



Dear reader,

The 29th Baltic Criminological Seminar, organised by the Faculty of Law of the University of Tartu, took place in Tallinn on 16–18 June 2016. This year, the seminar celebrates its 30th year, continuing a tradition begun in 1987 by what was then the Laboratory of the Sociology of Deviant Behaviour at the University of Tartu. The series of annual criminological seminars was initiated by our close colleague Dr Eduard Raska (1944–2008), who was director of the laboratory at that time.



Originally, the event brought together social scientists from the Baltic States, Saint Petersburg, and Moscow in efforts to create an alternative, even competing, paradigm to that of Soviet orthodox criminology. Later, the seminar expanded in scope, and it now draws international participants from not only the Baltic region but all over the world. The Baltic Criminological Seminar has become a scientific enterprise that is highly valued by specialists in the field of crime research and control as an arena for presentation of novel ideas and approaches.

The title of this year's seminar and collection of papers, 'Crime, Culture, and Social Control', was not chosen arbitrarily. Amidst globalisation and cross-cultural exposure, new forms of crime are emerging that require new means of control. Furthermore, criminology should be able to identify and monitor the social changes, in order to find alternatives to today's dominant, West-centred approaches. Thirdly, in addition to following this 'cultural turn', responsible criminology must deal with new social dangers and harms that are emerging from combinations of criminality, psychopathology, and economic and military factors. Thereby, the ways of the past – positivistic precise categorisation of forms of deviance and their study – can be replaced with a holistic approach that brings synthesis.

The articles in this volume of *Juridica International* address developments and tendencies in crime and crime control in various countries. Some articles offer theoretical investigation of the above-mentioned problems; others present results of empirical research. Most of the journal articles elaborate upon material presented at the seminar, in addition to which there are some authors who could not attend the seminar but were able to contribute to this issue. We would like to thank all the authors and those reviewing and language-editing the articles for their work, which has resulted in a publication of high scientific quality. Finally, we are very thankful to the university's Faculty of Social Science and School of Law for their financial support for organising the seminar and publishing this volume.

The seminar and this issue of *Juridica International* are further proof, should any be needed, that the University of Tartu is an excellent place for holding international scientific events and meetings for the exchange of ideas and experience in the field of crime control. The tradition of the Baltic Criminological Seminar has stood the test of time, weathering the many changes that the region has experienced over the last 30 years. It is clear that analysis of crime that knows no borders requires ongoing in-depth international scientific co-operation, and with the current issue we aspire to respond to this need.

Anna Markina

Jüri Saar

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A 'Suitable Amount' of Crime and a Cultural-Civilisational Approach^{*2}

1. Introduction to the notion of 'suitable amount' of crime – when is enough enough?

In the classic view of crime, the criminal offence and criminal offender resemble 'social junk', a societal pathology that can be treated by means of active measures. If crime is really an undesirable by-product of social life, the main rule is simple – the less crime and the fewer criminals there are, the better. There is no such thing as a suitable amount of crime in principle. If, in fact, crime is a social sickness, punishment is the treatment and cannot be conceived of otherwise; hence, all the discussion aroused revolves around knowing what the punishment should be such that it fulfils its role as a remedy.

The paradigm established by Émile Durkheim is in opposition to the approach described above. Through his studies, Durkheim posited, social science should be able to determine whether a given society is 'healthy' or 'pathological', with social reform sought, accordingly, to negate organic breakdown or '**social anomie**'. All behavioural acts (e.g., suicide or criminal offences) performed at the level of the individual arbitrarily (*via* 'free will') are at the level of society social facts *sui generis* characterising the state of the social organism in an indicative manner.^{*3} He believed that a 'social fact is normal for a given social type, viewed at a given phase of its development, when it occurs in the average society of that species, considered at the corresponding phase of its evolution'.^{*4}

Durkheim proposed a novel theoretical view of the precise amount of crime that should be treated as a normal phenomenon at its optimal level. A lower quantity of crime indicates a stage of stagnation in the society, while a higher level accompanies a state of social disorganisation. Durkheim developed a new and totally different view of the criminal too, that 'the criminal no longer appears as an utterly unsociable creature, a sort of parasitic element, a foreign, unassimilable body introduced into the bosom of society. He plays a normal and important role in social life'.^{*5} In response to the accordant change of approach, crime and crime-control issues moved from the periphery to a central position in social science.

¹ No grant from any funding agency in the public, commercial, or not-for-profit sector was earmarked for this research.

² The term 'cultural-civilisational approach' is used for distinguishing from 'cultural criminology', which has its own agenda and followers.

³ É. Durkheim. *Suicide: A Study in Sociology*. London, New York: Routledge [1897] 2005.

⁴ É. Durkheim. Rules for the distinction of the normal from the pathological. – S. Lukes (ed.). *The Rules of Sociological Method*. New York, London: The Free Press [1901] 1982, p. 97. – DOI: https://doi.org/10.1007/978-1-349-16939-9_4.

⁵ *Ibid.*, p. 102.

The idea of the suitable amount of crime has, since then, been directly or indirectly discussed by many criminologists. In critical theory, crime has been treated mainly as not a natural phenomenon but a social construct. The social construction of crime by state power is connected with that apparatus's ambition to impose ever more control over human behaviour. The law and its enforcement follow the interests of certain segments of society and can be used for discipline and for repression of people. The position of Michel Foucault was presented as follows:

This production of delinquency and its investment by the penal apparatus must be taken for what they are: not results acquired once and for all, but tactics that shift according to how closely they reach their target. The split between delinquency and other illegalities, the way in which it is turned back upon them, its colonization by the dominant illegality – these all appear clearly in the way in which the police-prison system functions; yet they have always met with resistance; they have given rise to struggles and provoked reaction.^{*6}

The new generation of sociologists in the 1960s whose works came to be seen as classics later (Howard Becker, Stanley Cohen, Jock Young, and others) were public advocates of the new subcultures then under formation. Their message was that the problem of deviancy was not as serious and dangerous as the general public tended to think: 'Calm down, do not panic, none will be injured. The true problem is not the deviant behaviour, but the general attitude, basing on unrestrained need to moralise.'^{*7} There will be created a state of moral panic by powerful groups – the undesired conduct will be exposed as more dangerous than it actually is. According to Cohen, this moral panic arises when 'a condition, situation, person or group of persons is defined as danger to social values and interests'.^{*8} An abolitionist position with regard to the suitable amount of crime was later proposed by Nils Christie. He stated:

Crime does not exist until the act has passed through some highly specialized meaning creating processes and, in the core case, ended up as occurrences certified by penal law judges as the particular type of unwanted acts called crime. Crime is one, but only one, among the numerous ways of classifying deplorable acts... We cannot abolish the penal institution totally, but the only right direction for crime control policy should be 'penal minimalism'.^{*9}

In essence, the same 'minimalist' view on crime (or its control) has been presented recently by some authors. Crime rates in all leading Western countries have decreased substantially since the beginning of the 1990s, but, irrespective of actual trends in crime, there is every sign that the shift towards punitive justice and a security build-up is continuing unabated, with some arguing that the 'culture of crime control, born of the fears and anxieties of the late twentieth century, could well continue long after its originating conditions have ceased to exist'.^{*10} Some studies indicate that during the 'war on crime', state powers began to engage actively in additional activities. Crime control was used as a power instrument by governments, and various branches of power exercise (executive, legislative, and judicial) were exploiting the crime-control issue for rapid reinforcement of that instrument's legitimacy in their hands. A shift from 'penal welfarism' to 'penal populism' marks movement of crime-control strategies away from evidence-based crime control, with their use as a tool for transformation from 'welfare state' into 'penal state'.^{*11}

The very practical question of how to find a level for crime and for other forms of deviant behaviour that could be taken as a relevant base for adequate control measures is still open. For more than a hundred years, nobody has answered this question better than Durkheim did in his pioneering work. His position was quite clear: crime belongs to every normal social organism. He noted that 'what is normal is simply that criminality exists, provided that for each social type it does not reach or go beyond a certain level'. Empirical establishment of that level (a normal level of crime) is perhaps not impossible; i.e., it may not be impossible to fix it 'in conformity with the previous rules'.^{*12} He hypothesised that every state of civilisation has its own criminality.^{*13}

⁶ M. Foucault. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books [1975] 1995, p. 285.

⁷ D. Garland. On the concept of moral panic. – *Crime, Media, Culture: An International Journal* 2008/4, p. 19. – DOI: <https://doi.org/10.1177/1741659007087270>.

⁸ S. Cohen. *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*. London: McGibbon and Kee 1972, p. 9.

⁹ N. Christie. *A Suitable Amount of Crime*. London, New York: Routledge 2004, pp 7, 85. – DOI: <https://doi.org/10.4324/9780203421086>.

¹⁰ D. Garland. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press 2001, pp. 203–204. – DOI: <https://doi.org/10.1093/acprof:oso/9780199258024.001.0001>.

¹¹ J. Simon. *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press 2007, p. 6.

¹² É. Durkheim (see Note 4), p. 98.

¹³ *Ibid.*, p. 107.

It is understandable that in his days there was not enough knowledge about society and deviance to go further in searching for an 'exact level of normal crime'. At that time, the theoretical and methodological foundation for comparative studies between civilisations was rather humble. At the end of the nineteenth century, only Western Judeo-Christian civilisation was accepted as a meaningful one. Western people were deemed to be civilised persons, and all outsiders were still described as savages. During the era of Durkheim's writings, there were no ideas in the social sciences as to how comparative studies of deviant behaviour of 'civilised persons and savages' could be useful. Today, we do not consider only Western forms of collective living and social order possible and acceptable or think that Western values and behavioural principles are the only meaningful ones that might form a basis for sustainable social life, all over the world.

2. The basis for a cultural-civilisational approach

But some things never change, or things may change too slowly. The criminological enterprise has long remained on well-trodden paths, and it cannot substantially contribute to understanding of this world in upheaval. Advances in technologies have produced fundamentally novel information, which has been neither systematised nor analysed, for lack of relevant theories. The attempts to compare crime on international scale have continually met with failure because comparative studies of crime have been carried out without a conceptual basis. The bulky records of crime data collected and published by international organisations contain, in undefined relations, the information and noise. The main problem for criminology lies in the absence of new ideas and approaches. As Michael Tonry noted, 'there the matter seems to rest. More recent criminological writing has added no new ideas'.^{*14}

According to David Smidt, there have been two distinct research communities established in criminology, as two camps of criminologists, representing different general viewpoints on the study of crime and crime control. In one camp are those who use the language and methods of science (the so-called positivistic camp), and in the other are those who use the language and methods of the humanities (the 'humanistic camp').^{*15} With a pure positivistic approach, based on empiricism, large masses of data are collected. The weak theoretical base has routinely hindered gaining better new knowledge from said data. Critics argue that positivism's three goals – description, control, and prediction – are incomplete, since the goal of understanding is absent from this list. The situation has been precisely described by Werner Heisenberg:

The positivists have a simple solution: the world must be divided into that which we can see clearly and the rest, which we had better pass over in silence. But can anyone conceive of a more pointless philosophy, seeing that what we can see clearly amounts to next to nothing? If we omitted all that is unclear, we would probably be left completely uninteresting and trivial tautologies.^{*16}

Simmental hindrances are evident in many spheres of Western scientific and intellectual life, and epistemic problems are obvious in criminology too. In figurative terms, progress has become gyration around oneself, with one foot stationary and the second steadily increasing in impetus. There is just an illusion of moving forward, without real development.

Crime as phenomenon belongs to the super-organic world that Karl Popper called world 3^{*17}, of which he said:

I regard world 3 as being essentially the product of the human mind. It is we who create world 3 objects. That these objects have their own inherent or autonomous laws which create unintended and unforeseeable consequences is only an instance (though a very interesting one) of a more general rule, the rule that all our actions have such consequences.^{*18}

¹⁴ M. Tonry. Is cross-national and comparative research on the criminal justice system useful? – *European Journal of Criminology* 2015/12, p. 512. – DOI: <https://doi.org/10.1177/1477370815581699>.

¹⁵ D. Smith. Wider and deeper: The future of criminology in Europe. – *European Journal of Criminology* 2014/11, pp. 6–8. – DOI: <https://doi.org/10.1177/1477370813500885>.

¹⁶ W. Heisenberg. *Physics and Beyond: Encounters and Conversations*. New York: Harper and Row 1971, p. 213.

¹⁷ K. Popper. *Unended Quest: An Intellectual Autobiography*. La Salle, Illinois: Open Court Publishing 1974, pp. 210–218.

¹⁸ *Ibid.*, p. 217.

