In the final paragraph of this paper, the first findings of the International Crime Survey, carried out in 1989, will be discussed in more detail. The questions about perceptions and attitudes used in that survey provide a good example of the kind of questions that are commonly used. The International Crime Survey was carried out in Surabaya (East Java, Indonesia) among a well-spread sample of 600 inhabitants (van Dijk et al. 1990). Some data concerning fear of crime were obtained in this study. The percentage of persons who felt it to be likely or very likely that their house would be burgled in the coming years was 23 per cent in Surabaya. This percentage is similar to the percentage found in The Netherlands, but lower than the one in Australia. The high Australian rate can be explained easily. Perceptions of the risk of burglary are strongly related to national burglary rates. Australian burglary rates are relatively high.

Two other questions were used to measure behavioural aspects of fear of crime. Respondents were asked whether they had stayed away from certain streets or areas, and had been accompanied by someone else to avoid crime. Fear of crime as measured by these questions was higher in Surabaya than in The Netherlands, Australia or any other Western country. In Surabaya, however, it is customary for older women to be escorted by a younger family member when going out. The high score may not reflect personal fear but a protective or courteous attitude towards the elderly.

Perceptions of crime, such as the perceived likelihood of a burglary, are important indicators of well-being in their own right. Even when such risk perceptions may be influenced by exaggerated media stories, they can be 'real in their consequences'. Crime control policies must not be geared exclusively towards the reduction of crime, but also towards the reduction of feelings of insecurity. Research has shown that foot patrol police officers may not greatly affect actual crime levels, but can do much to instil feelings of safety and trust among the public.

Perceptions of individual victimisation risks must be distinguished from a generalised concern about crime or rising crime rates as a social problem. In many surveys, the public is asked to assess the urgency of a list of current social problems. In the past, the crime problem was usually rated as the second or third most pressing problem, after unemployment and inflation. In The Netherlands, the crime problem was rated as the most pressing social problem in 1988 after environmental pollution (Recht in Beweging 1990).

In relation to questions about crime as a social problem, Dutch respondents have also been asked to express an opinion on government expenditure on crime control. In 1985, 77 per cent said they would welcome an increase in expenditure. Thirty-two per cent would even be prepared to pay more taxes for this purpose (Samenleving en Criminaliteit 1985). These results were quoted in several memoranda and reports of the Ministry of Justice arguing for an expansion of the budget (which was subsequently granted).

The citizens as consumers of the criminal justice system

Members of the public can be seen as 'consumers' of the criminal justice system in their capacities as victim, witness or defendant or as ordinary citizens who care about justice or safety. Crime surveys can be used as a form of marketing research on behalf of the criminal

justice system among its main groups of consumers. In crime surveys, questions are often included about perceived satisfaction of victims with the police and the courts. Sometimes questions are also asked about the appropriate sentence for particular offenders. In the Surabayan crime survey, the victims' opinions on their treatment by the police appeared to be fairly positive (22 per cent were dissatisfied). Respondents in Surabaya opted more often for a prison sentence as an appropriate sentence for a recidivist burglar (66 per cent) than in any other country (27.5 on average). This is a somewhat remarkable finding, since the official Indonesian imprisonment rate is only moderate (36 per 100,000).

In the international survey, actual victims were asked whether they had been helped by a specialised victim support scheme (an agency helping victims by giving information or practical or emotional support). Those who did not receive such help were subsequently asked whether they would have appreciated having it. The concept of special services for crime victims was exceptionally popular among victims in Surabaya: two-thirds of all victims would have welcomed the services of such agencies. Perhaps this need of specialised help is partly induced by a low level of insurance coverage (only 4 per cent of the households are insured against burglary).

Another question category which is often included is about protection against crime. Respondents are asked whether they installed good locks in their houses, cars or motorbikes or whether they keep their lights on when the house is empty. In Surabaya, the rate of respondents who keep lights on when the home is left empty was 70 per cent. This proportion is just as high as in Australia and The Netherlands. In the southern parts of Europe it is much lower.

In countries with a high rate of so-called neighbourhood watch programs—a voluntary support network for the local police—respondents are often asked whether they participate in such activities or would be ready to do so if the occasion rises.

Victimological risk analysis

Results of national crime surveys can also be used for the formation of theories. The differential distribution of victimisation risks over the population has become a hobby horse of theoretically-oriented criminologists. Statistical analyses are used to discover the main correlates of victimisation risks. In Figure 4, the international victimisation rates for three different groups of the population is presented.

Figure 4

Victimisation rates for three categories of crime (1) and all crime, by different groups of the population

	Property Crime	Burglary	Contact Crime	Any Crime	Total Respondents
	% victimised once or more				
Gender					
Male	16.7	3.7	5.1	22.0	13,542
Female	14.2	3.6	6.0	20.3	14,458
Total	15.4	3.6	5.5	21.1	28,000
Age					
16-34	21.1	4.5	8.9	28.9	10,716
35-54	16.7	3.9	4.3	22.0	9,048
55+	6.5	2.3	2.5	10 1	8,138
Household income (2)					
Below average	11.7	3.5	5.4	17.6	12,046

Above average	19.8	3.9	5.9	25.6	11,794
Not stated	13.5	3.2	4.8	18.6	4,121
Size of place of residence					
<10,000	12.5	2.5	4.0	16.7	9,317
10,000-50,000	15.1	3.3	5.3	20.8	6,408
>50,000	19.7	5.2	7.7	27.5	8,490
Not stated	13.3	3.6	5.1	18.5	3,785

Source: Experiences of Crime across the World, van Dijk, Mayhew, Killias, 1990.

(1) *Property crime*: theft of cars, motorcycles, bicycles; theft from cars; car vandalism; non-contact personal thefts.
Burglary: including attempts.
Contact crime: pickpocketing; robbery; sexual incidents; assaults/threats.

(2) Respondents were asked first whether or not their total household income after deductions was above or below given figures (set in the questionnaire at the median level for the country). They were then asked whether it was above or below the upper or lower quartile figure (as appropriate). Quartile figures were set independently in each country on the basis of national income data.

The main risk increasing characteristics were found to be a young age, the status of urban dweller, a high level of affluence and an outgoing lifestyle. These risk factors seem to be the same in most nations. In the USA, ethnic minorities were found to run especially high risks. Several theoretical perspectives have been developed to explain these findings, such as a lifestyle/exposure theory (Hindelang et al. 1978). It is to be expected that much important theoretical work will be done concerning victimisation risks in the near future.

Local surveys

During the 1980s, local crime surveys have become an important policy tool for crime control policies. Local surveys are often executed with modest budgets. Mailed questionnaires instead of personal interviewing is a favourite method of data collection. Surveys carried out at the level of cities have the same uses as the ones listed above. In addition, such local surveys have important operational utilities for local government.

Firstly, local surveys are often mounted in the preparatory stage of a local crime control initiative. Through a local survey, reliable information is gathered on the most pressing crime problems in the area and their exact geographical location. Also, the public can be asked directly to indicate their priorities and wishes concerning crime control policies. Subsequently, follow up surveys can be used to monitor and evaluate the new policies.

In the early 1980s, the Research and Documentation Centre of the Ministry of Justice of The Netherlands was asked to evaluate a series of local crime control projects (van Dijk 1984). In most cases, crime surveys were carried out in the target area and a control area before and after the new policies were introduced. The study in Osdorp (Amsterdam) provides a good example of such research. In this district of Amsterdam with 10,000 inhabitants, a team of ten patrol officers was made responsible for an integrated burglary reduction program, consisting of intensified patrolling and crime prevention instructions. According to the surveys, the public's willingness to report crimes increased significantly during the presence of the special team and not in the control area. The victimisation rates for all types of crimes together showed a significant decrease, whereas the control area showed an increase. Since the willingness to report had risen, the number of registered crimes remained constant in the experimental area. If the latter figures would have been used as a measure of occurrence, the new policies would have been evaluated negatively. The available survey data indicated that the new policies had been effective in reducing crime and fear of crime and increasing the willingness to report crime to the police.

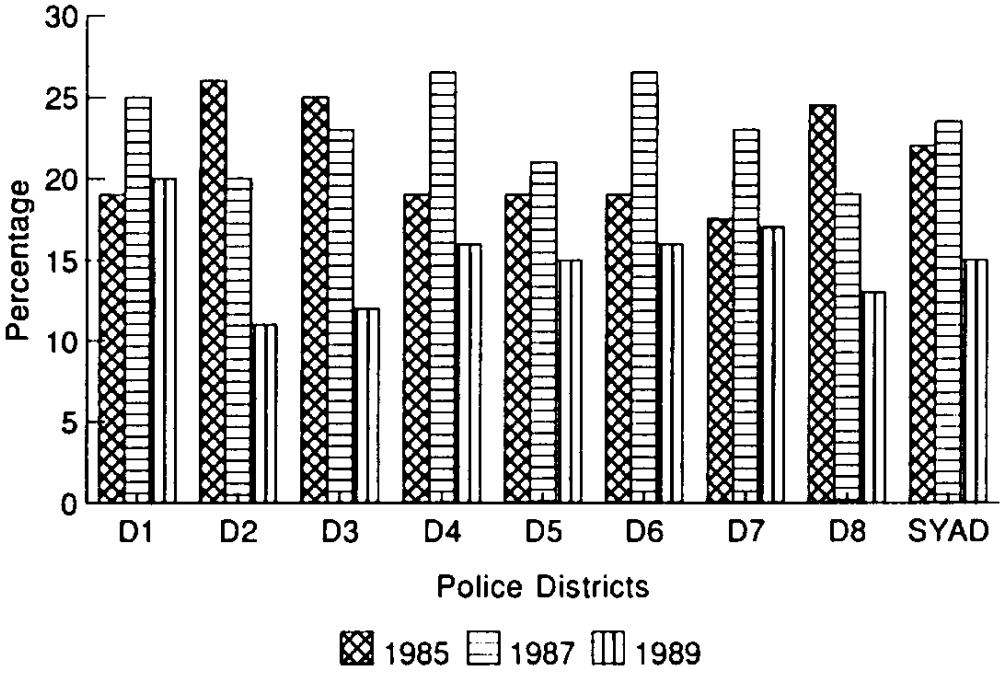
Since 1985, the city of Amsterdam carries out its own full blown biannual crime survey as a means of monitoring its policing policies on a regular basis (Hoenson en Lofers Adema 1990). In the survey, respondents are asked to rate the effectiveness of the police in their own district. Respondents are asked, for example, whether or not they agree with the statement 'one cannot rely upon the Amsterdam police anymore'. In Figure 5, we present the trend data of this popular verdict.

The findings presented in Figure 5 show a different judgment on the police in the various districts. It also shows a decrease in the number of citizens who are disgruntled with their local police.

In some local surveys, respondents are not only asked about their experiences with crime and the police, but also about their judgment on the delivery of other social services by local government (Jones et al. 1986). When local surveys are carried out among very large samples, as was done in Islington (London) and Barcelona, a detailed mapping of criminal incidents becomes feasible. Such information about the incidence, place and time of crimes can serve as an important operational tool for the police. Large scale local surveys also provide information about small groups in the population who are recidivist victims of crimes of violence. The multiple and repeated victimisation by crime of such groups tends to be overlooked in national crime surveys. Such groups may be an important target for crime prevention advice for other social services. Although few cities can afford large scale local surveys, they yield unique information about local problems and the effectiveness of local policies.

Figure 5

Percentage of the inhabitants of Amsterdam who agree with the statement that their police can no longer be relied upon, according to police district.



International surveys

Background

There has long been a need for comparable information about levels and patterns of criminal victimisation in different countries. Researchers have principally wanted to test theories about the social causes of crime by means of cross-national comparisons. Policy makers have principally wanted to understand better their national crime problems by putting these in an international perspective. To date, by far the major effort has been put into analysing crime rates in different countries on the basis of offences recorded by the police ('police figures').

However, police figures have substantial limitations for comparative purposes. First, reports of crime by victims form the major bulk of incidents that the police have available to record; any differences in the propensity to report to the police in different countries will seriously jeopardise comparisons, and rather little is known about these differences. Second, comparisons of police statistics are severely undermined by differences in legal definitions, and by technical factors to do with how offences are classified and counted.

The climate ripened for a standardised international survey as more was understood about the methodology of crime surveys and the value of their information. At a meeting in Barcelona of the Standing Conference of Local and Regional Authorities of the Council of Europe at the end of 1987, the author formally aired plans for a standardised survey (van Dijk et al. 1987).

The momentum was continued through a Working Group comprising Jan van Dijk (overall coordinator), Ministry of Justice, The Netherlands; Pat Mayhew, Research and Planning Unit, Home Office, England; and Martin Killias, University of Lausanne, Switzerland.

Organisation and methods

An invitation to join in the survey was sent to some twenty-odd countries. Fifteen countries eventually took part in a fully coordinated survey exercise. The countries were: Australia, Belgium, Canada, England and Wales, Federal Republic of Germany, Finland, France, Japan, The Netherlands, Northern Ireland, Norway, Scotland, Spain, Switzerland, USA.

In addition, local surveys using the same questionnaire were conducted in Poland (Ministry of Justice) and Indonesia (Guru Besar Kriminologi, Penologi, Victimologi dan Hukum Pidana, Surabaya).

In the majority of countries, 2,000 respondents were interviewed by telephone. Respondents were asked about eleven main forms of victimisation. Those who had been victimised were asked short questions about the place where the offence occurred; its material consequences; whether the police were involved (and if not why not); satisfaction with the police response; and any victim assistance given. In addition, some basic socio-demographic and lifestyle data were collected. Some other questions were asked about: fear of crime; satisfaction with local policing; crime prevention behaviour; and the preferred sentence for a 21-year old recidivist burglar.

Results

The key findings of the survey are presented in the Figures 6 and 7.

Figure 6

Victimisation rates for fourteen different types of crime in seventeen countries in 1988

	Total[1]	Europe[2]	England & Wales	Scotland	Northern Ireland	Nether-lands	West Germany	Switzer-land	Belgium	France	Spain	Norway	Finland	USA	Canada	Australia	Warsaw	Surabaya	Japan
Theft of car	1.2	1.3	1.8	0.8	1.6	0.3	0.4	0.0	0.8	2.3	1.3	1.1	0.4	2.1	0.8	2.3	2.2	0.2	0.2
Theft from car	5.3	5.8	5.6	5.3	4.0	5.3	4.7	1.9	2.7	6.0	9.9	2.8	2.7	9.3	7.2	6.9	10.2	4.7	0.7
Car vandalism	6.7	7.0	6.8	6.5	4.5	8.2	8.7	4.1	6.6	6.5	6.3	4.6	4.0	8.9	9.8	8.7	7.6	2.7	2.7
Theft of motorcycle[3]	0.4	0.4	0.0	0.3	0.2	0.4	0.2	1.2	0.3	0.6	0.8	0.3	0.0	0.2	0.3	0.2	0.0	0.8	0.4
Theft of bicycle	2.6	2.2	1.0	1.0	1.6	7.6	3.3	3.2	2.7	1.4	1.0	2.8	3.1	3.1	3.4	1.9	1.0	2.7	3.7
Burglary with entry	2.1	1.8	2.1	2.0	1.1	2.4	1.3	1.0	2.3	2.4	1.7	0.8	0.6	3.8	3.0	4.4	2.6	3.8	0.7
Attempted burglary	2.0	1.9	1.7	2.1	0.9	2.6	1.8	0.2	2.3	2.3	1.9	0.4	0.4	5.4	2.7	3.8	2.8	1.7	0.2
Robbery	0.9	1.0	0.7	0.5	0.5	0.9	0.8	0.5	1.0	0.4	2.8	0.5	0.8	1.9	1.1	0.9	1.2	0.5	0.0
Personal Theft	4.0	3.9	3.1	2.6	2.2	4.5	3.9	4.5	4.0	3.6	5.0	3.2	4.3	4.5	5.4	5.0	13.4	5.2	0.2
-- pickpocketing	1.5	1.8	1.5	1.0	0.9	1.9	1.5	1.7	1.6	2.0	2.8	0.5	1.5	1.3	1.3	1.0	13.0	3.3	0.0
Sexual incidents[4]	2.5	1.9	1.2	1.2	1.8	2.6	2.8	1.6	1.3	1.2	2.4	2.1	0.6	4.5	4.0	7.3	3.6	6.3	1.0
-- sexual assault	0.8	0.7	0.1	0.7	0.5	0.5	1.5	0.0	0.6	0.5	0.7	0.6	0.2	2.3	1.7	1.6	2.0	1.7	
Assault/threat	2.9	2.5	1.9	1.8	1.8	3.4	3.1	1.2	2.0	2.0	3.0	3.0	2.9	5.4	4.0	5.2	3.0	0.8	0.5
-- with force	1.5	1.2	0.6	1.0	1.1	2.0	1.5	0.9	0.7	1.2	1.2	1.4	2.0	2.3	1.5	3.0	1.4	0.3	0.2
All crimes[5]	21.1	20.9	19.4	18.6	15.0	26.8	21.9	15.6	17.7	19.4	24.6	16.5	15.9	28.8	28.1	27.8	34.4	20.0	9.3

1 Total figure treats each country as of equal statistical importance, with an assumed sample of 2000 (excl. Japan)

2 European totals have been calculated by weighting individual country results by population size (excl. Warsaw/Surabaya)