World 3 has been created by men as plausibly subjective, however inherently the subjective creation has transited into objective reality. For this reason – the crime as phenomenon being both subjective (created by the human mind in the process of human activity) and tied up with the self-propelling sphere of reality – the antinomy has obviously sapped the development of criminology. It has in effect split the crime-research community.

A solution could be negotiated via an approach wherein crime and all relevant phenomena are consistently regarded against the cultural background. In that case, 'culture' would be not just another variable or factor but the determination of the whole context in which the cause–effect relations are actually manifested in action, thereby making it possible to elucidate and understand these relations. Such a mental move could also be defined as a 'cultural turn' for criminology, whereby crime analysis would be underpinned by certain representations of human environment. Marcel Danesi and Paul Perron named man *Homo culturalis*, to denote 'a meaning-seeking species, whose hunger and search for meaning to its existence has led it to invent myths, art, ritual, language, science, and all the other cultural phenomena that guide its search'.^{*19} 'Man is an animal suspended in webs of significance he himself has spun', in the words of Clifford Geertz, proponent of a cultural turn in anthropology.^{*20}

The cultural turn witnessed in many social sciences and fields of the humanities in the 20th century has been considered to be a conceptual shift as fundamental as the 'evolutionary turn' in biology in the 1800s. The evolutionary approach revolutionised and restructured the whole science of biology.^{*21} Unlike many humanitarian sciences having witnessed significant epistemological innovations in recent decades, which have allowed paying more attention to meaningful symbolic dimensions of the human environment, in the domain of crime such a change is still pending. In criminology, the conceptual turn needs be effected – in the form of 'mixing the genres' when researching crime – in an analogue to what was done with flair in anthropology by Geertz. The anthropological interpretation process entails not just describing the things seen but 'thick description' as a special research method. The traditional differentiation, distinguishing, and pigeonholing would be substituted for by mixing and intertwining the genres, because research into crime calls for genuine interdisciplinary enterprise. We need to reach the stage wherein the criminological projects exist as dialogues between individual (research) cultures. Further, the turn would strengthen both positivist criminology and humanist criminology, and criminologists would be able to switch readily between the two viewpoints, with both traditions being on the 'winning side'.

Crime as phenomenon would, in the course of this turn, get a new actual meaning, one quite different from that found in either the positivist or humanist interpretations. As is punishment, crime is socially constructed, which means that 'the legal apparatus and the practices and regulations of punishment define and therefore create at the same time crime and deviance, rather than simply responding to crime as a social fact coming from outside the control systems and conceived independently of them'.^{*22} This should not, however, involve sinking into the mental quagmire of a radical humanistic approach. By accepting crime and crime control as cultural constructs, they are still within reach of empirical research.

Crime and punishment are phenomena whose key implications are understandable only by keeping in view the respective cultural context and through its language and perceptions. Consistent situating of crimes and related wrongdoings as social deviations in the cultural context would be a *magnum* leap forward for criminology as science. Firstly, it would introduce the analysis of penal law and law enforcement in a concrete spatio-temporal context. Paradoxically, the criminal code can be identified as the 'comprehensive root cause of crime', because crimes and rules for differentiating them from non-crimes have been defined in the system of criminal law. Secondly, comparative study of crimes and punishments would represent in the first place an inter-culture 'translation exercise', yielding new knowledge about oneself and the others. Thirdly, an understanding would be established that penal law not only reflects social realities but also constitutes them.

¹⁹ M. Danesi, P. Perron. *Analyzing Cultures: An Introduction and Handbook*. Bloomington and Indianapolis, Indiana: Indiana University Press 1999, p. ix.

²⁰ C. Geertz. Thick description: Toward an interpretative theory of culture. – *The Interpretation of Cultures: Selected Essays by Clifford Geertz*. New York: Basic Books 1973, p. 5.

²¹ A. Kroeber, C. Kluckhohn. *Culture: A Critical Review of Concepts and Definitions*. Cambridge, Massachusetts: Harvard University Press 1952, p. 3.

²² D. Smith (see Note 15), p. 4.

We believe that different civilisations produce different definitions of acceptable and deviant behaviour. Through law enforcement, the social reality is formed, because controlling crime not only secures public order and safety but creates a certain socio-cultural environment on a day-to-day basis. Therefore, crime control is a crucial issue as seen from the nation-building and political-technology angles, because the criminal justice system is related to cultural self-assertion. What the criminal justice system and its components (e.g., the police, courts, and prisons) in a given state look like and how they function is established by proceeding from dominating conceptions, respected in that society and considered normal and equitable. The unbroken chain of crime and punishment follows a steady process, because they conjointly fulfil a distinctive role, with crime being a phenomenon consisting of acts of free will of men and developing in accordance with fixed rules. Study of the mechanism of such conflicts between legal principles and people's behaviour, whether overt or covert, is extremely instructive, and it reveals to us the very nature of the **social fabric** in a concrete society.

The identification of behaviour as crime and the rules applied in handling of incidents in a corresponding way are in line with historical, social, and cultural conditions. In one country, a wife having deceived her husband is stoned to death, while in another the spouse of a fornicating or adulterous wife is accorded the title 'cuckold'. By reference to such dramatic differences in manners of reaction, diametrically opposite cultural elements of two legal cultures can be inferred, manifested by differences in value ascribed to people of different gender, linked to differences in family patterns, associated with defining of the crimes, linked to divergence of practices of penalising, etc. Moreover, 'faithfulness' and 'faithlessness' carry different implications in different cultural environments. The principles and manner of chastisement nonetheless bear witness to what sort of 'headman' we are dealing with.

This reveals the universality among cultures/civilisations; however, what causes sanctions and who metes out sentences, in which way, is civilisation-specific. A conceptual foundation to such analysis has been laid by classical civilisation studies.^{*23} Over the years, the idea that there are a number of distinct civilisations, all civilised and undergoing specific development, has been elaborated upon further.^{*24} The parameter of creation of civilisedness as social order is treated in that conceptualisation as the capability of creating and preserving certain systemic self-similarity (i.e., in a patterned manner), as fractality in analogy with the capacity of trees to evolve crowns of a shape different from those of other species in nature.^{*25} There is in every civilisation a kind of tonality *sui generis* that is to be found in all the details of collective life, which somehow is never lost. This is why Durkheim's purpose was to find the mental ground determining the various types of civilisation.^{*26} Leo Frobenius named this entity *paideuma* and attempted to create a method for seeing through the debris of a civilisation to its paideumic structure.^{*27} According to Carl Schmitt, such specificities can be determined also as 'chastity of civilisation', with reference to the quality of being chaste (*Tugend*).^{*28}

In principle, it is possible to characterise a criminal law by proceeding from what extent of crime is preferable and how many members of society one 'wishes' to treat as criminals. The main task of criminology should be to find out how the social fractality of various civilisations manifests itself through crime and crime control. Via a cultural-civilisational approach, a new construct may be added alongside the previously known levels of analysis (criminal offence, criminal offender, and crime)^{*29}: the level of meta-crime. By

²³ É. Durkheim, M. Mauss. Note on the notion of civilization. – *Social Research* [1913] 1971/38, pp. 808–813.

²⁴ Among other works, S. Huntington. *The Clash of Civilizations and the Remaking of World Order*. New York: Simon and Schuster 1997; S. Eisenstadt. *Comparative Civilizations and Multiple Modernities*. Leiden, Netherlands; Boston: Brill 2003; V. Kavolis. Civilization theory and collective identity in the postmodern-globalized era. *Kultūros barai* 2006/7, pp. 1–14. Published in *Eurozine* at <http://www.eurozine.com/articles/2006-07-24-kavolis-en.html> (most recently accessed on 19 July 2017); J. Arnason. Civilisational analysis: A paradigm in the making. – P. Holton (ed.). *Encyclopedia of Life Support Systems, Developed under the Auspices of the UNESCO*. Oxford: EOLSS Publishers 2007, pp. 1–34.

²⁵ B. Mandelbrot. *The Fractal Geometry of Nature*. San Francisco: WH Freeman and Co. 1982.

²⁶ É. Durkheim. Civilisation in general and types of civilisation. – S. Lund (ed.). *The Rules of Sociological Method and Selected Texts on Sociology and Its Method*. New York: Free Press [1902] 2013, pp. 186–187.

²⁷ L. Frobenius. Early African culture as an indication of present Negro potentialities. – *Annals of the American Academy of Political and Social Science* 1928/140 (November 1928), pp. 153–165. – DOI: <https://doi.org/10.1177/000271622814000121>.

²⁸ C. Schmitt. *The Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* ['The Nomos of the Earth in the International Law of the Jus Publicum Europaeum.'], 5th ed. Berlin: Duncker and Humblot 2011. – DOI: <https://doi.org/10.3790/978-3-428-48983-1>.

²⁹ J. Pinatel. *Traité de droit penal et de criminologie. Tome 3: Criminologie* ['Criminal Law and Criminology. Volume 3: Criminology'], 2nd ed. Paris: Dalloz 1969.

analysing crime on a meta level, we can reach the meanings, commonly/jointly and severally, to both crime and punishment.

3. Three variables via which the 'suitable amount' of crime can be characterised

Nowadays it is obvious that the optimal level of crime cannot be evaluated by considering just one (for instance, Western-type) society in the absence of the necessary background for comparison. Theoretically, the optimal level of crime can be identified only under the presumption that there are societies of distinct types, which differ from one another with regard to tolerance/ intolerance for deviation. Organisms differ in their capacity of resistance and ability to react to stimuli originating from the external environment. Quite similarly, individual societies need, for normal functioning and development, their own levels of crime – i.e., respective numbers of deviants. The empirical indicators of crime should, from a theoretical standpoint, be fairly similar in countries belonging to the same general civilisation, as compared to other civilisations. Simultaneously, when upheavals of social life take place, the optimal level of crime too changes.

The indicators for an optimal level of crime/punishment cannot come merely from statistical data produced by criminal justice systems. Those indicators are too often and too tightly linked to specificities of states and therefore are subjective. The indicators for optimal level should in principle express some more general proportions, describing cultural value-based patterns and images. They should also reflect simultaneously the regulation by state and society ('order') and 'chaos' as results of free will of man. Considering human society as a sophisticated self-organising system, consisting of self-similar patterns (social fractals), one could compare the characteristics of an optimal level of crime with the fractional dimensions known from Mandelbrot's research.^{*30}

The most amazing discovery is that we already know about such variables. They used to be regularly employed by criminologists especially in life-course perspective, but we were not able to recognise them in those specific roles. All such variables represent characteristics of individual-level criminal activity as highlighted through the criminal-career approach^{*31}, where 'criminal career' is defined as the longitudinal sequence of offences committed by an individual offender.^{*32} By generalising from the individual cases, we obtain general criminal career pathways. The criminal-career approach today is not a criminological theory but a framework within which theories can be proposed and tested. In modern criminology, it is a conspicuously represented and developing paradigm. However, it stands aloof, seemingly situated outside the positive and humanist camps or straddling the two.

Criminal career can be treated as a phenomenon that hypothetically reflects both transgression and retribution, a reunion between crime as an act of free will of an individual and punishment as discretionary reaction to the crime by the state. Research into criminal careers in the concrete cultural environment and generalising their pathways and trajectories reveals a detailed picture of the type of social fractality in the given civilisation. Within the context of a cultural-civilisational approach, there are three important empirical findings from research into criminal career pathways. In the first place, they are stable and relatively persistent over time. Secondly, they are total; i.e., they affect the general picture of crime significantly. Thirdly, they have not met with adequate explanation and substantiation in criminology as yet.

³⁰ B. Mandelbrot (see Note 25), p. 405.

³¹ D. Farrington. Developmental and life-course criminology: The 2002 Sutherland Award Address. – *Criminology* 2003/41, pp. 221–256.

³² D. Nagin, K. Land. Age, criminal careers, and population heterogeneity: Specification and estimation of a nonparametric, mixed Poisson model. – *Criminology* 1993/31, p. 329. – DOI: <https://doi.org/10.1111/j.1745-9125.1993.tb01133.x>; D. Farrington. Human development and criminal careers. – M. Maguire et al. (eds). *The Oxford Handbook of Criminology*. Oxford: Clarendon Press 1997, p. 511; A. Blumstein et al. (eds). *Criminal Careers and 'Career Criminals' I, II*; Report of the National Academy of Sciences Panel on Research on Criminal Careers. Washington, DC: National Academy Press 1986, p. 12.