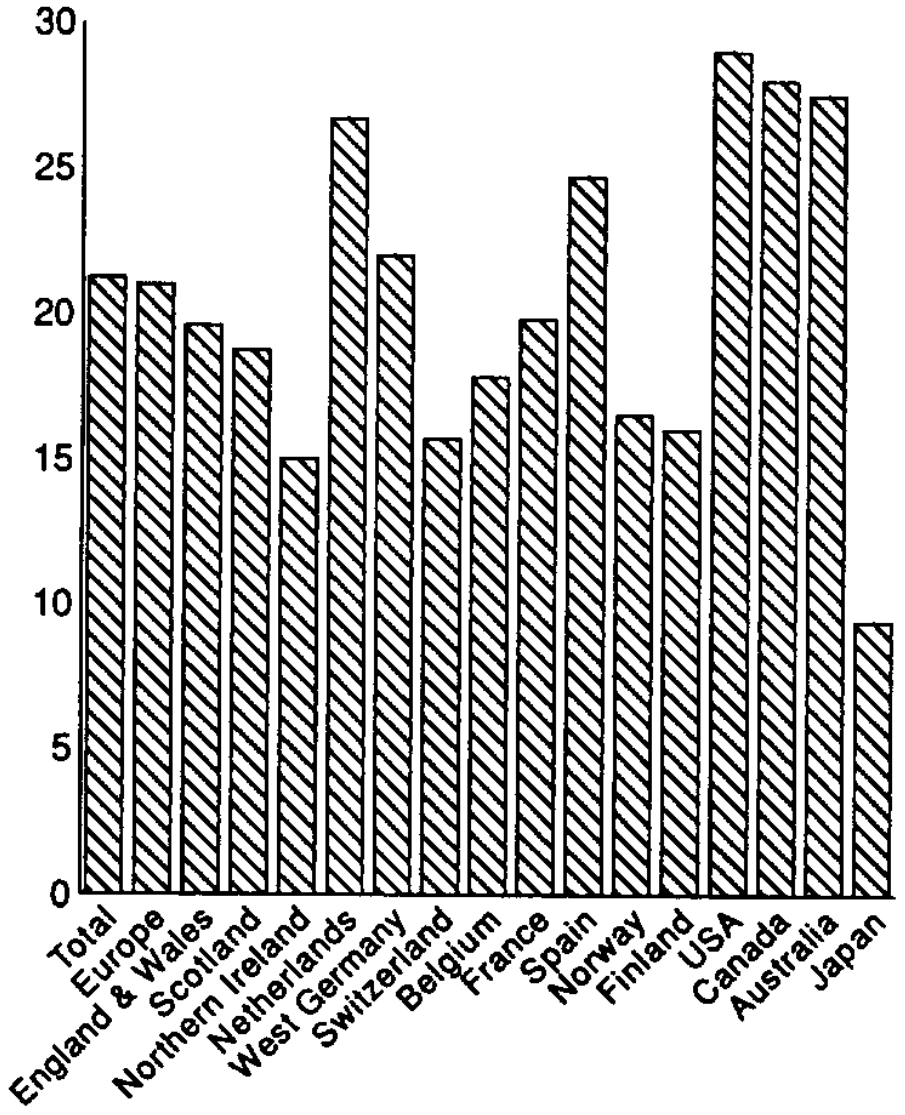
3 'Motorcycles' include mopeds and scooters

4 Asked of women only

5 Percentage of sample victimised by at least one crime of any type.

Source: Van Dijk, Mayhew, Killias, *Experiences of Crime across the World*, Kluwer, Deventer, 1990.

Figure 7
Percentages of the population victimised by any crime in 1988, in fifteen countries.



The percentage of persons 16 years and over who had been victimised in 1988 at least once by one of the eleven types of crime covered by the study was the highest in the USA, Canada and Australia (approximately 30 per cent).

Countries with overall victimisation rates of about 25 per cent were The Netherlands, Spain and West Germany. The high Dutch rate is partly due to an extremely high rate of bicycle theft (7.6 per cent). A victimisation rate of about 20 per cent was found in Scotland, England and Wales, France and Belgium. Rates around 15 per cent were found amongst the public of Northern Ireland, Switzerland, Norway and Finland. Japan has a rate below ten per cent. Offence rates in Warsaw (Poland) resemble West-European city rates, although thefts of personal property—particularly pickpocketing—seem more common.

Victimisation rates in Surabaya (Indonesia) show a somewhat different picture. Motorcycle theft, though far from a common offence, is relatively more common in

Surabaya, where there is an extraordinarily high ownership rate (86 per cent). The owner's risk is relatively low. Car-related crimes are relatively low in Surabaya though ownership is low (43 per cent of households own a car). The burglary rate in Surabaya is relatively high. Offensive sexual behaviour was quite frequently reported too, though cultural and definitional differences may well play a part here. The percentage of respondents who report assaults/threats is extremely low.

Survey estimates and police figures

We have compared the present estimates of national victimisation risks with the conventional measure of offences recorded by the police per 100,000 inhabitants ('police figures') as complied by Interpol. The amount of crime as indicated by the survey will, of course, be higher than the official police figure, since in all countries less than half of victimisations were reported to the police (for example, in Japan the overall reporting rate was 46.5 per cent in 1988-89). Our comparisons focused on how far the survey and police measures show similar relative rankings of countries with regard to crime levels.

For car theft, the ranking of countries on the basis of victimisation rates is quite similar to the picture shown by police figures (rank order correlation was 0.83). For instance Australia, England and Wales and France feature at the top and Japan, Finland and The Netherlands at the bottom in both rankings. For burglary there is a moderately strong positive correlation between the two sources of information (0.53). The relationship between survey and police figures is also moderately strong for robbery (0.49), Japan, for example, is at the bottom of both the survey and Interpol list. The rankings for assault and sexual incidents, however, are dissimilar (0.22 and 0.29). The reporting rates for these two categories of crime vary greatly across countries. When the Interpol ranking is compared with the ranking of reported offences, there were much stronger relationships between survey and police figures for robbery (0.73), assault (0.72) and sexual incidents (0.81).

The most important result of the analysis is that there is a much closer correspondence between survey and police figures when account is taken of differences in reporting to the police. After adjusting for national reporting rates, the associations between survey measures and police figures were statistically robust for all five crime types. This result confirms our belief that for many types of crime, police figures as compiled by Interpol cannot be used for comparative purposes, simply on account of different reporting rates in various countries.

Correlates of victimisation risks at country level

Are the overall social correlates of victimisation risks related to victimisation risks at the level of countries? The question now, then, is whether countries with a high percentage of persons living in large towns actually do have higher national victimisation risks. Only if risk factors are also correlated with national victimisation rates, can the prevalence of such factors in a society be seen as a possible criminogenic factor (a causal factor of crime). In the case of urbanisation, this would mean that highly urbanised societies are more likely to suffer from high crime rates, for instance, because the anonymity and social disintegration of urban society.

No relationship was found between the national rates on going out in the evening and national victimisation rates for all crimes (van Dijk et al. 1990). National victimisation rates are positively related, however, with levels of urbanisation (correlation coefficient 0.64). Countries with fewer persons living in cities of 100,000 inhabitants or more tend to have lower overall victimisation rates, and vice versa. The correlation is much weaker after the inclusion of Japan (0.34). Japan is the outlier here, since it combines the highest level of urbanisation with the lowest crime rate. National victimisation rates are negatively related to

the age structure: countries with a higher percentage of young tend to have higher crime rates (0.49). We have presented the main findings in Figure 8.

National victimisation rates are not significantly related to Gross National Product per capita (-04) or unemployment rates (-34) according to our analyses. No clear association was found with the distribution of housing types—prevalence of tower blocks or detached houses—either.

Figure 8

Ranking of 15 countries in terms of victimisation rates, rates of city dwellers (>100,000 inhabitants), unemployment rates, proportion of young people (15-29 years), Gross National Product per capita and rates of car ownership

	victim. rate 1 = high	urbanis. 1 = high	unemploy. 1 = low	% youngsters 1 = low	GNP p.c. 1 = low	car ownership 1 = high
England & Wales	8	5	12	8	3	9
Scotland	9	7	12	8	3	14
Northern Ireland	14	15	12	8	3	13
The Netherlands	4	11	14	14	3	10
W. Germany	6	6	7	12	9	7
Switzerland	13	13	1	10	14	12
Belgium	10	14	10	6	5	5
France	7	8	8	5	8	4
Finland	12	9	4	3	11	11
Norway	11	12	3	4	13	8
USA	1	10	5	15	15	1
Australia	2	2	9	1	12	3
Canada	3	4	6	13	7	2
Spain	5	3	15	11	1	15
Japan	15	1	2	2	10	6

Source for victimisation rate, urbanisation and car ownership: van Dijk et al. 1990
Source for other measures: International Marketing Data and Stat. 1987-88

There are positive relationships between national ownership rates of cars and overall victimisation rates (r=.48), and between national ownership rates of bicycles and motorbikes and victimisation rates for bicycle and motorbike theft (0.86; 0.65). Also, rates of television ownership are associated with national burglary risks (Block & Zhang 1990). National victimisation rates for burglary, in particular, are positively associated with the percentage of the paid work force that is female. This is probably because in countries with high female participation the houses are less well-guarded during daytime (Block & Zhang 1990). Interestingly and intriguingly, Walker et al. (1990) discovered that countries with colder climates have lower levels of crime than countries nearer to the equator (this is true for sexual incidents and burglary in particular, and may be accounted for by a more outgoing lifestyle in countries with a more gentle climate). The inclusion of Japan, however, weakens the association.

A look into the future

A second book with papers on the data of the 1989 International Crime Survey will be published in 1991. In this book results of new analyses on the relationships between social, economic and cultural characteristics of nations and regions and victimisation rates will be presented.

In the meantime, preparations have started for a second International Crime Survey to be mounted in January/February 1992. The questionnaire will be extended with a few questions about consumer fraud, environmental pollution and corruption by state officials, for example. It is envisaged that several new Western nations will join the initiative, notably Sweden, Denmark, Italy, Austria, USSR, and Hungary. In 1990, the survey was also carried out in East Germany (the former DDR) and parts of Greece.

The United Nations Interregional Crime and Justice Research Institute has agreed to promote and coordinate the execution of the survey in developing countries. It is believed that such surveys could give impetus to a number of desirable social policies aimed at better crime prevention and control within the context of social equity, respect for human rights and the creation of conditions for balanced economics and social development. The questionnaire developed for the 1989 study will be adapted for use in developing countries and its applicability pre-tested in seven developing countries in Asia, the Arab region, Africa and Latin America. The results will be evaluated and a project document prepared for a follow-up project focusing on fully-fledged crime surveys in several developing countries. It is hoped that a great many developing countries will eventually take part in this project. The results will not only help to put crime prevention and control on the political agenda of developing countries, but also increase our understanding of the relationships between modernisation and crime.