3.1. Gender differences in crime

There is a fixed unambiguous link between criminal activity and gender – males conduct themselves unlawfully significantly more often than females. The most consistently demonstrated finding in all of social science is that men are considerably more likely than women to engage in crime.^{*33} The prevalence rate in the male population is and has always been much higher than that for the female part of the general population. This is true in all countries for which data are available. It is true for all racial and ethnic groups, and for every historical period.^{*34} In the mid-1800s, Adolphe Quetelet had already established that females constituted below 25% of all those arrested.^{*35} Contemporary surveys too indicate that the percentage of females among criminals is consistently within the 10–15% range.

Females are less likely than males to become repeat offenders, and long-term criminal careers are very rare among women. There are some isolated types of crime for which females represent a larger share than men (for instance, prostitution in those countries where prostitution is criminalised). When one differentiates between more serious and less serious or between violent and property crime, the lower criminal activity of females is noticeable especially with regard to more serious and violent crimes, for which women hold steady at approximately 10%.^{*36} In criminal activity, the gender differences are revealed already in the teenage years, with girls' delinquency being less chronic and less serious than boys'.^{*37} The indicators characterising the criminality of females have not changed, and no tendencies have thus far been identified that would suggest value in 'unifying' female and male criminality. The 'gender gap' in crime has been sustained.

To account for the wide and stable gender differences manifested with regard to crime, several hypotheses have been proposed, with themes varying from biological specificities to gender roles contributing to lesser criminal activity of females.^{*38} Nonetheless, the gender differences in general and, especially, the stability of the 10–20% share of females have not been convincingly elaborated upon. Some authors have identified as the greatest flaw of criminology its failure to theorise on the relation between gender and crime.^{*39}

The idea that gender is best understood as socially produced fits well with the cultural-civilisational approach. 'Doing gender' means that this is a mechanism whereby the situated social action contributes to the reproduction of social structure. This is relevant not only with respect to activities that conform to prevailing normative conceptions but also for those activities that deviate. The issue is not deviance or conformity; rather, it is the possible evaluation of action in relation to normative conceptions and the likely consequence of that evaluation for subsequent interaction.^{*40} The performance of gender *via* crime is a response to gendered social hierarchies and expectations but also reproduces them.

We should remember that surveys of specificities of females' crime have been carried out almost exclusively in the Western cultural area, hence not enabling larger-scale comparisons in that respect. We can prognosticate dramatically different manifestation of forms of criminal activity among females in other cultures/civilisations – for instance, the phenomenon of 'black widows' linked to religious suicide terrorists of a type relatively unknown in the Western countries.^{*41} On the basis of existing empirical material, one cannot deduce either the possible gender proportion in crime of other civilisations or by what social-cultural

³³ D. Britton. Feminism in criminology: Ending the outlaw. – *The Annals of the American Academy of Political and Social Science* 2000/571, p. 58. – DOI: <https://doi.org/10.1177/0002716200571001005>.

³⁴ G. Smith. Long-term trends in female and male involvement in crime. – R. Gartner, B. McCarthy (eds). *The Oxford Handbook of Gender, Sex, and Crime*. New York: Oxford University Press 2014, pp. 139–157. – DOI: <https://doi.org/10.1093/oxfordhdb/9780199838707.013.0008>.

³⁵ A. Quetelet. *A Treatise on Man and the Development of His Faculties*. New York: Cambridge University Press [1842] 2013.

³⁶ J. Wilson, R. Herrnstein. *Crime and Human Nature*. New York: Simon and Schuster 1985, pp. 105–111.

³⁷ M. Snyder, M. Sickmund. *Juvenile Offenders and Victims: 2006 National Report*. Washington, DC: Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

³⁸ F. Heidensohn. Gender and crime. – M. Maguire et al. (eds). *The Oxford Handbook of Criminology*. Oxford: Clarendon Press 1994, p. 998; T. Moffitt et al. *Sex Differences in Antisocial Behavior: Conduct Disorders, Delinquency, and Violence in the Dunedin Longitudinal Study*. New York: Cambridge University Press 2001. – DOI: <https://doi.org/10.1017/cbo9780511490057>.

³⁹ J. Allen. Men, crime and criminology: Recasting the questions. – *International Journal of the Sociology of Law* 1989/17, pp. 19–39; C. Smart. *Feminism and the Power of Law*. London: Routledge 1989. – DOI: <https://doi.org/10.4324/9780203206164>.

⁴⁰ C. West, S. Fenstermaker. Doing difference. – *Gender and Society* 1995/9, p. 21. – DOI: <https://doi.org/10.1177/089124395009001002>.

⁴¹ M. Bloom. *Bombshell: Women and Terrorism*. Philadelphia: University of Pennsylvania Press 2011, pp. 35–67. – DOI: <https://doi.org/10.9783/9780812208108>.

specificities those differences could be accounted for. It is logical that a female's social status and roles in countries of non-Western civilisations affect to what extent and with what crimes women are represented there. There is a great need to identify and explain patterns in crime committed by women in jurisdictions outside Western world.

3.2. Age and criminal activity

An important finding of modern criminology points to a strong curvilinear link between age and criminal activity (the 'age-crime curve'). Surveys show that involvement in criminal behaviour increases until late adolescence or the early adult years, after which it steadily decreases for the remainder of life. That relationship between age and criminal activity has been unchanged across geographical areas and between eras. Criminologists have not been able to explain satisfactorily why such a connection between age and crime persists specifically and remains stable. Travis Hirschi and Michael Gottfredson, for instance, have claimed that 'the age change of crime cannot be accounted for by any variable or combination of variables, available to criminology at the present time'.^{*42} Yossi Shavit and Arye Rattner share the opinion that the age dynamics of delinquency remains to be unravelled by use of any whatsoever known sociological variables.^{*43} An attempt has been made to substantiate the age-crime curve by use of a bio-social approach.^{*44}

Age-related prescriptions have different contents between separate cultures and civilisations. Even a seemingly objective category such as age is not culturally universal; it represents a discursive construct that bears a fixed meaning in a certain context. The special treatment of minors under criminal law, which started in the Western world after the 'discovery' of minority (adolescence) in the nineteenth century, is a phenomenon that is highly complicated by its very nature, associated with social-cultural and economic developments.^{*45} The way in which modern Western societies treat their children and minors is in conformity with expectations related to the role and capacity for development of new generations achieved over a long teaching and maturation period. Minority can be seen on one hand as an element aggravating responsibility (for instance, minors are subject to more restrictions than adults are, with several modes of behaviour allowed for adults being prohibited for minors – the 'status offences'). On the other hand, minors are treated and punished less rigorously (the punishments are milder, age limits have been established with regard to administering the harshest sanctions, and punishment under criminal-law procedure is usually avoided).

Does the link between age and crime hold in all world cultures and civilisations? Maureen Cain described, for instance, the society of Trinidad and Tobago, lacking the age stratification characteristic of the Western world. The local population are divided into two groups: children, who usually do not participate in the undertakings of adults, and the rest of the people – the adults. The children become adults without having been teenagers in an interim stage. Socialising of adults takes place in groups of multi-age individuals and in family groups.^{*46} According to Anthony Harriott's data, sales of narcotic drugs in the Caribbean Sea area are carried out primarily by people of advanced age, not the young.^{*47} Farley Braithwaite, when analysing police data on people penalised on Barbados, found that minors of ages 14–19 constituted a little more than 9% of this group, while people older than 25 years of age constituted over 70%^{*48}, although corresponding Western data would seem to show that people in the latter age band should have 'outgrown' criminal activity.

^{*42} T. Hirschi, M. Gottfredson. Age and the explanation of crime. – *American Journal of Sociology* 1983/89, p. 554. – DOI: <https://doi.org/10.1086/227905>.

^{*43} Y. Shavit, A. Rattner. Age, crime, and the early life course. – *American Journal of Sociology* 1988/93, p. 1457. – DOI: <https://doi.org/10.1086/228907>.

^{*44} A. Walsh. Crazy by design: A biosocial approach to the age-crime curve. – A. Walsh, K. Beaver (eds). *Biosocial Criminology: New Directions in Theory and Research*. New York: Routledge 2009, pp. 154–175. – DOI: <https://doi.org/10.4324/9780203929919>.

^{*45} P. Aries. *Centuries of Childhood: A Social History of Family Life*. New York: Random House, 1962.

^{*46} M. Cain. Orientalism, Occidentalism and the sociology of crime. – *British Journal of Criminology* 2000/40, p. 244. – DOI: <https://doi.org/10.1093/bjc/40.2.239>.

^{*47} A. Harriott. The changing social organization of crime and criminals in Jamaica. – *Caribbean Quarterly* 1996 / 42 ('For a Caribbean Criminology'), pp. 61–81. – DOI: <https://doi.org/10.1080/00086495.1996.11671846>.

^{*48} F. Braithwaite. Some aspects of sentencing in the criminal justice system of Barbados. – *Caribbean Quarterly* 1996 / 42 ('For a Caribbean Criminology'), pp. 113–130. – DOI: <https://doi.org/10.1080/00086495.1996.11671849>.

Hence, there are valid grounds to believe that the link between age and criminal activity is a fundamental characteristic of crime of Western-Christianity-based civilisation, arising from a specific Western *modus vivendi* and the associated cultural background. That indicator expresses comprehensively the specificities of socialisation of new generations into a Western type of society. It is highly possible that results differing from those of the West with regard to the link between age and criminal activity will be obtained in other non-Western civilisations also, should similar surveys be conducted there.

3.3. Chronic and occasional offenders

A third significant discovery in life-course criminology is considered to lie in a so-called dual taxonomy according to which the whole (criminal) population can be divided into two distinct groups. Terrie Moffitt established in a longitudinal survey carried out in New Zealand that, while antisocial behaviour is encountered very rarely among those below 11 years of age, by age 18 about 93% of respondents reported participation in some type of delinquency. The bulk of the latter group is constituted by adolescence-limited offenders. A second group is made up of life-course-persistent offenders, whose criminal offences start early and criminal careers last a long time, and who commit most of the serious crime. The share of such individuals among all offending adolescents is approximately 5%.⁴⁹ The strong correlation between an early start to offences and later high incidence of crimes can be viewed as one of the most convincingly established patterns.⁵⁰ The existence of adolescence-limited and chronic, persistent criminals has been corroborated by results of several other surveys.⁵¹

Moffitt associates the high criminal activity of teenagers with the so-called maturity gap – i.e., the discrepancy between the biological and social maturity of individuals in contemporary Western societies. In traditional societies, these two processes occur simultaneously; however, in a Western society, a long learning period extends between child and adult. The biologically adult person remains a child in the social meaning for a long time. The high level of criminal activity is linked to striving for autonomy and to challenging the older generation.⁵² What does it mean, however, that roughly 5% of all (male) individuals develop into chronic criminals? This indicator has long been discussed, and diverse conclusions have been arrived at. In the opinion of some authors, the group of 'violent predators' are most dangerous and these are the criminals against whom the majority of the resource of the criminal-justice system should be targeted.⁵³ According to other opinions, that group cannot be prospectively differentiated (it can be done in retrospect only), a fact that renders such knowledge redundant.⁵⁴

When considering the size of such group as stable characteristics, inherent to societies of the Western type, advocates of both positions are in the right. The Western societal organisation on the whole 'causes' such a proportion of individuals to become chronic 'clients' of the criminal-justice system. This is apparently an indicator characterising the Western collective body, with a relatively standard proportion of deviants to law-abiding citizens. Hence, there are no grounds for believing that a global regular pattern is in evidence. Therefore, with reference to the existing data, the percentage of persistent criminals should be viewed as an inherent characteristic of (crime) of **Western-Christian** civilisation.

It is possible to make forecasts on the basis of certain personality traits and social characteristics to address what sorts of individuals have the highest probability of being found among that group. These are

⁴⁹ T. Moffitt. Adolescence-limited and life-course-persistent antisocial behavior: A developmental taxonomy. – *Psychological Review* 1993/100, pp. 641–701. – DOI: <https://doi.org/10.1037//0033-295x.100.4.674>.

⁵⁰ J. Wilson, R. Herrnstein (see Note 36), p. 137.

⁵¹ M. Wolfgang et al. *Delinquency in a Birth Cohort*. Chicago: University of Chicago Press 1972; D. Farrington. Explaining and preventing crime: The globalization of knowledge – American Society of Criminology 1999 Presidential Address. – *Criminology* 2000/38, pp. 1–24. – DOI: <https://doi.org/10.1111/j.1745-9125.2000.tb00881.x>; B. Lahey, I. Waldman. A developmental model of the propensity to offend during childhood to adolescence. – D. Farrington (ed.). *Integrated Developmental and Life-Course Theories of Offending*. New Brunswick, New Jersey: Transaction 2005, pp. 15–50; T. Thornberry, M. Krohn. *Taking Stock of Delinquency: An Overview of Findings from Contemporary Longitudinal Studies*. New York: Kluwer/Plenum 2005.