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PREVENTION OF VIOLENT CRIME: THE WORK OF THE NATIONAL COMMITTEE ON VIOLENCE

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IN 1987 IN MELBOURNE, AUSTRALIA'S SECOND LARGEST CITY, THERE OCCURRED two mass killings, which resulted in the deaths of sixteen people and injury to many more. The random killing of strangers in an apparently tranquil and orderly city was seen to be an enormous indictment of the prevailing social climate and caused widespread anxiety.

The European settlement of Australia two hundred years earlier had been marked by extreme violence. The colony of New South Wales was established as a repository for the excessive number of convicted felons occupying British gaols (Hughes 1987). The suffering inflicted upon the indigenous Aboriginal population by the new settlers was enormous, and the consequences of that persecution remain with Australians today (Reynolds 1982).

Nevertheless, this brutal history seems to most Australians very much a thing of the past. The majority of the population of seventeen million live in large urban centres along the coast of a vast land mass. The two largest cities, Sydney and Melbourne, each have more than three million inhabitants: many of these are post-war migrants to Australia who came seeking freedom from violence, overcrowding and related problems which afflicted their homelands. Despite difficulties associated with absorbing large numbers of new arrivals and consequent rapid city growth, Australians felt that they had escaped many of the social ills which existed in other countries.

These beliefs had been tempered more lately by the expression of unease with growing levels of violent behaviour: a general perception was abroad that using public places and public transport, for example, was no longer always safe, and that as a consequence quality of life had diminished. In addition, some were drawing attention to the reality of family violence tolerated in Australian society and for so long ignored (Scutt 1983; Hatty 1986; Queensland Domestic Violence Task Force 1988).

These perceptions were confirmed by a recent cross-national crime survey (van Dijk et al. 1990; Walker et al. 1990), which had shown that Australia's general rates of victimisation for violent and property offences was more similar to North America than Europe.

The political response to these events was a meeting called by the Prime Minister at that time, Mr Bob Hawke, with all heads of government of the constituent states and territories which make up the Commonwealth of Australia. The ostensible purpose of the meeting was to discuss ways of dealing with the widespread availability of firearms in Australia.

Both the Melbourne incidents had involved high-powered rifles which were easily obtainable throughout most Australian jurisdictions: legislation governing gun control is largely a state/territory responsibility in Australia, as is every matter not explicitly referred to in the Australian Constitution as being a federal responsibility. In particular, principal responsibility for the enactment and administration of the criminal law is vested in the individual states and territories (Chappell & Wilson 1986).

The meeting between the Prime Minister and the heads of state and territory governments agreed that the problem of violence in the Australian community went far beyond questions about the availability and use of firearms. It was decided that a National Committee on Violence should be established to investigate violence from a wider perspective.

National Committee on Violence

The National Committee on Violence was asked to address a range of issues: in brief, it was asked to examine the level of violence in Australia, to review explanations for violent behaviour and to make recommendations for the control and prevention of violence.

Noted authorities with expertise in various areas of the Terms of Reference were appointed as members of the Committee, and I was appointed as chairman. Members were pre-eminent in the areas of forensic psychiatry, women's issues, child and family welfare, Aboriginal issues, and police. The breadth of knowledge encompassed by its membership was one of the great strengths of the Committee.

The secretariat for the Committee was located within the Australian Institute of Criminology, because of its ability to provide a range of services deriving from its position as the centre of cooperation between jurisdictions in the area of criminological and criminal justice research.

The Committee had much in common with similar enquiries which have recently been carried out in two other countries: the German Anti-Violence Commission, chaired by Professor Dr Hans-Dieter Schwind of Ruhr University, and the United States National Academy of Sciences Panel on the Understanding and Control of Violent Behaviour, chaired by Professor Albert Reiss of Yale University. Throughout its life, the Committee remained in close communication with researchers on these two enquiries.

The lifespan of the Committee was only fifteen months, for it was required to report to the Prime Minister by the end of 1989. During this relatively brief time, it generated a considerable volume of material on various aspects of violence. In its final report, entitled *Violence: Directions for Australia* (1990), the Committee set out in detail its response to the issues raised in its Terms of Reference.

Methodology in Information Collection

In considering how best to go about collecting the material needed for the determination of its recommendations for action, the Committee adopted several strategies.

Public consultation

First, it was decided that it was important to undertake consultation with members of the public, policy makers, professionals and representatives of interested organisations, in order to gain the broadest possible perspective of the issue of violence, and, in particular, its manifestations and effects at the grassroots level.

The Committee's limited budget meant that it was not possible to hold formal public hearings, but instead it was decided to hold a series of community forums in each state capital city and Alice Springs in central Australia. In addition, Committee members visited four Aboriginal communities in northern and central Australia: many of these communities have special problems with violent behaviour, and were too distant from the locations of the community forums to attend them.

The Committee secretariat contacted a large number of relevant organisations and individuals prior to each of these forums. Included were those involved in health and welfare policy and service delivery at the government level, police, academics, legal aid, the courts, victims' organisations, youth workers, sexual assault and domestic violence workers and other community groups. Representatives of the major political parties were also given the opportunity to speak. Advertisements were placed in the local press inviting interested members of the general public to attend and participate.

Over two hundred people, representing a wide variety of organisations, elected to give a presentation at the forums, and numerous others attended and took part in discussion.

Expert briefings

The Committee chose to invite to its own meetings a number of experts in various fields, so that members could be briefed in issues which had been identified as particularly important. These invitees included experts in the areas of domestic violence, Aboriginal issues, child abuse, racial violence and media violence. These informal discussions were very useful to members in gaining a perspective on the diversity of issues in violence with which they were faced.

Review of the literature

In addition to the information collection activities of the Committee itself, its secretariat undertook a thorough and critical literature review of published research, both Australian and overseas, on the subject of violence generally. The breadth of this coverage, ranging from biological factors, through child development issues, the effects of alcohol and other drugs to larger social and cultural factors, was reflected in the scope of the Committee's final recommendations.

Major conference

In order to provide an opportunity for academics and policy makers to express their views and discuss their research, the Committee hosted a major four-day conference on violence. This was a particularly useful event in terms of information collection. The conference covered seven main areas:

- contemporary and historical perspectives on violence;
- the epidemiology of violence;
- the causes of violence;

- strategies for mitigating the effects of violence on its victims;
- treatment of violent offenders: society's response;
- the prevention and control of violence: exploring policy options;
- an international perspective on Australian violence.

This last area was addressed by Professor Albert Reiss of Yale University and Professor Hans Joachim Schneider of the University of Westphalia, who were able to talk of the activities of the American and German inquiries into violent behaviour and to put violent behaviour in Australia into a broader context.

Selected papers presented at this conference have now been published in a volume entitled *Australian Violence: Contemporary Perspectives* (Chappell et al. 1991): some of these report on new and original research in the area of violence in Australia, whilst others represent state-of-the-art summations in particular areas of expertise. Together they represent some of the best work on violence yet undertaken in Australia.

Consultation with local government

Finally, the Committee decided to contact directly each of the almost one thousand local government authorities in Australia. It believed that local governments, which are the level of government closest to the everyday lives of most Australians, are in an important position to contribute to the prevention and control of violence within their respective communities. Facilities for families under stress, reactions to graffiti and vandalism, decisions about town planning and design are all local government responsibilities which have a large impact on community safety.

Local governments were asked about activities and programs they had developed in response to public concerns about violent behaviour, both public and private. Some very interesting activities were found to be in place: some were particularly conscious of the principles of crime prevention through environmental design (Geason & Wilson 1989); others with large populations of young residents sponsored a variety of alcohol-free recreation and entertainment activities, which they had found to be the most effective strategy for preventing problems of vandalism and violence.

The Committee observed that most of the successful programs in the area of youth involved close consultation with the potential users of the facilities or programs offered, to ensure that they had genuine input into their planning; it also observed that it was not effective to plan such activities specifically for youth 'at risk', for young people thus identified were not likely to respond positively to the perceived stigma (National Committee on Violence 1990). The Committee was glad to be able to communicate these ideas and experiences to other local authorities around Australia.

Prevention Strategies

The Committee observed that the causes of violence are complex, and the factors contributing to violent behaviour occur not in isolation but in interaction with numerous other forces. For this reason it is necessary to resist the temptation to rely on simplistic solutions, and to recognise that the prevention and control of violence is a challenge which confronts not only a wide variety of agencies across all levels of government, but non-government organisations and, above all, the individual.

In framing its recommendations, the Committee identified three major objectives:

- the adoption of a national strategy for the promotion of non-violent attitudes;
- the reduction of factors which aggravate the risk and extent of violence;
- an improvement in the availability of accurate information about the extent and nature of violence so as to provide a proper basis for decision-making.

In determining the structure of the recommendations, the Committee decided against basing them according to problems areas—street violence, child abuse, violence in Aboriginal communities and the like. Instead, in the interests of facilitating implementation, it was agreed that they should be structured according to portfolio responsibility, that is, by type of government department.

Because, as mentioned earlier, responsibility for the prevention and control of violence does not lie exclusively with government, the structure also included relevant non-government organisations. The Committee specifically noted that, in deciding on this structure, it did not seek to absolve individuals from their responsibilities, both in terms of acting non-violently and in condemning acts of violence when they occurred.

The Committee's recommendations numbered 138 in total. They varied from the very specific, as was the case with firearms regulation, where almost twenty specific recommendations were made, to the more general, as for example in the areas of housing, employment and training.

It is not appropriate to discuss here the intricacies of the Australian system, but we mention them only to illustrate the need for the shape of government organisation to be taken into account in structuring recommendations about issues that cross jurisdictional boundaries.