⁵² T. Moffitt. Natural histories of delinquency. – E. Weitekamp, H.-J. Kerner (eds). *Cross-National Longitudinal Research on Development and Criminal Behavior*. Dordrecht, Germany: Kluwer 1994, pp. 3–61. – DOI: https://doi.org/10.1007/978-94-011-0864-5_1.

⁵³ A. Blumstein et al. (see Note 32).

⁵⁴ T. Hirschi, M. Gottfredson. *General Theory of Crime*. Stanford, California: Stanford University Press 1990.

the features that we have so far considered predictive of criminal careers – for instance, low self-control capacity in combination with hyperactivity.^{*55} It would be worthwhile to ponder why such features are connected with persistent criminal careers in the West, as well as reflect on psychopathic personalities, which represent a modern, positivist counterpart to the anti-ideal of the Western man. We should then pose the question of whether such features are similarly negatively appreciated in the process of socialisation in those countries adhering to an Islamic creed. Regrettably, we can only make uneducated guesses with regard to the characteristics of criminal careers in other civilisations.

We can suppose that all three basic characteristics belong to the normal level of crime in Western-Christian civilisations, as Durkheim evidently held as a view fitting his time. These are probably not the only ones stemming from a Western cultural environment and *modus vivendi*. We may only surmise that our hypothesis is true by working from the information we have already within the context of the Western world. Now it needs be contrasted against the respective indicators for non-Western civilisations. Longitudinal surveys focused on trajectories of criminal activity have until now been carried out exclusively in Western countries.^{*56} But even for countries belonging to a Western, Christian tradition, the international comparative longitudinal studies are found wanting or there are too few of them.^{*57} This problem must be dealt with, to make the present unsatisfactory situation better: surveys of criminal career pathways across different civilisations must be initiated. This is feasible today, while in Durkheim's age it would have been preposterous to suggest contrasting two societies, one populated by civilised persons and the other teeming with savages.

4. Conclusions

The main theoretical and methodological implications of the proposed cultural-civilisational approach to crime are summarised below.

At first, this approach would help criminology to get rid of the Western introspective view of crime. The Western model for societal life is not the only meaningful one, and there are many other civilisations. By conducting scientific research into Western institutions for crime control, their genesis, and their functioning, one cannot create new knowledge for the whole world. In particular, globalisation inherently imposes a need to learn to know other cultures or civilisations and their functioning, so that we may identify the rules and mechanisms of their cultural reproduction. Thence arises the need for surveys of pathways of criminal careers in multiple cultural spaces and civilisations. These are, in fact, indispensable for the civilisations' coexistence. They might form part of a cross-cultural dialogue, providing knowledge for engagement in mutual informing with the Other. The role of criminologists therein cannot be overestimated.

Secondly, although crime is a fact of normal sociology, it does not follow that we should not abhor it. Pain, likewise, has nothing desirable about it: the individual detests it just as society detests crime.. Crime as a mass phenomenon refers to the rate of conflict, the extent of which is determined within the normative framework of the relevant society and by reactions to crime. A new level for analysis, meta-crime, should be added to the earlier ones – the levels of offence, offender, and crime. This analytical level of crime and crime control would amount to analysis of crime of various civilisations not via direct comparison of statistical data but through exposing the social mechanisms as root causes that contribute to one or another real-world practice of crime and punishment. Through such consideration, the attention would be focussed not on crime itself but on a broader complex of social relations, through which certain actions and people are criminalised while others are not.

Thirdly, the criminal-career approach as a frame would form grounds for the new model in criminology. The humanistic and positivistic camps would be reconciled, and the linkages between criminology

⁵⁵ T. Moffitt, A. Caspi. Childhood predictors differentiate life-course-persistent and adolescence-limited antisocial pathways among males and females. – *Development and Psychopathology* 2001/13, pp. 355–375. – DOI: <https://doi.org/10.1017/s0954579401002097>.

⁵⁶ D. Farrington (see Note 31), pp. 221–256.

⁵⁷ Conspicuously outstanding as a singular achievement is the Estonian longitudinal survey that commenced when Estonia was incorporated into the USSR, to remain isolated from the Western cultural space for the following half a century. That survey was not, however, aimed at comparing the characteristics of trans-civilisation pathways of criminal careers. See J. Saar, A. Markina. Mortality rate and causes of death of delinquent individuals: Data from the Estonian Longitudinal Study of Criminal Careers. – *Juridica International* (Law Review of the University of Tartu) 2012/19, pp. 179–186.

and the world of action would be more varied and extensive. This is a manifestation of enlivened interest in the practical aspect of criminal behaviour, arising from better understanding of cultural 'construction' and awareness of inevitable restrictions imposed on activities of man. Real mechanisms of social life cannot always be explained by those who participate in it, because profound causes are able to escape their consciousness.

Fourthly, the cultural-civilisational approach in criminology does not mean moving away from an empirical approach and toward the 'soft', humanitarian tradition of social science. Just the opposite, this is an alternative to the postmodernist endless deconstruction and relativism. The method of science is to begin with questions, not with answers, least of all with value judgements. Science is dispassionate enquiry and therefore cannot accept outright any ideologies 'already formulated in everyday life', since these are themselves inevitably tradition-bound and normally tinged with emotional prejudice. Sweeping all-or-none, black-and-white judgements are characteristic of categorical attitudes and have no place in science, whose very nature is inferential and judicious.

The meta level of crime would allow comparing civilisations through certain characteristics and highlighting how the cultural differences find an outlet in crimes. Such a position is not a 'view from nowhere'⁵⁸: it amounts to comparing and contrasting in a rational way the indicators that are really and truly comparable. It is only then that the statistical data on crime become truly meaningful and we can differentiate the important things from the unimportant ones. Quetelet's famous comment that '[w]e might even predict annually how many individuals will stain their hands with the blood of their fellow-men, how many will be forgers, how many will deal in poison, pretty nearly in the same way as we may foretell annual births and deaths'⁵⁹ gets an additional connotation here. We will be able to analyse crime on points of fact and from the substance of the case in various cultures/civilisations when we have learnt well the local values and principles of functioning in the relevant society.

⁵⁸ T. Nagel. *The View from Nowhere*. New York: Oxford University Press 1986.

⁵⁹ A. Quetelet (see Note 35), p. 6.



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Explaining the Relationship between Social Trust and Value Similarity: The Case of Estonia

1. Introduction

Generalised social trust has been proven to be extremely beneficial both at country and at community level: it is related to many positive outcomes, among them good governance and an effective state^{*1,*2,*3}, economic growth and good economic performance^{*4,*5,*6}, crime reduction^{*7,*8}, and greater overall happiness and well-being^{*9,*10}. These predominantly positive societal outcomes of generalised social trust result from one important quality of trust – it facilitates co-operation between people and among groups of people. Many social theorists have considered trust an important building block of society precisely because society could not function without co-operation. N. Luhmann^{*11}, for example, is one of those authors who emphasises the importance of trust as a facilitator of co-operation and a major contributor to the maintenance of social order at the micro level.

¹ E.M. Uslaner. *The Moral Foundations of Trust*. New York: Cambridge University Press 2002. – DOI: <https://doi.org/10.1017/CBO9780511614934>.

² P.F. Whiteley. Economic growth and social capital. *Political Studies* 48 (2000), pp. 443–466. – DOI: <https://doi.org/10.1111/1467-9248.00269>.

³ S. Zmerli, K. Newton. Social trust and attitudes toward democracy. *Public Opinion Quarterly* 72 (2008), pp. 706–724. – DOI: <https://doi.org/10.1093/poq/nfn054>.

⁴ I. Neira et al. Social capital and growth in European regions. *Regional and Sectoral Economic Studies* 10 (2010) / 2, pp. 19–28.

⁵ E.M. Uslaner (see Note 1).

⁶ P.F. Whiteley (see Note 2).

⁷ S. Akcomak, B. ter Weel. The impact of social capital on crime: Evidence from the Netherlands. *Regional Science and Urban Economics* 42 (2011), pp. 323–340. – DOI: <https://doi.org/10.1016/j.regsciurbeco.2011.09.008>.

⁸ P.F. Whiteley (see Note 2).

⁹ R. Inglehart. Trust, well-being and democracy. In M.E. Warren (ed.). *Democracy and Trust*. Cambridge: Cambridge University Press 1999, pp. 88–120. – DOI: <https://doi.org/10.1017/cbo9780511659959.004>.

¹⁰ R.D. Putnam. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon and Schuster 2000. – DOI: <https://doi.org/10.1145/358916.361990>.

¹¹ N. Luhmann. *Trust and Power*. New York: Wiley 1979.

Generalised social trust can be defined as the willingness to trust others, even total strangers, without the expectation that they will immediately reciprocate that trust or favour^{*12, *13}, or a belief that others will not deliberately cheat or harm us as long as they can avoid doing so^{*14}. Therefore, generalised social trust is foremost a social norm that we learn from our environment: some people become trusting because they experience trustworthy behaviour in their day-to-day life, whereas others, because they live in communities where it is not reasonable to trust others, learn not to trust other people^{*15, *16, *17}. Indeed, it would even be stupid to trust generalised others in places where the levels of generalised social trust are low, since anyone who tries to co-operate in a society lacking social trust will simply be exploited^{*18}. Therefore, it seems that the existence of community- or country-level generalised social trust is a prerequisite for individual-level generalised social trust.

When one considers the extremely positive outcomes from generalised social trust, a question logically follows: why is there more generalised social trust in some societies than in others? Modernisation^{*19}, democracy^{*20}, an accordant high level of political rights and civil liberties, social and economic equality^{*21, *22, *23, *24, *25, *26}, a strong universalistic welfare state^{*27, *28}, a trustworthy state and good governance^{*29, *30, *31, *32, *33}, low corruption in the legal system^{*34, *35, *36}, ethnic homogeneity^{*37, *38}, a Protestant tradition^{*39, *40, *41}, individualistic

¹² R.D. Putnam (see Note 10).

¹³ P.F. Whiteley (see Note 2).

¹⁴ J. Delhey, K. Newton. Predicting cross-national levels of social trust: Global pattern or Nordic exceptionalism? *European Sociological Review* 21 (2005), pp. 311–327. – DOI: <https://doi.org/10.1093/esr/jci022>.

¹⁵ K. Newton. Social trust: Individual and cross-national approaches. *Portuguese Journal of Social Science* 3 (2004), pp. 15–35. – DOI: <https://doi.org/10.1386/pjss.3.1.15/0>.

¹⁶ E. Ostrom, T.K. Ahn. The meaning of social capital and its link to collective action. In G.T. Svendsen, G.L.H. Svendsen (eds). *Handbook of Social Capital: The Troika of Sociology, Political Science and Economics*. Cheltenham, Northampton: Edward Elgar 2009, pp. 17–35. – DOI: <https://doi.org/10.4337/9781848447486.00008>.

¹⁷ B. Rothstein. *Social Traps and the Problem of Trust*. Cambridge: Cambridge University Press 2005. – DOI: <https://doi.org/10.1017/CBO9780511490323>.

¹⁸ P.F. Whiteley (see Note 2).

¹⁹ K. Newton (see Note 15).

²⁰ D. Stolle. The sources of social capital. In M. Hooghe, D. Stolle (eds). *Generating Social Capital: Civil Society and Institutions in Comparative Perspective*. New York: Palgrave Macmillan 2003. – DOI: https://doi.org/10.1057/9781403979544_2.

²¹ C. Bjornskov. Determinants of generalized trust: A cross-country comparison. *Public Choice* 130 (2007), pp. 1–21. – DOI: <https://doi.org/10.1007/s11127-006-9069-1>.

²² H. Jordahl. Economic inequality. In G.T. Svendsen, G.L.H. Svendsen (eds). *Handbook of Social Capital: The Troika of Sociology, Political Science and Economics*. Cheltenham, Northampton: Edward Elgar 2009, pp. 323–336. – DOI: <https://doi.org/10.4337/9781848447486.00031>.

²³ K. Neller. Explaining social trust: What makes people trust their fellow citizens. In H. Meulemann (ed.). *Social Capital in Europe: Similarity of Countries and Diversity of People? Multi-level Analyses of the European Social Survey 2002*. Leiden, Netherlands; Boston: Brill 2008, pp. 103–133. – DOI: <https://doi.org/10.1163/ej.9789004163621.i-328.23>.

²⁴ K. Newton (see Note 15).

²⁵ D. Stolle (see Note 20).

²⁶ E.M. Uslaner (see Note 1).

²⁷ B. Rothstein, D. Stolle. Social capital, impartiality, and the welfare state: An institutional approach. In M. Hooghe, D. Stolle (eds). *Generating Social Capital: Civil Society and Institutions in Comparative Perspective*. Basingstoke: Palgrave Macmillan 2003, pp. 191–209. – DOI: https://doi.org/10.1057/9781403979544_10.

²⁸ D. Stolle (see Note 20).

²⁹ K. Neller (see Note 23).

³⁰ K. Newton (see Note 15).

³¹ B. Rothstein (see Note 17).

³² B. Rothstein, D. Stolle (see Note 27).

³³ D. Stolle (see Note 20).

³⁴ B. Rothstein (see Note 17).

³⁵ B. Rothstein, D. Stolle (see Note 27).

³⁶ E.M. Uslaner (see Note 1).

³⁷ C. Bjornskov (see Note 21).

³⁸ K. Newton (see Note 15).

³⁹ C. Bjornskov (see Note 21).

⁴⁰ K. Neller (see Note 23).

⁴¹ K. Newton (see Note 15).

values^{*42, *43, *44, *45, *46}, and value similarity^{*47, *48, *49} have all been found to be important factors for generating high levels of social trust at country and community level. However, one should not overlook the individual-level differences in levels of generalised social trust within societies, because groups within a given society may differ substantially from each other. Therefore, it is important to consider micro-level predictors of generalised social trust as well, and there is evidence that at the individual level of generalised social trust is influenced by a wide range of socio-economic and contextual factors: income, education, age, and many others^{*50, *51, *52, *53}.

In this article, we explore the relationship between social trust and value similarity further. There is growing evidence that value similarity may foster generalised social trust in society^{*54, *55}. Similarly to M. Siegrist and colleagues^{*56}, K. Newton^{*57} claims that it is easier to trust other people in homogenous societies wherein people know that others share largely similar interests and values. Furthermore, individuals benefit from holding values similar to those of their reference groups because people are likely to experience a sense of well-being when they emphasise the values that prevail in their environment^{*58}.

Because the theorising and some previous findings suggest that people find it easier to trust total strangers if holding the same values as the prevailing values in the relevant society or community, M. Beilmann and L. Lilleoja^{*59} tested whether value similarity indeed fosters generalised social trust in society. There was found to be a stronger positive relationship between value similarity and generalised social trust in countries that have high generalised social trust levels, while in countries with very low levels of generalised social trust the congruity of personal value structure with the country-level value structure tends to be coupled with individuals' lower trustfulness. As generalised social trust is inversely related to perceived corruption^{*60}, it is not surprising that there is also a strong country-level relationship between, on one hand, corruption perceptions levels and, on the other, the amount of correlation between generalised social trust and value similarity (see Figure 1).

⁴² J. Allik, A. Realo. Individualism–collectivism and social capital. *Journal of Cross-Cultural Psychology* 35 (2004), pp. 29–49. – DOI: <https://doi.org/10.1177/0022022103260381>.

⁴³ G. Hofstede. *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations across Nations*, Vol. 2. Beverly Hills, California: Sage 2001.

⁴⁴ A. Realo et al. Radius of trust: Social capital in relation to familism and institutional collectivism. *Journal of Cross-Cultural Psychology* 39 (2008), pp. 447–462. – DOI: <https://doi.org/10.1177/0022022108318096>.

⁴⁵ A. Realo, J. Allik. On the relationship between social capital and individualism–collectivism. *Social and Personality Psychology Compass* 3 (2009), pp. 1–16. – DOI: <https://doi.org/10.1111/j.1751-9004.2009.00226.x>.

⁴⁶ E.M. Uslaner (see Note 1).

⁴⁷ M. Beilmann, L. Lilleoja. Social trust and value similarity: The relationship between social trust and human values in Europe. *Studies of Transition States and Societies* 7 (2015) / 2, pp. 19–30.

⁴⁸ K. Newton (see Note 15).

⁴⁹ M. Siegrist et al. Salient value similarity, social trust, and risk/benefit perception. *Risk Analysis* 20 (2000), pp. 353–362. – DOI: <https://doi.org/10.1111/0272-4332.203034>.

⁵⁰ M. Hooghe et al. The cognitive basis of trust: The relationship between education, cognitive ability, and generalized and political trust. *Intelligence* 40 (2012), pp. 604–613. – DOI: <https://doi.org/10.1016/j.intell.2012.08.006>.

⁵¹ K. Neller (see Note 23).

⁵² R.D. Putnam (see Note 10).

⁵³ R.D. Putnam. *Democracies in Flux: The Evolution of Social Capital in Contemporary Society*. New York: Oxford University Press 2002. – DOI: <https://doi.org/10.1093/0195150899.001.0001>.

⁵⁴ M. Beilmann, L. Lilleoja (see Note 47).

⁵⁵ M. Siegrist et al. (see Note 49).

⁵⁶ *Ibid.*

⁵⁷ K. Newton (see Note 15).

⁵⁸ L. Sagiv, S. Schwartz. Value priorities and subjective well-being: Direct relations and congruity effects. *European Journal of Social Psychology* 30 (2000), pp. 177–198. – DOI: [https://doi.org/10.1002/\(sici\)1099-0992\(200003/04\)30:2<177::aid-ejsp982>3.0.co;2-z](https://doi.org/10.1002/(sici)1099-0992(200003/04)30:2<177::aid-ejsp982>3.0.co;2-z).

⁵⁹ M. Beilmann, L. Lilleoja (see Note 47).

⁶⁰ E.M. Uslaner (see Note 1).

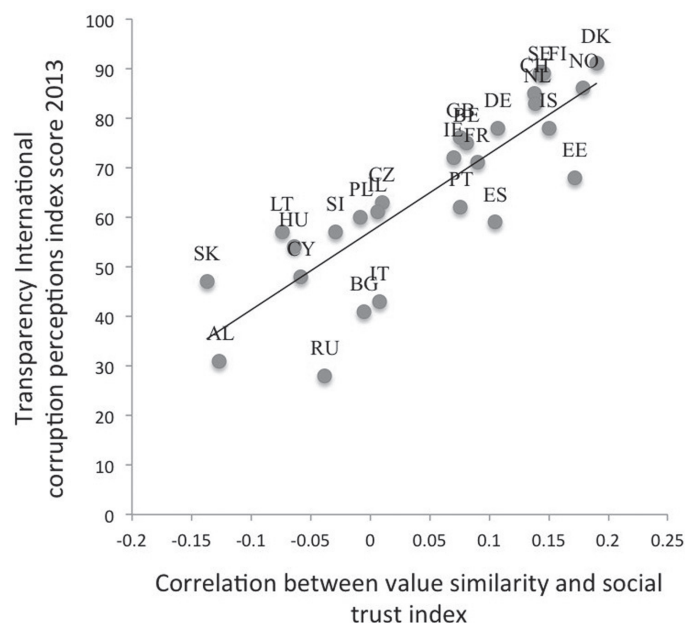


Figure 1. Correlation of generalised social trust and value similarity across countries, plotted against the overall perception of corruption.

Value similarity is more important in generating individual-level generalised social trust in countries where the overall levels of generalised social trust are higher and perceived amounts of corruption are lower. With this article, we aim to test which meso-level indicators could explain this relationship in Estonia, which belongs to the group of countries wherein generalised social trust is high. To this end, we analyse for which groups in Estonian society value similarity is more important in creation of generalised social trust.

2. Method

2.1. The data

European Social Survey data from round 7 that were collected in Estonia in 2014 were used for this research. The European Social Survey, or ESS⁶¹, is an academically driven social survey to map long-term attitudinal and behavioural changes in more than 20 European countries. The ESS provides comparable data for nationally representative samples collected to the highest methodological standards across countries. Answers on generalised social trust and human values were available from 2,051 respondents in Estonia, with females accounting for 59% of participants. Around 63% of the respondents were Estonian-speakers and 37% Russian-speakers. On average, the respondents were 50.3 years old (SD = 19.08) and had completed 13.2 years of full-time education (SD = 3.38). Hence, the survey was representative of all persons aged 16 and over (with no upper age limit) residing in private households. The sample was selected by strict random probability methods at every stage, and respondents were interviewed face-to-face.

Our Social Trust Index was composed of three indicators:

- (1) Trust: 'Would you say that most people can be trusted, or that you can't be too careful in dealing with people?' (0 = 'You can't be too careful' ... 10 = 'Most people can be trusted')
- (2) Honesty: 'Do you think that most people would try to take advantage of you if they got the chance, or would they try to be fair?' (0 = 'Most people would try to take advantage of me' ... 10 = 'Most people would try to be fair')
- (3) Helpfulness: 'Would you say that most of the time people try to be helpful, or that they are mostly looking out for themselves?' (0 = 'People mostly look out for themselves' ... 10 = 'People mostly try to be helpful')

⁶¹ See <http://www.europeansocialsurvey.org/>.

The index computed was based on the average of the standardised scores for these items. The overall standardised alpha of the three-item measure was 0.74, with an average inter-item correlation of 0.589.

2.2. Measurement of value similarity

Our conceptualisation and measurement of value similarity relies on S.H. Schwartz's⁶² conceptualisation of human values. Schwartz has defined values as desirable, trans-situational goals, varying in importance in serving as guiding principles in people's lives. According to his original theory, each individual value in any culture is locatable with respect to 10 universal, motivationally distinct basic values – **hedonism, stimulation, self-direction, security, universalism, benevolence, conformity, tradition, power, and achievement** – which, on the basis of their interrelationships, form a universal circular structure. Similar value types are close to each other, and conflicting values appear on opposite sides of the circle. Pursuing one type of value always results in conflict with types of values opposite it⁶³.

Human values can be measured by means of Schwartz's portrait value questionnaire (PVQ-21), which consists of 21 indicators. To assess the similarity of individuals' value preferences with the central value profile of Estonian society, an individual-level value similarity measure was created in line with the procedure of Beilmann and Lilleoja⁶⁴. For each individual, rank order values for all 21 value indicators were estimated, and correlations with the value hierarchy were then determined, on the basis of the average scores for the Estonian population. The Spearman correlation coefficient for each calculation was used as a value similarity measure for each respondent.

2.3. Other variables

Our Index of Trust in Institutions was computed as a composite score based on the two indicators 'trust in police' and 'trust in the legal system' (0 = 'Do not trust the institution at all' ... 10 = 'Completely trust the institution'). Feelings about income were measured on a four-point scale (1 = 'Living comfortably on present income'; 2 = 'Coping on present income'; 3 = 'Living with difficulty on present income'; 4 = 'Living with great difficulty on present income').

3. Results

Table 1 presents standardised regression coefficients from multiple regression analyses, with generalised social trust as the dependent variable and trust in institutions, the language spoken in the home, the overall feeling about the income, age, gender, individual-level value similarity, and years of education as independent variables.

**Table 1: Standardised regression coefficients
(dependent variable: generalised social trust)**

Trust in institutions	0.32***
Home language (1 = EST; 2 = RUS)	-0.12***
Feeling about the income	-0.12***
Age	0.08***
Gender (1 = male; 2 = female)	0.06**
Value similarity	0.06*
Years of education	0.05*
Adjusted R ²	0.18

*** $p < .001$, ** $p < .01$, * $p < .05$

⁶² S.H. Schwartz. Universals in the content and structure of values: Theoretical advances and empirical tests in 20 countries. In M. Zanna (ed.). *Advances in Experimental Social Psychology* (25). New York: Academic Press 1992, pp. 1–65. – DOI: [https://doi.org/10.1016/s0065-2601\(08\)60281-6](https://doi.org/10.1016/s0065-2601(08)60281-6).

⁶³ S.H. Schwartz. Are there universal aspects in the structure and contents of human values? *Journal of Social Issues* 50 (1994), pp. 19–45. – DOI: <https://doi.org/10.1111/j.1540-4560.1994.tb01196.x>.

⁶⁴ M. Beilmann, L. Lilleoja (see Note 47).

All of the factors tested have a significant relationship with generalised social trust. In line with expectations, the strongest predictor for generalised social trust was the level of confidence held by an individual in the legal institutions (the police and the legal system). In an Estonian context, generalised social trust differs with ethnic group – the Estonian-speaking majority tend to be more trusting than the Russian-speaking minority. People who feel economically secure report higher levels of generalised social trust than do people who are finding it difficult to cope with the present income. The effect of age on generalised social trust is positive; that is, older residents tend to be more trusting. The same is true of women and highly educated respondents. When all of the named variables are included in the model, there exists also a significant effect of value similarity, which means that, irrespective of their socio-economic background, Estonian residents whose value schemes are more similar to the country-level value structure are more trusting.