Evaluation

In formulating its recommendations for action, the Committee was conscious of the necessity for programs and policies, whose aim was the prevention and control of violence, to be subject to rigorous, independent evaluation. It specifically recommended that provision for such evaluation should be incorporated in the design and budget of the program in question. The Committee observed that good intentions are never a sufficient basis for the expenditure of public funds.

However, the Committee itself has no power to ensure implementation, and the Federal government has no means of requiring compliance from state and territory authorities in respect of those recommendations which fall within their areas of responsibility. Nevertheless, the objective is, by consultation and cooperation, to encourage these authorities to implement, and this has in some measure been successful.

As far as the federal government's responsibilities are concerned, two major initiatives flowing directly from the Committee's recommendations have been announced: a three-year national campaign against child abuse, and the establishment of a Violence Monitoring Unit within the Australian Institute of Criminology.

The Violence Monitoring Unit aims to establish a consolidated body of data about trends in violence and to provide an information service and other practical assistance to organisations and individuals working on programs which impact on levels of violence. Its functions also are to ensure that non-government organisations are aware of those Committee recommendations relevant to them, and to facilitate exchange of information between jurisdictions about initiatives being taken within individual jurisdictions.

The Australian Institute of Criminology itself has been able to implement one specific recommendation of the Committee, and that relates to the systematic collection of

information, on an ongoing basis, concerning the nature of homicide in Australia and the characteristics of victims and offenders. It is anticipated that analysis of these data will, over time, provide the kind of information needed for the rational formulation of public policy in areas such as family law, child protection and firearms regulation.

It is also hoped that this National Homicide Monitoring Program may be used as a model for the investigation of other categories of violent offences; the methodology employed in dealing with relatively small numbers involved in homicide may be adaptable to larger classes of offence such as serious assault.

Conclusion

The National Committee on Violence, with few resources compared to those major studies undertaken in the United States and Germany, produced during its brief life a very substantial amount of useful information on many aspects of violent crime. Its Report, with its 138 recommendations, constitutes a blueprint for action which the Committee was confident could make a real difference to the level of violence in our community.

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CONCLUDING REFLECTIONS

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TO BE INVITED TO GIVE THE CLOSING ADDRESS AT THE END OF AN HISTORIC conference, such as this one, is indeed an honour and a privilege.

I know that all the Western participants will wish to join with me in congratulating the Indonesian Society of Criminology on the enormous success of this, its first international conference. It is also a very real pleasure to extend to the Society our sincere good wishes for all its future activities.

I have chosen to focus this closing address upon some issues connected with the explanation of crime. I shall pay particular attention to some of the special questions which arise in the context of 'East meets West'.

Aspects of Society and Crime in the United Kingdom

Let me begin with two vignettes from my own country (the United Kingdom) both of which illustrate, in different ways, the complexity of the social dimensions of crime.

My first illustration concerns Northern Ireland. Northern Ireland is an integral part of the United Kingdom, but it is located across the sea from the main part of the country and on the same island as the Republic of Ireland. The total population of Northern Ireland is about 1.5 million; the majority of the population are Protestant, but a sizeable minority are Catholic (as are the great majority of the population of the Republic of Ireland). Many (but not all) Catholics in the North would prefer Northern Ireland to become part of the Republic of Ireland, and the Constitution of the republic formally enshrines such an aspiration. Such views are strongly opposed by the majority of Protestants in the north.

For just over twenty years now, Northern Ireland has suffered a serious problem of sectarian violence, including the existence of organised paramilitary groups on both sides of the religious and political divide. Sadly, there have been many murders. At the moment, no generally acceptable political solution to the problems of the province seems to be in sight, and the murders look set to continue.

This, then, is a problem of political violence, linked to conflict about the government of the area, but also mixed inextricably with issues of religious affiliation and community identity. The violence has been repeatedly condemned by both Protestant and Catholic religious leaders, but their appeals have not been sufficient to stem the tide of killings.

While Northern Ireland's politico-religious violence is well known internationally, other aspects of the province's crime profile are much less well known. Two features are worth highlighting. First, the general crime rate of the area is low, as was confirmed in the recent international victim survey (van Dijk et al. 1990, pp. 39-42). This is probably partly because of the rural and small-town character of much of the province.

Data presented in the report of the international victim survey suggest that, of all the countries represented in the survey, Northern Ireland had, in 1988, by far the lowest proportion of its population (1.6 per cent) living in cities of more than 100,000 inhabitants. In fact, this particular statistic for Northern Ireland is incorrect: I understand from a source in the Northern Ireland Office that the true figure should be 19.0 per cent, not 1.6 per cent. Even with this much higher figure, Northern Ireland is well below the average percentage for all the countries represented in the survey.

As sociologists have for long attested, most rural and semi-rural areas have strong community ties which seem to act as inhibitors of criminality. But additionally, it must be borne in mind that the population of Northern Ireland is, on average, more active in religious affiliation and religious practice than is most of mainland Britain, and there is evidence that active religious affiliation may reduce general crime levels (Tittle & Welch 1983). Hence, interestingly, religious issues may be related—in different ways—both to Northern Ireland's high-profile problems of sectarian violence, and to the low rates of burglary and other property crime.

The second point of interest concerns an exception to the generally low rate of property crime in the province. For Northern Ireland as a whole has a high rate of car thefts, relative to the number of cars in the province.

The province has a relatively low rate of vehicle ownership, so victimisation rates for car thefts calculated on a population base somewhat mask the true level of victimisation. In the international victim survey, the vehicle incidence rate for theft of cars (that is number of offences per annum per 100 vehicles owned) was 2.0 for Northern Ireland in 1988: the province was second only to Spain (2.1) in this respect (van Dijk et al. 1990, Table E7, p. 179). These data refer only to thefts of cars: Northern Ireland does not have a particularly high rate of thefts from cars.

The rate is particularly high in Belfast, and these crimes are known to be committed especially by adolescents living in Catholic West Belfast (McCullough et al 1990).

In 1987 and 1988, 80 per cent of cars reported stolen in Northern Ireland were taken in Belfast. In 1987, 47 per cent of all cars reported stolen in the province were recovered in West Belfast—though there has apparently been a trend during the 1980s for offenders who live in West Belfast increasingly to steal cars from outside the local area, and then bring them in to West Belfast (McCullough et al. 1990, p. 27).

This occurs despite strong discouragement from the local community, including the main Republican paramilitary organisation, and seems to be related to the strains and tensions of being brought up in a divided and violent society, together with the absence of regular community policing in this particular area.

> The police and the army—'legitimate targets' in the eyes of the (main Republican paramilitary organisation)—are confined in West Belfast to fortress-like bases with look-out posts and security fencing. Tours of the area are made in heavily armoured Land Rovers, often travelling in convoy . . . the car thief has a fairly low risk of being apprehended in a stolen car . . . (and) the owners of stolen cars discovered in West Belfast usually have to travel into the area to reclaim their cars themselves. Owing to the low level of normal policing, . . . the paramilitary organisations have tended to emerge as self-appointed guardians of law and order . . . (McCullough et al. 1990, pp. 6-7).

Car theft in West Belfast also 'raises particularly hostile feelings within the community at large . . . it gives rise to a sense of despair and hopelessness . . . which in turn has given the paramilitaries the excuse to use the most drastic and inhumane methods (on known car thieves), such as knee-capping, punishment beatings and shootings' (McCullough et al. 1990, p. 31).

This brief sketch of the situation in Northern Ireland well illustrates the complexity of the problem of the explanation of crime. The province has three very distinct crime patterns, all co-existing within one quite small society. To emphasise one of the three patterns at the expense of the others would be to fail to understand the whole picture. Satisfactorily to explain all three patterns (including their relationship to one another) requires a quite sophisticated understanding of the social and political organisation and the culture of the province—including some special features of its social life which are replicated in few, if any other, modern societies.

My second vignette comes from mainland Britain—specifically from the city of Sheffield, in which I used to live and work. Sheffield is a city with a population of about half a million, and it is rather self-contained both geographically (it is not part of a conurbation) and culturally. Over the years, my colleagues and I have conducted a number of different explorations of crime in the city; the particular finding that I want to highlight here arose from some studies that we undertook in the mid 1970s. At that time, we were able to identify three residential areas, all of which had high offender residence rates and high offence commission rates (for distinction between these rates, *see* Bottoms & Wiles 1986, Wikström 1990)—yet socially, the three areas were in many ways very different from one another. In outline, they were as follows:

Area 1, which we called 'Redlight', was a small residential area close to the city centre, with fairly high population mobility, but also a stable core of long-term residents. The housing was predominantly privately rented, with some multi-occupation of large houses. The population was very mixed, with a relatively high proportion (about 15-20 per cent) of ethnic minority residents. Redlight was well known in the city as Sheffield's main prostitution district, and it was also known as a small-scale centre for drug dealing. In short, this was in many ways a classic interstitial area, as discussed by the Chicago sociologists of the 1930s (for discussion of Redlight *see* Bottoms & Wiles 1986, pp. 140-50).

Area 2, which we called 'Skyhigh', was also situated close to the city centre, and it too had quite high population mobility. However, unlike Redlight, Skyhigh was a public housing development, built in a high-rise style, and it had only a small ethnic minority population. Prostitution and drugs activities were almost wholly absent from the area, but vandalism was a particular problem. Surveys showed that Skyhigh was one of the most disliked areas of the city, and few of its residents felt at home there. It appeared to be a more anomic area than either of the others mentioned here (for discussion of Skyhigh *see* Bottoms & Wiles 1986, pp. 128-9).

Area 3, known to us as 'Gardenia', was two miles from the city centre. Like Skyhigh, it was a public housing estate; but unlike Skyhigh, it was a low-rise housing area, with very low population turnover (60 per cent of the families had lived in the area for more than ten years). Ethnic minorities were wholly absent. As regards crime, the area had a thriving, if relatively mild, criminal subculture; but there were no prostitution or drug activities (for a full analysis of Gardenia in the mid-1970s *see* Bottoms et al. 1989).

These three areas, with their intriguing diversity, give the lie to any simple one-dimensional explanation of high-crime residential area. They emphasise, as does the Northern Ireland example, that a central task for criminology is to get close to and to understand some of the very different social settings in which criminal activity takes place, and the very different patterns of crime which can occur within a particular social context.

Karl Marx's famous remark that human beings 'make history, but not in circumstances of their own choosing', has perhaps been insufficiently pondered by criminologists. For crimes, too, are committed by human beings who (usually) make choices to offend, but within the context of lives shaped crucially by social and cultural contexts not of their own choosing. That is true in Northern Ireland and in the three areas of Sheffield that I have highlighted. But it is also true, as the papers of this conference have very ably demonstrated, of various kinds of crime in Indonesia—though the social and cultural context in Indonesia is, of course, very different.

West Meets East

I have deliberately entitled this second section of my address 'West Meets East', because what I want to offer here are a few remarks concerning what I, a Westerner, have learned about crime in a major Eastern country (Indonesia) from the papers at this conference.

It is not, of course, possible to mention all the papers about Indonesia, and the points that I have selected for comment are simply the ones that specially interested me. There is, naturally, a great deal of other valuable material in the papers, upon which the Indonesian Society of Criminology should be warmly congratulated.

I shall begin with Mr Muhammad Mustofa's paper on the 'Siri' phenomenon in a rural community in South Sulawesi. **Siri ripakasiri**, I have learned, is the deep feeling of shame of a person whose dignity has been degraded by others in public; and according to the customs of the Buginese-Makasserese community, this shame requires retaliation, or 'the duty to restore **siri**'. This duty falls upon the kin of the victim as well as the victim him/herself.

We immediately see here the strong sense of community, or **communitarianism**, found in most traditional societies. However, I shall not dwell on this, but rather move on to comment on three special points of interest in Mr Mustofa's analysis.

Firstly, according to the traditions of this community, the disputing parties may, in certain circumstances, seek mediation from the **Pabicara**, or community leaders (though the Pabicara do not initiate attempts at mediation). Mediation of this kind is not always successful but, where success is achieved, the result seems to be a very clear example of what John Braithwaite (1989) has termed **reintegrative shaming**. That is to say:

- there is a clear acknowledgement of wrongdoing by the person who has violated the siri; and

- apologies and reparations are made which help to rebuild the fractured social bonds between the parties.

However, if the mediation is unsuccessful, the result is rather what Braithwaite has termed **disintegrative shaming**—that is, condemnation of the wrongdoer by most of the community, but no rebuilding of social bonds, and potentially serious tensions (perhaps including serious physical injuries) within the community.

Secondly, the decline in the number of Pabicara in recent years has made this mediation option less available, possibly leading to more violent retaliations (though I understand there is no firm data on this point). Moreover, the modern Indonesian legal system does not officially recognise the potentially reintegrative and violence-reducing role of the Pabicara: and here we see some clear tensions between customary laws and official state laws within a developing country.

Thirdly, a police operation in South Sulawesi in 1985-88, which was intended to reduce violent siri-related retaliations by the confiscation of weapons (**badik**) from owners, sellers and producers, in fact failed to have the desired effect. To the Western observer, this is very interesting as an example of the failure of a particular kind of situational crime prevention (that is, reducing the opportunities for crime; *see* Hough et al. 1980). The main reason for the failure, in South Sulawesi, was apparently largely the strength of the cultural norms within the Buginese-Makasserese community, supporting the traditional **siri** customs.

It is important not to dwell too long upon examples of the kind just discussed, because of course most criminal problems in Indonesia (and hence most of the papers in this conference) do not now occur in these rural and traditional communities, but rather in the main cities and the industrial sites. For Indonesia, like many other developing countries, has experienced very rapid industrialisation and urbanisation in recent decades.

The Western observer (or at least one who knows the history of his/her own country) is at first inclined to draw strong parallels between the recent experience of industrialisation and urbanisation in a country like Indonesia and the experiences of the same phenomena in the West in the early nineteenth century. But, as my Cambridge colleague Dr Colin Sumner (1982, ch. 1) has valuably pointed out, this kind of parallel contains many pitfalls. (However, my theoretical orientation is different from that of Dr Sumner, and I would not subscribe to the argument of his paper in full.) In fact, the developing countries' experience of industrialisation and urbanisation has been different from the earlier experience of the West in at least three crucial respects:

> Firstly, because modern developing countries are surrounded by more developed economies, whose multinational corporations are anxious, wherever possible, to make profitable entries into the developing economies. 'Capitalism in one country' is not an option in the way that it largely was in the nineteenth century.
>
> Secondly, the developing countries are surrounded by, and cannot avoid using, the advanced technology of the modern world. This technology, however, has its own social effects, which are not always welcome. For example, Mardjono Reksodiputro has referred to the growth of fear of crime in Indonesia as a result of the overdramatisation of crime stories in the mass media.
>
> Thirdly, most developing countries are former colonies whose political and legal systems have in one way or another (by continuity or rejection, or a combination of both) been crucially influenced by their colonial past; and these politico-legal features have often been important in the shaping of economic and social policy.

Some of the criminological consequences of the current socioeconomic situation in Indonesia have been very well brought out in the papers of this conference. For example, I could mention:

- Professor Sahetapy's forceful paper on environmental pollution by industrial plants;

- Dr Soesanto's analysis of corporate crime in Indonesia, including the apparently widespread violation of the minimum wage legislation, despite the fact that the minimum wage is, on any objective analysis, itself very low;

- Arif Gosita's paper on child exploitation showing, among other things, that in the big cities there are numerous children from underprivileged families who become completely detached from any family relationship—with a considerable potential, in Mr Gosita's opinion, for delinquency;

- Mardjono Reksodiputro's authoritative overview of crime in Indonesia, which draws attention amongst other things to: the weakening of family and social ties with urbanisation; housing problems in cities; the development of organised crime (including drug trafficking and fraud); and, in a political context, some crimes of corruption by government officials.

Hence, we see clear evidence that Indonesian criminologists are giving serious attention to a range of different crime problems (including crimes by children, adult street crimes, crimes by businesses, and crimes within the government service) that arise in the context of a developing country. One participant at the conference aptly called all this 'the dark side of modern cultural development'.

I should like to comment on one other matter, of a rather different character, arising from the paper by Mardjono Reksodiputro. This concerns the low prison population in Indonesia and the fact that the recorded crime rate seems not to be rising, despite rapid urbanisation. Also, Professor Sahetapy's pioneering victim survey in Surabaja, mentioned in Dr van Dijk's paper (see also van Dijk et al. 1990, pp. 43-5) does not suggest an unduly high crime rate for a dense urban area.

These matters clearly require further study. But it is most interesting that modern Japan has a low crime rate (now confirmed in the international victim survey—*see* Dr van Dijk's paper to this conference), and that, in the period since the Second World War, Japan has not (despite rapid urbanisation during this time) suffered the kind of dramatic increases in crime experienced in most Western countries. Scholars usually attribute these findings to the strongly communitarian nature of Japanese society, retained so far despite urbanisation—though it is interesting to learn from Dr Sugihara's paper to this conference that he feels these communitarian features of Japanese society may now be weakening.

Could it be that Indonesia, like Japan, is also retaining some communitarian features despite urbanisation, and that this is helping to keep the recorded crime rate stable? I cannot, of course, answer this question: but the question seems to me to be an important one and, if there is any truth at all in such a suggestion, then the issue of how such communitarian features might be sustained is surely worth the most serious attention of Indonesian criminologists and policymakers.

In concluding this section of my address, I would like to comment on just two more of the Indonesian papers. The first is the presentation by Dr Soedjono Dirdjosisworo on the crime defence strategy in Western Java—a paper which had, to the Western observer, a number of familiar features. In Western countries in recent years, including both the United Kingdom and The Netherlands, governments have increasingly been trying to develop coordinated crime prevention strategies of this kind, not infrequently referred to as 'crime management strategies'.

I do not have the time to discuss these strategies in depth here, but I should just like to offer one word of warning, which arises from my observations of these kinds of approaches in Western countries. Professor Philip Selznick has recently suggested a useful conceptual distinction between management and governance (*see* Garland 1990, pp. 58-9). 'Management', he suggests, is an activity based upon concepts of rational efficiency in which aims tend to be taken for granted, and there is an emphasis on planning, efficiency, and administrative effectiveness: 'this is the realm of administrative rather than political decisions'. 'Governance', on the other hand, cannot limit itself to the single-minded pursuit of narrowly-conceived goals. It implies a broader responsibility for 'all the interests that affect the viability, competence, and moral character of a social system'. In short, governance, unlike management, emphasises vital moral and political dimensions of social life.

This distinction was developed by Selznick in a broader context than that of criminal policy. Nevertheless, in my view it is useful to mention the distinction in discussing modern crime prevention strategies, because there is a danger (at least in Western countries) that the rapid growth of management-style thinking in relation to these strategies is causing at least some officials on some occasions to lose sight of important moral and political questions relating to key dimensions of public order and public feelings of safety—which a well-balanced criminal policy should not neglect. As Indonesia develops crime prevention strategies such as that in West Java, I would suggest it would be useful to bear in mind these potential difficulties.