To depict the effect of value similarity on trustfulness in more detail, the next image (Figure 2) illustrates levels of generalised social trust across the main differentiators – ethnicity and economic coping – while comparing individuals on the basis of the congruity of their personal value structure with the Estonian general value structure.

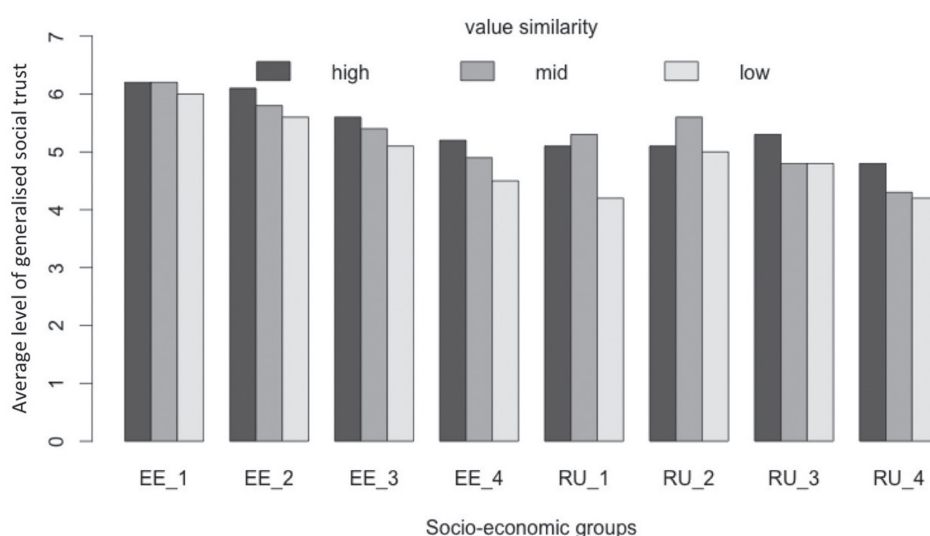


Figure 2. Generalised social trust in relation to ethnicity, feelings about income, and value similarity⁶⁵, where EE = ‘Estonian-speakers’, RU = ‘Russian-speakers’, 1 = ‘Living comfortably on present income’, 2 = ‘Coping on present income’, 3 = ‘Living with difficulty on present income’, and 4 = ‘Living with great difficulty on present income’.

Among Estonian-speakers, the trends are very clear – throughout each economic group, the respondents with greater value similarity are, on average, more trusting than those with less value congruity. At the same time, better economic coping is systematically associated with a higher level of generalised social trust.

In general, the Russian-speakers tend to be less trusting than Estonian-speakers, and for them economic welfare and generalised social trust do not show a linear relationship. In terms of economic coping, the most trusting Russian-speakers are those who ‘cope’ on the present income, whereas individuals who are living comfortably on the present income show a level of generalised social trust similar to that of those who find it difficult to cope with the present income. In a similarity to the ethnic majority, the least trusting are those Russian-speakers for whom coping with the present income is very difficult.

As for value similarity, the least trusting Russian-speakers are the ones with low value congruity and the economically least successful respondents. High value congruity corresponds to a higher level of generalised trust among poorly coping Russian-speakers, but an equivalent relationship is not so clear among economically more successful ones.

⁶⁵ Aggregated value-similarity measure: high = corr. of 0.71 to 1, mid = corr. of 0.41 to 0.7, low = corr. of 0.4 or less.

4. Discussion and conclusions

It has been claimed that people tend to trust those who are more like them and who share similar values^{*66, *67}. Recent results indicate that this is indeed true in high-trust societies but not in countries where overall generalised social trust is low^{*68}. With this article, we aimed to go further toward explaining the relationship between value similarity and generalised social trust on meso level, using Estonia as an example.

Our results suggest that when one controls for differences in socio-economic factors, value similarity remains a significant factor fostering generalised social trust in Estonian society. However, its direct effect is relatively low in comparison with predictors such as trust in the institutions considered, economic well-being, and ethnicity. When we analysed value similarity in the context of these last two variables, some substantive differentiation appeared. There exists a very clear positive relationship between value similarity and generalised social trust among the Estonian-speaking majority but not among the Russian-speaking minority. On one hand, this could be explained by the cultural differences, but when one considers economic circumstances too, these results seem to mirror the problems related to social cohesion. Social and economic equality have been found to be important factors for generating social trust^{*69, *70, *71, *72, *73, *74}, and it seems that the economic problems facing the Russian-speaking minority in Estonia affect their trust in other people more strongly than such problems influence their Estonian-speaking counterparts. If we take into account that generalised social trust is strongly related to trust in state institutions, it seems plausible that the Russian-speaking minority's distrust in state institutions leaves them less trusting of people in general. In that connection, we have to consider differences in culture and in the resulting expectations that the ethnic majority and minority have for state institutions. P. Ehin and L. Talving^{*75} have demonstrated that Estonian- and Russian-speaking people in Estonia have rather different expectations with regard to the functioning of democracy in the country. Estonian-speakers' expectations are related mainly to aspects of procedural justice, while Russian-speakers see social justice much more often as a crucial part of well-functioning democracy. Because expectations of the state taking care of the social and economic welfare of its citizens are an important issue for many members of the Russian-speaking minority, there may result lower rates of trust in state institutions that have fallen short of their hopes for more social and economic justice, and low trust in these institutions could, in turn, result in lower levels of generalised social trust.

In consideration of the most important predictor of generalised social trust, the relationship between generalised social trust and institutional trust is not surprising, because a trustworthy state and good governance^{*76, *77, *78, *79, *80} and, secondly, low corruption in the legal system^{*81, *82, *83} are found to be important factors for creating high levels of generalised social trust at country and community level. B. Rothstein^{*84} has advanced the idea that trustworthy state institutions – especially non-political state institutions

⁶⁶ K. Newton (see Note 15).

⁶⁷ M. Siegrist et al. (see Note 49).

⁶⁸ M. Beilmann, L. Lilleoja (see Note 47).

⁶⁹ C. Bjornskov (see Note 21).

⁷⁰ H. Jordahl (see Note 22).

⁷¹ K. Neller (see Note 23).

⁷² K. Newton (see Note 15).

⁷³ D. Stolle (see Note 20).

⁷⁴ E.M. Uslaner (see Note 1).

⁷⁵ P. Ehin, L. Talving. Demokraatia tähendus ['The meaning of democracy']. In P. Ehin (ed.). *Eesti elanike suhtumise demokraatiasse* ['Estonian residents' attitudes towards democracy']. Tartu, Estonia: Tartu Ülikooli Kirjastus 2014, pp. 12–21 (in Estonian).

⁷⁶ K. Neller (see Note 23).

⁷⁷ K. Newton (see Note 15).

⁷⁸ B. Rothstein (see Note 17).

⁷⁹ B. Rothstein, D. Stolle (see Note 27).

⁸⁰ D. Stolle (see Note 20).

⁸¹ B. Rothstein (see Note 17).

⁸² B. Rothstein, D. Stolle (see Note 27).

⁸³ E.M. Uslaner (see Note 1).

⁸⁴ B. Rothstein (see Note 17).

such as the legal system and police force – play the key role in generating generalised social trust because, when people see that the officials with state institutions treat people equally and are not involved in corruption, a highly visible example is offered that it is reasonable to expect honesty and trustworthiness even from people whom one does not know very well. Corrupt state institutions, on the other hand, are often considered one of the main causes for low levels of generalised social trust, because people learn from these that they can trust people only very selectively^{*85},^{*86}. Therefore, trustworthy state institutions seem to play the key role in building high-trust societies in which people share the values that lead them to treat other people honestly and kindly in general, regardless of whether they belong to the same social groups as those people.

⁸⁵ *Ibid.*

⁸⁶ E.M. Uslander (see Note 1).



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Soziale Werte in der soziologischen und kriminologischen Forschung: Überlegungen zum Begriff und Operationalisierung

1. Einführung

Soziale Werte sind Bestandteil einer Vielzahl von theoretischen Ansätzen. Soziale Werte werden im Allgemeinen als Orientierungsleitlinien definiert, sie sind persönlich und intern, und sie halten die sozialen Gruppen zusammen. Soziale Werte werden von Wertorientierungen, sozialen Normen und Einstellungen unterschieden. Eine Reihe soziologischer und kriminologischer Studien untersuchen die Struktur der sozialen Werte und ihre Bedeutung für abweichendes Verhalten.

Viele theoretische Ansätze und Studien werden in diesem Aufsatz diskutiert. Die Werte und ihre Funktionalität werden unterschiedlich definiert in Abhängigkeit davon, ob sie auf der Makro- oder Mikroebene angesiedelt sind. Neben der Frage der Definition der sozialen Werte wird hier die Antwort auf die zentrale Frage gesucht – wie werden die sozialen Werte operationalisiert? Die Institutionelle Anomietheorie wird hier als Beispiel einer kriminologischen Theorie dargestellt, die beide gesellschaftliche Ebenen verbindet und ein hohes Erklärungspotenzial des menschlichen Handelns den sozialen Werten zuschreibt.

2. Zum Wertbegriff

In seiner Anomietheorie^{*1} spricht *Durkheim* von einem Wertekonzept, das eine doppelte gesellschaftliche Funktion annimmt: Zum Einen regeln die Werte das menschliche Handeln, zum Anderen halten sie die Gesellschaft zusammen bzw. stärken das Kollektivbewusstsein der Gesellschaftsmitglieder.

Max Weber betont die Funktionalität der Werte in der Anleitung des menschlichen Handelns und im Zusammenhalt der Gesellschaft. Zum Wertebereich gehört die Idee der „Nation“, die für gewisse Menschengruppen spezifisch ist und auf dem Solidaritätsempfinden gegenüber anderen Personen ruht. Obwohl das

¹ Durkheim, E. (1992). *Über soziale Arbeitsteilung: Studie über die Organisation höherer Gesellschaften*. Frankfurt a/M.: Suhrkamp.

Solidaritätsgefühl innerhalb einer Gesellschaft unterschiedlich intensiv ist, rückt es die Gruppenmitglieder zusammen und macht sie durch spezifisches Verhalten zu einer „Nation“.^{*2} Ein Übergang von der protestantischen Ethik zum Geist des Kapitalismus sollte nach Weber^{*3} vor allem durch eine Übernahme von der Leistungsmotivation stattfinden. Eine solche Übernahme von Motiven und Werten sei eine Handlung, ein innerliches Tun.

Die meisten soziologischen Theorien sind entweder auf der Mikro- oder Makroebene angesiedelt. *Talcott Parsons* erweiterte die Handlungstheorie zu einer Systemtheorie. Er verband damit beide Ebenen, um kollektive soziale Prozesse ursächlich zu erklären. Parsons entwickelte erstmals auf Basis der Handlungstheorie von Max Weber sein eigenes handlungstheoretisches Konzept, das das Handeln auf der Ebene von Individuen erklären sollte. Der nächste Schritt – bei der Konzipierung einer Systemtheorie – bestand darin, dass das Handeln, vermittelt durch die Situation und über die individuellen Werte und Normen, zu erklären. Auf der Individualebene betrachtete er Werte als Logik der Selektion. Es sollte dabei zwischen Handlungsalternativen und Handlungszielen entschieden werden. Parsons betrachtete die Werte auf der Ebene der Gesellschaft als allgemeingültige Standards und Regeln. Während in späteren Debatten Werte eher als Orientierungsleitlinien verstanden wurden^{*4}, sind die Werte bei Parsons ein Überbegriff.

Während in den theoretischen Konzepten die Werte eine gewisse Funktion haben und an einer bestimmten Stelle im theoretischen Modell angesiedelt sind, geht es in der sozialwissenschaftlichen Werteforschung primär um Dimensionalität und Ausprägung der Werte selbst sowie um den Wertewandel. Um in der weiteren Diskussion die Präzision der Aussagen möglichst hoch zu halten, sollte man solche Begriffe, wie *Werte*, *Wertorientierungen*, *soziale Normen* und *Einstellungen* von einander abgrenzen.

In der sozialen Werteforschung werden Werte und Wertorientierungen oft als Synonyme benutzt und durch einander ersetzt. Die Forscher haben unterschiedliche Vorstellungen vom Verhältnis zwischen Werten und Einstellungen: Einstellungen werden auf Werten aufgebaut; Werte und Einstellungen nehmen eine wechselseitige Beziehung an; Einstellungen gelten als Korrelate und damit als potentielle Indikatoren für Werte.^{*5} Nach Thomas und Znaniecki^{*6} sind Werte und Einstellungen separate Gegenpole und unterscheiden sich in dem Grad der Generalisierung: Während Werte sozial generalisiert sind, sind Einstellungen individualisiert. „By attitude we understand a process of individual consciousness which determines real or possible activity of the individual in the social world. ... The attitude is thus the individual counterpart of the social value; activity, in whatever form, is the bond between them“^{*7}.

Es gibt eine Annahme über relative Selbstständigkeit der Werte und ihren Einfluss auf Bildung von Normen, die durch empirische Tests bestärkt wird.^{*8} Die Werte sind nach Kluckhohn^{*9} ein Konzept, das für eine Person oder eine Gruppe charakteristisch ist und welches die Entscheidung über Handlungsform, -mittel und -ziele beeinflusst. Rokeach unterscheidet in Bezug auf individuelles Verhalten soziale Normen von Werten je nach dem, wie groß ihr sog. Deckungsfeld ist: Während soziale Normen sich auf das Verhalten in speziellen Situationen beschränken, gehen Werte über diese speziellen Situationen hinaus^{*10}. Denkt man in unterschiedlichen gesellschaftlichen Dimensionen (Mikro-Makro), sind dann soziale Normen „normative“, gesellschaftlich institutionalisierte Werte, während Wertorientierungen „individuelle“ und „persönliche“ Werte sind^{*11}.

² Weber, M. (1976). *Wirtschaft und Gesellschaft: Grundriß der verstehenden Soziologie*. Tübingen: Mohr, S. 527 ff.

³ Weber, M. (2006). *Die protestantische Ethik und der Geist des Kapitalismus*. München: Beck.

⁴ z.B. Klages, H., & Kmiecik, P. (Hrsg.) (1979). *Wertewandel und gesellschaftlicher Wandel*. Frankfurt a. Main, New York: Campus-Verlag, S. 14.

⁵ Vgl. Thome, H. (2003). Soziologische Wertforschung: Ein von Niklas Luhman inspirierter Vorschlag für die engere Verknüpfung von Theorie und Empirie. *Zeitschrift für Soziologie*, 32(1), 4-28.

⁶ Thomas, W. I., & Znaniecki, F. (1927). *The Polish peasant in Europe and America*. New York: Alfred A. Knopf.

⁷ Thomas, W. I., & Znaniecki, F. (1927). *The Polish peasant in Europe and America*. New York: Alfred A. Knopf, p. 22.

⁸ Hermann, D. (2003). *Werte und Kriminalität. Konzeption einer allgemeinen Kriminalitätstheorie*. Wiesbaden: Westdeutscher Verlag. – DOI: <https://doi.org/10.1007/978-3-663-11837-4>.

⁹ Kluckhohn, C. (1951). Values and value-orientations in the theory of action. In: Talcott Parsons & Edward A. Shils, *Toward a general theory of action* (S. 388-433). Cambridge: Harvard University Press, p. 395. – DOI: <https://doi.org/10.4159/harvard.9780674863507.c8>.

¹⁰ Vgl. Rokeach, M. (1973). *The nature of human values*. New York: The Free Press, p. 19.

¹¹ Vgl. z.B. Klages, H. (1992). Die gegenwärtige Situation der Wert- und Wertwandelforschung – Probleme und Perspektiven. In Helmut Klages, Hans-Jürgen Hippler & Willi Herbert (Hrsg.), *Werte und Wandel. Ergebnisse und Methoden einer Forschungstradition* (S. 5-39). Frankfurt, New York: Campus Verlag, S. 32.

Außerdem unterscheidet man Werte und Normen anhand ihrer gesellschaftlichen Funktionen. Soziale Normen sind konkrete Vorschriften. Sie übernehmen im Rahmen einer allgemeinen soziologischen Theorie sogar die Bedeutung von sozialen „Verhaltensregelmäßigkeiten, die in Fällen abweichenden Verhaltens durch negative Sanktionen bekräftigt werden“^{*12}. Soziale Normen dienen somit der Regelung des sozialen Lebens, der individuellen Erkenntnis über Gut und Böse. Da Werte das Wünschenswerte bedeuten, können sie nicht institutionell sanktioniert werden. Die gesellschaftlichen Werte dienen einer individuellen Zielsetzung.

3. Entwicklung der Werteforschung: Einzelne Studien und Konzepte

Es gibt mittlerweile eine Unzahl an Wertstudien, obwohl die Werteforschung keine lange Geschichte hat. Viele Studien untersuchen verschiedene Wertekonzepte, die inzwischen eine breite Palette darstellen. Die Werteforschung findet ihren Anfang durch Clyde Kluckhohn^{*13} am Anfang der 1950er Jahre und wurde in den 1970er Jahren durch mehrere Sozialforscher intensiviert. Zwei der wichtigsten Kritikpunkte, die sich auf den Stand der Werteforschung bis Anfang der 1990er Jahre richten, wurden in den nachkommenden Studien zum Teil aufgehoben. Zum einen wurde der theorielose Charakter der Werteforschung kritisiert, der eher als Mangel einer „Einordnung des gegenwärtigen Wertewandels in ein übergreifendes gesellschaftstheoretisches Konzept“ beschrieben wurde.^{*14} Dieser Kritikpunkt trifft spätestens seit Hagan et al.^{*15} nicht mehr zu. Zum anderen wurden methodische Differenzen bei der Operationalisierung und Erfassung von Werten kritisiert^{*16}, die eine Vergleichbarkeit der Untersuchungsergebnisse unmöglich machen.^{*17} Es existieren nach wie vor unterschiedliche Varianten zur Erfassung von Werten, eine Vereinheitlichung der Wertekonzepte hat sich bis jetzt noch nicht ergeben. Es lässt sich zugleich eine allgemeine Tendenz in der Entwicklung der Werteforschung beobachten: Ein Übergang von einem streng hierarchischen zu einem mehrdimensionalen Wertemodell.

Milton Rokeach^{*18} entwickelte einen der ersten empirisch basierten Wertekonzepte. Sein Konzept des Wertesystems beinhaltet zwei Wertdimensionen: instrumentelle (modes of conduct; means-values) und terminelle (end-states of existence; ends-values) Werte. Es gibt einen funktionalen Zusammenhang zwischen den beiden Wertedimensionen. Terminelle Werte sind, im Grunde genommen, „weit entfernte“ Werte oder sogar Ziele, während instrumentelle Werte Mittel zum Erreichen dieser Ziele sind. Zu den terminellen Werten gehören nach Rokeach z.B. komfortables Leben (comfortable life), Gleichheit (equality) und familiäre Sicherheit (family security). Um eigene Ziele zu erreichen, muss man z.B. ambitioniert (ambitious), hilfsbereit (helpful) oder intellektuell (intellectual) sein (instrumentelle Werte). Beide Wertedimensionen werden in zwei theoretische Subdimensionen unterteilt: terminelle – in personelle und soziale Werte; instrumentelle – in moralische Werte und Kompetenzwerte.

Die Werteforschung hat in den 1970er Jahren einen Durchbruch durch die Studien zum gesellschaftlichen Wertewandel von Roland Inglehart^{*19} erlebt. Eine große Rolle spielte dabei die Tatsache, dass es

¹² Popitz, H. (1980). *Die normative Konstruktion von Gesellschaft*. Tübingen: J.C.B. Mohr, p. 21.

¹³ Kluckhohn, C. (1951). Values and value-orientations in the theory of action. In: Talcott Parsons & Edward A. Shils, *Toward a general theory of action* (S. 388-433). Cambridge: Harvard University Press. – DOI: <https://doi.org/10.4159/harvard.9780674863507.c8>.

¹⁴ Böckler, M., Herbert, W., Hippler, H.-J., & Kluck, M. (1991). *Wertewandel und Werteforschung in den 80er Jahren. Forschungs- und Literaturdokumentation*. Bonn: Informationszentrum Sozialwissenschaften.

¹⁵ Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merckens, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>.

¹⁶ Böckler, M., Herbert, W., Hippler, H.-J., & Kluck, M. (1991). *Wertewandel und Werteforschung in den 80er Jahren. Forschungs- und Literaturdokumentation*. Bonn: Informationszentrum Sozialwissenschaften.

¹⁷ Zu den weiteren Kritikpunkten sehe z.B. Klages, H., & Kmiecik, P. (Hrsg.) (1979). *Wertewandel und gesellschaftlicher Wandel*. Frankfurt a. Main, New York: Campus-Verlag, S. 16-17.

¹⁸ Rokeach, M. (1973). *The nature of human values*. New York: The Free Press.

¹⁹ Inglehart, R. (1979). Wertewandel in den westlichen Gesellschaften: Politische Konsequenzen von materialistischen und postmaterialistischen Prioritäten, S. 279-316. In Helmut Klages & Peter Kmiecik (Hrsg.). *Wertewandel und gesellschaftlicher Wandel*. Frankfurt a. Main, New York: Campus-Verlag.

dem Forscher gelungen ist, ein überschaubares Konzept zu entwickeln. Des Weiteren wurde in einer relativ kurzen Zeit ein großer Datensatz gewonnen, der u. a. internationale Vergleiche ermöglichte.^{*20}

Inglehart formulierte zwei Hypothesen^{*21}. Die Mangelhypothese: Die Prioritäten eines Individuums reflektieren seine sozioökonomische Umwelt. Man schätzt jene Dinge subjektiv am höchsten, die verhältnismäßig knapp sind. Die Sozialisationshypothese: Die Werteprioritäten im Erwachsenenalter hängen von der erlebten sozioökonomischen Umwelt in der Jugend ab. Wäre man in der Situation der finanziellen Not aufgewachsen, würde man später eher materielle Dinge schätzen bzw. materialistische Wertvorstellungen haben. Eine beträchtliche zeitliche Verzögerung spielt hierbei eine Rolle.

Um seine Mangelhypothese zu prüfen, formulierte Inglehart Items zur Messung von Wertprioritäten. Diese Items basieren auf dem Modell der Bedürfnishierarchie von Maslow^{*22}. Dabei wurden nur physische Bedürfnisse (Versorgungs- und Sicherheitsbedürfnisse) sowie soziale Bedürfnisse und Selbstverwirklichung (ästhetisch, intellektuell sowie Zugehörigkeit und Achtung) benutzt. Die physischen Bedürfnisse bilden eine Gruppe der sog. materialistischen Wertpräferenzen. Die sozialen Bedürfnisse und Selbstverwirklichung bilden die Gruppe der postmaterialistischen Wertpräferenzen. Eine Kritik von Klages^{*23} an das von Inglehart entwickelte Messinstrument bezweifelt seine Angemessenheit zur Messung von Werten. Der Grund zur Auswahl gerade dieser beiden Dimensionen bleibt ungewiss. Die Palette physischer und sozialer Bedürfnisse ist nach Maslow deutlich breiter als in der Darstellung von Inglehart.

Die Werteforschung zielt bei Inglehart im Sinne der Sozialisationshypothese auf Wertewandel in unterschiedlichen Regionen. Der Wertewandel findet dort durch den Austausch der älteren durch jüngere Generationen statt. Da die primäre Sozialisation bei den verschiedenen Generationen unterschiedlich verlief, sollten sich die Generationsvertreter in ihren Wertprioritäten unterscheiden: Die jüngere Generationen sollte eher postmaterialistisch orientiert sein.

Harry Triandis^{*24} unterscheidet in seinem Konzept des *Individualismus-Kollektivismus-Syndrom* zwischen zwei Dimensionen des Individualismus und zwei des Kollektivismus: „The horizontal types refer to emphasis on equality and the perception of people having more or less the same self, as is typically found in homogeneous cultures. The vertical types refer to acceptance of inequality. Vertical individualists are competitive and try to be on top of the social structure. Vertical collectivists are willing to sacrifice themselves for the benefit of the collective.“ Die Zugehörigkeit zu diesen Dimensionen wird durch zwei Kriterien bestimmt: Zum ersten das individuelle Maß an Individualismus vs. Kollektivismus, und zum zweiten das individuelle Maß an Gleichheit vs. Ungleichheit.