Finally, and on a methodological note, I feel I must mention the paper by Mr Paulus Hadisuprapto, which tests Hirschi's control theory in an Indonesian context. The main interest of this paper for me lies in its timely methodological warnings about the over-simplistic transfer of social concepts (such as 'attachment') from one cultural context into another. These warnings re-emphasise the point which I made at the end of the first section of this address—namely, that in all our criminological work, both within a given country and when working cross-culturally, we must be extremely sensitive to the social and cultural context.

John Braithwaite's Theory of Reintegrative Shaming

In this third section of my address, I want to focus upon an important book published by the Australian scholar John Braithwaite in 1989, and entitled *Crime, Shame and Reintegration* (Braithwaite 1989).

This book has already been mentioned in several of the papers presented at this conference (for example, those by Professor Kellens and Professor van den Heuvel). It seems to me to be of special interest in the context of an 'East meets West' conference, for three reasons;

- because it bravely attempts a general theory of crime, that is, it seeks to offer an overall explanatory framework for most criminality in most countries (including white-collar crime). (However, Braithwaite explicitly excludes from his theory 'the small minority of criminal laws that are not consensually regarded as justified' (p. 3));

- because it explicitly draws upon some concepts (such as 'shaming') which are now more familiar in Eastern than in Western countries;

- because a discussion of Japan's low crime rate features quite prominently in the argument of the book.

Before offering some comments on Braithwaite's book, it is first necessary to explain briefly (and obviously, in the time available, somewhat inadequately) the main features of the general theory of reintegrative shaming which is proposed by the author.

This theory has, perhaps, two main features. First, it can reasonably be regarded as an extended discussion and attempted correction of labelling theory. Labelling theory, argues Braithwaite, has only modest empirical support in the criminological literature, but few criminologists have seriously investigated under what conditions labelling might amplify initial criminality, and under what conditions it might actually reduce crime. Braithwaite's hypothesis is that reintegrative shaming (as discussed in the previous section of this paper) will reduce criminality, but disintegrative shaming will increase it.

The second main feature of Braithwaite's theory, as I see it, is that it is a deliberately eclectic approach, seeking to blend creatively some elements from control theory, subcultural theory, labelling theory, opportunity theory of the type adopted by Merton (1957) and Cloward & Ohlin (1960), and learning theory. Some criminologists might immediately be repelled by this kind of eclecticism, but, like the sociologist Anthony Giddens (1984, p. xxii), I have never been able to see the force of this kind of objection, provided that the various different elements which are utilised in an eclectic theory are epistemologically compatible, and are carefully related to one another in a coherent way—as, certainly, they are in Braithwaite's book.

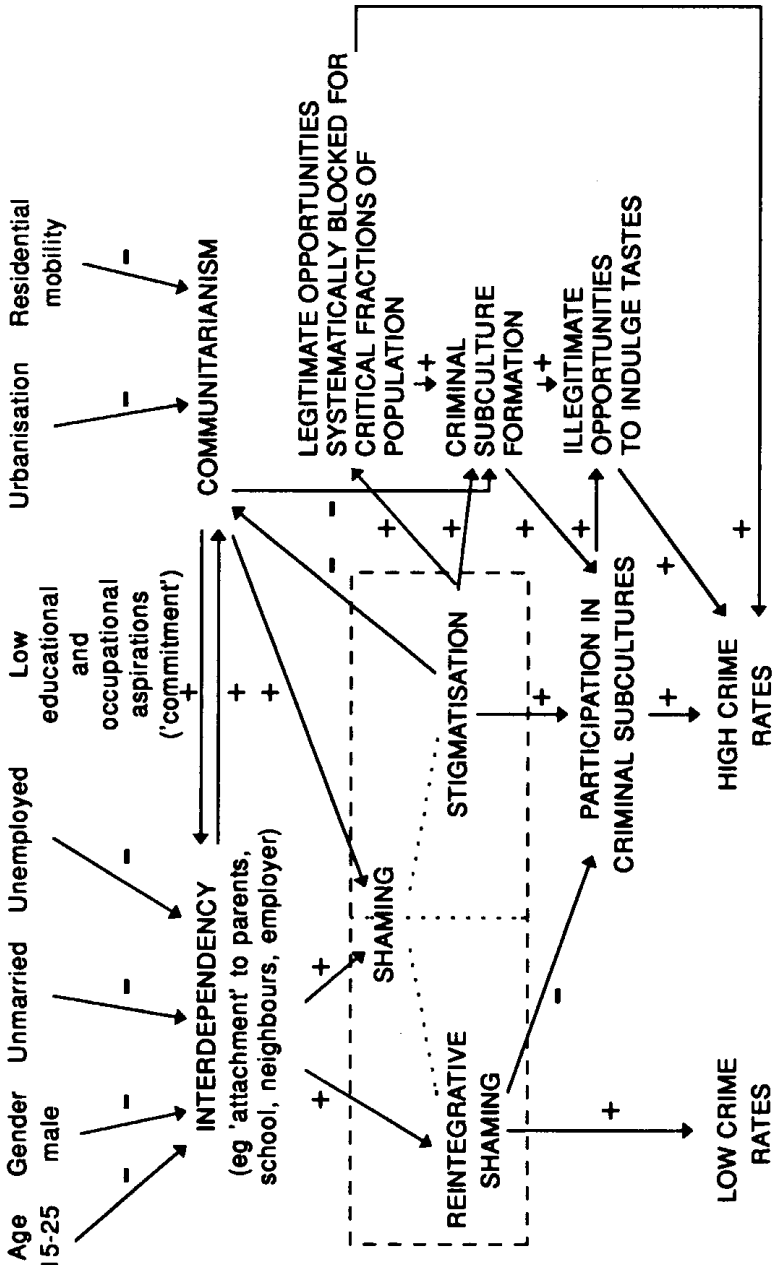
Turning then to the substance of Braithwaite's theory, a key idea is that clear moral boundaries are essential for societies which wish to achieve low crime rates. A society without shaming mechanisms for wrongdoers becomes too permissive, and generates high crime. But not all shaming is equally effective: as previously discussed, reintegrative shaming is considered to be greatly superior to disintegrative shaming in reducing crime.

The various elements of Braithwaite's theory are presented by him in a summary diagram, reproduced here as Figure 1. At the top of the diagram are the two linked concepts of communitarianism and interdependency: communitarianism is a concept relating to social groups, and interdependency refers to the individual's degree of attachment to significant others such as in families, schools and neighbourhoods. Braithwaite postulates that, where communitarianism or interdependency are strong, crime will usually be low, and vice versa. Various characteristics representing weak communitarianism or interdependency are shown above the boxes at the top of the diagram (for example urbanization = a weakening of communitarianism). This part of Braithwaite's theory obviously draws strongly on control theory.

The next element of the theory—for those who have not been held away from crime by the controls of interdependency—is shaming. This is shown in the box in the middle of the diagram, which incorporates the reintegrative/disintegrative distinction. As previously indicated, this part of the theory seeks to improve upon labelling theory. Braithwaite devotes a whole chapter to the mechanisms of shaming, but it is not possible to elaborate upon these here.

Figure 1

Summary of the Theory of Reintegrative Shaming



Source: Braithwaite, 1989, *Crime Shame and Reintegration*, Cambridge University Press, Cambridge. Reproduced by permission.

The theory then postulated—as shown at the bottom of the main part of the diagram—that the stigmatisation produced by disintegrative shaming will be more likely to lead to participation in delinquent subcultures. Additionally, as in Cloward & Ohlin's (1960) theory, the social blocking of legitimate opportunities, plus the availability or otherwise of illegitimate opportunities (for example drug dealing for gain), is seen as independently likely to produce high crime rates (*see* the right hand side of the diagram; also Braithwaite 1989, p. 103). In these ways, subcultural theory and opportunity theory make their contribution to Braithwaite's overall framework.

The final theoretical strand of Braithwaite's eclectic approach is learning theory, which is not specifically represented in Figure 1, but which in a sense pervades the whole diagram.

John Braithwaite at one point says of his own theory that 'with one crucial exception (reintegrative shaming), there is .. . no originality in the elements of this theory, simply originality of synthesis' (Braithwaite 1989, p. 107).

Whilst this statement is, formally speaking, correct, it also seems to me to be too modest. The theory of reintegrative shaming is, in my judgment, a superb essay in criminological synthesis, and surely one of the most stimulating pieces of writing in the field in recent years. (Among its positive features, I would particularly recommend the very clear-headed chapter 3, which deals with 'the facts a theory of crime ought to fit', and 'the failure of the dominant theories to explain these findings'.) But of course, as Braithwaite would be the first to insist, it is only a theory and certainly requires both theoretical refinement and empirical testing. I would hope that some interest in the theory might be shown in Indonesia, because a rapidly developing society such as this would be a very good site for the testing of some of its central hypotheses.

It will be apparent that I find much of value in Braithwaite's theory, but I do also have four main criticisms of the work, which I shall now elaborate briefly. I hope that these criticisms might lead to constructive refinement of the theory, by Braithwaite or by others.

The first criticism is that the theory is very offender-focussed and says little about crimes. This crime/offender distinction is a potentially very important one for criminological explanation, as environmental criminologists in particular tend to emphasise (*see* for example Wikström 1990). At a practical level, the significance of the distinction can be seen when, for example, a sudden quarrel between acquaintances might become murder if there is a gun available, but there would be no crime at all without the availability of such a weapon. In other words, even motivated potential offenders will not necessarily offend at all if other appropriate conditions are not present, the most important of such conditions being opportunity. (The concept of 'opportunity' is however itself a complex one. The concept can include, for example, the ready availability of potential criminal targets; the availability of adequate means to accomplish a particular crime; the absence of capable guardians or adequate surveillance; and so on. For a full discussion *see* Clarke (1983).) In Britain, this 'crime as opportunity' thesis has been pressed hard by the proponents of situational crime prevention (see Hough et al. 1980) and they have succeeded in demonstrating its importance, even if not quite to the extent that original versions of the approach seemed to want to claim (*see generally* Clarke 1983; Bottoms 1990).

Braithwaite's theory contains an opportunity dimension, but, as indicated above, this relates solely to the kind of opportunity theory put forward in the 1950s and 1960s in the wake of Robert K. Merton's (1957) *Social Theory and Social Structure*—that is to say, it refers to such matters as the social arrangements which block systematically, for a majority of the population, the routes (or opportunities) to material and career success; or, in a different vein, the availability or otherwise in a particular locality of illegitimate opportunity structures (for example organised crime syndicates). This Mertonian kind of opportunity theory is thus primarily offender-centred, and is significantly different from the offence-oriented opportunity theory referred to in the previous paragraph.

An example of the potential importance for criminological explanation of this kind of 'crime-as-opportunity' dimension may be seen in considering the problem of explaining the rapid growth of crime in most Western countries since the 1950s. Indonesian criminologists might be surprised to learn that this important question has rarely been systematically addressed by Western criminologists (*see* Bottoms 1987); and John Braithwaite is to be congratulated on tackling it. However, his solution to the problem is simply that of 'a decline of interdependency and communitarianism and a progressive uncoupling of punishment and shaming' (Braithwaite 1989, p. 106): that is, it is an offender-based explanation referring to social change in families and neighbourhoods, for example. (Specifically, Braithwaite argues that 'this has been a period when urbanisation, residential mobility, delayed marriage and marriage breakdown, and an explosion of the 15-25 age group have occurred in most countries' (p. 106).) Plus an element referring to the penal strategies of Western countries during the period in question.

I must here leave aside this last point, which raises issues that are both controversial and very complex. The controversies would include both whether there has in fact been a 'progressive uncoupling of punishment and shaming' in post-war Western societies, and, if so, whether this has necessarily led to increased crime rates. Rather, I want to compare Braithwaite's analysis with one which appeared in a Dutch White Paper on crime, published in 1985 (Netherlands Ministry of Justice 1985, p. 10). This referred, very much in the same vein as Braithwaite, to 'a decline since 1960 in the influence of many traditional social institutions within which the behaviour of individuals is effectively normalised, such as the family, clubs and associations, the church and the schools'. 'Society', the White Paper declared, 'has become more individualistic'. (Among other things, the White Paper suggests that increased alcohol consumption and drug use are products of a more individualistic society.) But the analysis did not stop there. As an additional dimension, it was argued that 'because of greatly increased prosperity many more goods are in circulation which can be stolen or destroyed than in the past. The growth in private car ownership in particular has greatly increased the opportunities for crime'.

Now, it can of course be correctly argued by opponents of the 'crime as opportunity' thesis that increases in criminal opportunities will not necessarily increase the incidence of crime—if, for example, the citizens are well-socialised and well socially-integrated. But that is not really the point at issue here. The issue is—given that there has been a decline in communitarianism and interdependency in the West in the port-war period, would the increase in crime have been as rapid if there had been no increase in the available stock of valuable and portable private possessions such as cars, televisions and videos? The Dutch White Paper in effect answered this question in the negative, and it seems to me to be overwhelmingly likely that it was right to do so.

The second criticism that I would make of Braithwaite's theory tackles it much more on its own home ground or offender-centred theory. It is clear from much recent research in criminal careers that the distribution of offences as between different offenders is very skewed: for example, in a British study by the Home Office Statistical Department it was found that nearly 1 in 3 males born in 1953 had been convicted of a 'standard list' offence by the age of 28, but only a small proportion of these (5.5 per cent, or 18 per cent of those convicted), had six or more court appearances before this age, and they accounted for 70 per cent of all the known offences committed by the whole cohort born in 1953 (Home Office 1985). Similar, although slightly less extreme, results have been found in other cohort studies both in the United States and in Britain, and the conclusions are supported by self-report research as well as by research on official arrests and convictions (Farrington 1987; Balvig 1988).

A corollary of this kind of research finding is that explanations of offending might differ as between occasional offenders (those who only offend once or twice), moderate offenders

(those with intermediate levels of criminality who then desist) and persistent offenders. Braithwaite's theory could perhaps be suitably modified to take account of this possibility: but, as it stands, the theory does not adequately confront the empirical challenge presented by the kind of research findings outlined above.

My third critical point concerns issues of place and of time. 'Place', in criminology, can refer either to the places where offences are committed, or to the places where offenders live (*see* Bottoms & Wiles 1986; Wikström 1990): I shall restrict attention for the moment to the former. It is now quite clear from the relevant criminological literature that both the spatial patterning and the timing of offence commission can be very skewed indeed (*see*, for example Brantingham & Brantingham 1984; Sherman et al. 1989; Wikström 1985). These patterns are undoubtedly explicable partly in terms of opportunity variables, but it is clear that this is not the whole explanation. Environmental criminologists have increasingly turned also to aspects of offenders' routine activities (in their ordinary, non-offending daily lives) to help explain place/time variations (*see* Brantingham & Brantingham 1984; Wikström 1990): on routine activities theory see Cohen & Felson 1979). To develop these themes more fully would take me deep into the literature of environmental criminology: suffice it to say, therefore, for present purposes, that Braithwaite once again does not adequately confront these issues. Nor should the issues be regarded as trivial: at least one major modern sociological theorist (Giddens 1984) accords to space/time considerations. ('Space' is a different concept from 'place', but the complexities of this distinction cannot be discussed here.) And to daily routines, a central role in the understanding of social life. (Elsewhere, I have argued that criminologists could usefully engage more fully with the implications of Giddens's sociological approach: *see* Bottoms & Wiles (1992).)

The fourth and final criticism of Braithwaite that I would offer is that the theory says too little about power. This is so at several levels. At a micro level, it is regrettably the case that some males within high interdependency family contexts nevertheless use their power within the family unit to commit offences of domestic violence or the sexual abuse of children. Female partners, in particular, may attempt to stop this kind of behaviour by intra-family tactics of reintegrative shaming: but the evidence suggests that they are usually unsuccessful, and crimes of this sort often develop into a repeated series of violations. It can be argued that it is a serious weakness of Braithwaite's theory not to discuss crimes of this kind, the issues of physical and social power which are inextricably linked to them, and the implications of these matters for his theoretical position.

Moving to a meso level of social organisation, power at this level can be extremely important to criminological explanation, notably as regards the direct and indirect results of various allocative decisions taken by, for example, local government officials concerning schools and housing, for example. If we return for a moment to the three areas of Sheffield discussed in the first section of this paper, Paul Wiles and I would want to argue that the high offence rates of these areas are in each case linked (though not exclusively so) to their being high offender-rate areas; and that the key to the understanding of both why all three areas are high offender-rate areas, and the intriguing differences between the areas, lies ultimately in the operations of the local housing market, and their immediate and longer-term social effects (Bottoms & Wiles 1986). This approach, therefore, takes one, as a criminologist, into issues of power that are not considered within Braithwaite's theory.

If we turn finally to the macro level of social organisation, Braithwaite's theory specifically excludes crimes about the proscription of which there is no social consensus. His own main example of no-consensus crime is a victimless crime (for example, drug offences); but in fact, non-consensuality can extend to more serious crimes than this, linked to overt political struggle, as the sectarian murders in Northern Ireland remind us. In a society such as Northern Ireland, crimes of this sort can be of dominating importance—and

we need to be aware, in considering a theory like Braithwaite's, that, although it is a general theory of crime, it does not claim to be able to explain this kind of criminality.

I repeat that these various suggested criticisms of Braithwaite's theory are offered in a constructive rather than a destructive spirit. His theory has much to offer us, and I hope it will receive the attention that it deserves in the criminological community.

Necessary Features of a General Theory of Crime

Braithwaite is not the only criminologist to have put forward a general theory of crime in the past year or so: another important attempt at such a theory has been offered by Gottfredson & Hirschi (1990). I thought, therefore, that it might be worth concluding this address by considering briefly some of the necessary features of such a theory, if it is to be successful in its task.

Reflecting on Braithwaite's theory in particular, it has seemed to me that the necessary features of a general theory should include the following:

1. It must fit the facts concerning the main characteristics of (a) crimes and (b) offenders;

2. It must explain the differences between occasional and persistent offenders;

3. It should probably be eclectic, and if so it should be coherently eclectic;

4. It must have an adequate dimension of place and time;

5. It must give adequate attention to human agency and to daily routines (real people making real choices in society—including choices to commit crimes—but doing so within the context of the routines of daily life);

6 It must have an adequate grasp of the social organisation and the power structures of society, the way in which they are perceived and acted upon by various social actors, and the implications of this for criminality.

I offer this list mainly to stimulate comment: I have no time here to defend in detail the various suggested features, and I realise that the list is very likely to be incomplete. Applying the list to Braithwaite's theory, I would argue that his theory adequately meets features 1(b), 3 and (in part) 5, but not the remainder of the criteria.

I should finally comment that features 4, 5 and 6 in the list above, taken together, and taken seriously will help us to ensure that our criminological explanations take adequate account of cultural differences. And, as I have argued from the outset of this paper, that is a matter of central importance, not least in the context of 'East meets West'.

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