Diese kulturelle Mehrdimensionalität entsteht nach Triandis aus der Natur der Gesellschaften: Die kollektivistischen Gesellschaften sind nicht homogen kollektivistisch und individualistische Gesellschaften sind nicht homogen individualistisch. Man unterscheidet zwischen vier Typen von Kulturen: Horizontale Individualisten streben nach Unabhängigkeit und tun „ihre eigenen Sachen“; vertikale Individualisten tun „ihre eigenen Sachen“ und wollen „die Besten“ sein; horizontale Kollektivistinnen verschmelzen sich mit der Gruppe und vertikale Kollektivistinnen unterwerfen sich den Autoritäten der Gruppe und sind bereit, sich selbst für die Interessen der Gruppe zu opfern.^{*25}

Shalom Schwartz entwickelte seit 1980er Jahren die Idee der *Theorie des individuellen Wertesystems*, die unterstellt, ähnliche Wertstruktur in allen Kulturen zu finden.^{*26} Schwarz suchte nach einer univer-

²⁰ Daten über Werteinstellungen wurden seit 1981 im *World Value Survey* (<http://www.worldvaluessurvey.org>) in mehreren Ländern erhoben.

²¹ Inglehart, R. (1979). Wertewandel in den westlichen Gesellschaften: Politische Konsequenzen von materialistischen und postmaterialistischen Prioritäten, S. 279-316. In Helmut Klages & Peter Kmiecik (Hrsg.), *Wertewandel und gesellschaftlicher Wandel*. Frankfurt a. Main, New York: Campus-Verlag.

²² Maslow, A. (1981). *Motivation und Persönlichkeit*. Reinbek b. Hamburg: Rowohlt Taschenbuch Verlag.

²³ Klages, H. (1992). Die gegenwärtige Situation der Wert- und Wertwandelforschung – Probleme und Perspektiven. In Helmut Klages, Hans-Jürgen Hippler & Willi Herbert (Hrsg.), *Werte und Wandel. Ergebnisse und Methoden einer Forschungstradition* (S. 5-39). Frankfurt, New York: Campus Verlag, S. 32.

²⁴ Triandis, H. C. (1995). *Individualism and Collectivism*. Boulder [u. a.]: Westview Press.

²⁵ Triandis, H. C. (2001). Individualism-Collectivism and Personality. *Journal of Personality*, 69(6), 907-924. (p. 910). – DOI: <https://doi.org/10.1111/1467-6494.696169>.

²⁶ Schwartz, S. H. (1992). Universals in the content and structure of values: theoretical advances and empirical tests in 20 countries. *Advances in Experimental Social Psychology*, 25, 1-65. – DOI: [https://doi.org/10.1016/s0065-2601\(08\)60281-6](https://doi.org/10.1016/s0065-2601(08)60281-6); Schwartz, S. H., & Bilsky, W. (1987). Toward a universal psychological structure of human values. *Journal of Personality and Social Psychology*, 53(3), 550-562. – DOI: <https://doi.org/10.1037//0022-3514.53.3.550>; Schwartz, S. H., Melech, G., Lehmann, A., Burgess, S., Harris, M., & Owens, V. (2001). Extending the cross-cultural validity of the theory of basic human

sellen Wertstruktur. Danach sollten alle Menschen die gleichen Werte haben. Erst die verschieden starken Ausprägungen dieser Werte würden den Unterschied machen. Wichtige Grundannahmen sind: Erstens, die Werte repräsentieren motivationale Ziele (motivational goal); zweitens, die Art der motivationalen Ziele macht eine inhaltliche Trennung der Werte möglich.^{*27} Die Werte, die ein gemeinsames Ziel repräsentieren, können zu einem Wertetyp zusammengefasst werden. Die folgenden zehn Wertetypen wurden extrahiert: self-direction, stimulation, hedonism, achievement, power, security, conformity, tradition, benevolence und universalism. Die Theorie des individuellen Wertesystems von Schwartz wird seit vielen Jahren im Rahmen des European Social Survey untersucht. Die Studie ist als eine Zeitreihenanalyse mit Zwei-Jahres Abständen angelegt worden und wird in 20 Ländern durchgeführt.

Der von Helmut Klages^{*28} entwickelte Ansatz ist als *Konzept der Wertesynthese* bekannt. Klages unterscheidet zwei theoretische Wertedimensionen, die in einer Wertesynthese miteinander verknüpft sind. Das sind zum einen Pflicht- und Akzeptanzwerte und zum anderen Selbstentfaltungswerte, die zweite Dimension besteht aus zwei Subdimensionen – hedonistisch-materialistische (oder hedonistisch-individualistische) und idealistische Selbstentfaltung.^{*29}

Klages entwickelte einen Trend zur Wertesynthese – „einer Vereinigung gegensätzlich erscheinender Werte“.^{*30} Die Idee einer Wertesynthese beinhaltet ein gemeinsames Auftreten von sog. traditionellen und modernen Werten und nicht deren Abgrenzung voneinander.

Diese Idee bietet die Grundlage für einen Persönlichkeitstypus, der zugleich traditionelle und moderne Werte anerkennt und als „aktiver Realist“ bezeichnet wird. Vier andere Persönlichkeitstypen sind: ordnungsliebende Konventionalisten (traditionelle), perspektivenlose Resignierte, nonkonforme Idealisten und hedonistische Materialisten.

Es hat sich eine Diskussion um die Anwendung des Konzeptes der Wertesynthese gegeben.^{*31} Zum einen, das Konzeptmodell wurde kritisiert, in Hinsicht darauf, dass die Werte hierarchisch geordnet werden müssen (argumentiert u. a. mit Modellen von Rokeach und Inglehart). Zum anderen, „aktive Realisten“ sollten nicht dem beschriebenen Muster einer Wertesynthese entsprechen. Auf diese Kritik sind Helmut Thome^{*32} sowie Helmut Klages und Thomas Gensicke^{*33} ausreichend eingegangen.

Jüri Allik und Anu Realo^{*34} entwickelten das *ESTCOL-Konzept* (*Estonian Three-Dimensional Collectivism Scale*). Die Autoren^{*35} unterscheiden drei Subdimensionen von Kollektivismus, die sich auf drei soziale Bereiche, wie Familie, Peers und Gesellschaft beziehen. Zum familiären Kreis gehören Beziehungen zwischen Familienmitgliedern und ihren Lebensgefährten. Zum Bereich der Gleichaltrigen (Peers) zählen intermediäre Beziehungen zwischen Nachbarn, Mitschülern und Arbeitskollegen. Der gesellschaftliche Bereich kommt durch ferne Beziehungen zwischen Person und einer größeren sozialen Gruppe oder Institution zum Ausdruck. Das ESTCOL-Konzept wird als ein hierarchisches Konzept mit mehreren

values with a different method of measurement. *Journal of Cross-Cultural Psychology*, 32(5), 519-542. – DOI: <https://doi.org/10.1177/0022022101032005001>.

²⁷ Schwartz, S. H., & Sagiv, L. (1995). Identifying culture-specifics in the content and structure of values. *Journal of Cross-Cultural Psychology*, 26(1), 92-116. (S. 93-94). – DOI: <https://doi.org/10.1177/0022022195261007>.

²⁸ z.B. Klages, H. (1985). *Wertorientierungen im Wandel: Rückblick, Gegenwartsanalyse, Prognosen*. Frankfurt [u. a.]: Campus.

²⁹ z.B. Klages, H. (1985). *Wertorientierungen im Wandel: Rückblick, Gegenwartsanalyse, Prognosen*. Frankfurt [u. a.]: Campus, S. 18.

³⁰ Klages, H. (2001). Brauchen wir eine Rückkehr zu traditionellen Werten? *Aus Politik und Zeitgeschichte*, B 29, 7-14.

³¹ Klages, H. (2001). Brauchen wir eine Rückkehr zu traditionellen Werten? *Aus Politik und Zeitgeschichte*, B 29, 7-14; Roßteutscher, S. (2004). Von Realisten und Konformisten - wieder die Theorie der Wertesynthese. *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 56(3), 407-432. – DOI: <https://doi.org/10.1007/s11577-004-0072-6>; Thome, H. (2005b). "Wertesynthese": ein unsinniges Konzept? *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 57(2), 333-341. – DOI: <https://doi.org/10.1007/s11577-005-0153-1>; Klages, H., & Gensicke, T. (2006). Wertesynthese - funktional oder disfunktional? *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 58(2), 332-351. – DOI: <https://doi.org/10.1007/s11575-006-0058-x>.

³² Thome, H. (2005b). "Wertesynthese": ein unsinniges Konzept? *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 57(2), 333-341. – DOI: <https://doi.org/10.1007/s11577-005-0153-1>.

³³ Klages, H., & Gensicke, T. (2006). Wertesynthese – funktional oder disfunktional? *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 58(2), 332-351. – DOI: <https://doi.org/10.1007/s11575-006-0058-x>.

³⁴ Allik, J., & Realo, A. (1996). The hierarchical nature of individualism-collectivism: Comments on Matsumoto et al. *Culture & Psychology*, 2(1), 109-117. – DOI: <https://doi.org/10.1177/1354067x9621006>.

³⁵ Realo, A., Allik, J., & Vadi, M. (1997). The hierarchical structure of collectivism. *Journal of Research in Personality*, 31, 93-116. – DOI: <https://doi.org/10.1006/jrpe.1997.2170>.

untergeordneten Komponenten verstanden.^{*36} Das hierarchische Schema schließt die absolute Unabhängigkeit unterschiedlicher Subdimensionen des Kollektivismus aus. Diese Dreidimensionalität unterstellt, dass kollektivistische Einstellungen bei Individuen unterschiedlich stark ausgeprägt werden können, je nachdem um Beziehungen in welcher sozialen Gruppe (Familie, Peers oder Gesellschaft) es sich handelt. Dies gilt sowohl für Individuen als auch für größere soziale Einheiten bis auf die Gesellschaften.

4. Soziologische Wertestudien

4.1. Individualismus – Kollektivismus

In vielen Studien werden neben Individualismus andere Dimensionen, wie Leistungs- und Konkurrenzdenken oder Streben nach Erfolg, untersucht. Green, Deschamps & Páez^{*37} stellten in einer Studie zu Individualismus und Kollektivismus fest, dass Konkurrenzdenken kein eindeutig typisches Merkmal einer individualistischen Gesellschaft ist. Die Autoren zeigen anhand der Daten aus 20 Ländern, dass das Konkurrenzdenken sowohl bei ausgeprägtem Individualismus als auch bei Kollektivismus vorhanden ist. Dabei gab es das sog. selbstsichere Konkurrenzdenken häufiger in ganz armen Ländern und den sog. gruppenabhängigen Konkurrenzdenken in weniger wohlhabenden Ländern des Lateinamerikas. Die Dominanz der konkurrierenden Idee in an sich kollektivistischen Ländern wird so interpretiert, dass Konkurrenzdenken nicht ausschließlich durch Individuen sondern auch durch größere Gesellschaften motiviert werden mag.^{*38} Weitere Studien^{*39} könnten keinen signifikanten Zusammenhang zwischen Individualismus und Konkurrenzdenken nachweisen. Individualismus und Kollektivismus wurden hier nach dem Konzept von Triandis^{*40} als horizontale und vertikale Typen gemessen: Der horizontale Aspekt betont die Gleichheit der Teilnehmer einer Gruppe, während der vertikale Aspekt die Hierarchie und Konkurrenz hervorhebt.

4.2. Komplexere Modelle

In einer früheren Studie von Hagan u. a.^{*41} wurden in vier ost- und westdeutschen Städten knapp 2000 Jugendliche im Alter von 13-16 Jahren (7. bis 10. Jahrgangsstufe) an Schulen befragt. Anschließend wurden in einem Modell zur Erklärung von Gruppendelinquenz u. a. Effekte des hierarchischen Selbstinteresses, der anomischen Amoralität und des Ethnozentrismus untersucht. Das latente Konstrukt „Hierarchisches Selbstinteresse“ wurde über Dimensionen „Konkurrenzdenken“ (competitiveness), „Leistungsorientierung“ (success orientation) und „Individualismus“ (individualism) erfasst.

Das Konzept des *hierarchischen Selbstinteresses* (HSI) wurde von Hagan u. a.^{*42} als Erweiterung seiner Power-Control Theory of Gender and Delinquency entwickelt.^{*43} „Prinzipien des hierarchischen Selbstinteresses beschreiben eine hierarchische Weltsicht, denn Ziel des Wettbewerbs ist es, eine höhere Position

³⁶ Allik, J., & Realo, A. (1996). The hierarchical nature of individualism-collectivism: Comments on Matsumoto et al. *Culture & Psychology*, 2(1), 109-117. – DOI: <https://doi.org/10.1177/1354067x9621006>.

³⁷ Green, E. G. T., Deschamps, J.-C., & Páez, D. (2005). Variation of individualism and collectivism within and between 20 countries: A typological analysis. *Journal of Cross-Cultural Psychology*, 36(3), 321-339. – DOI: <https://doi.org/10.1177/0022022104273654>.

³⁸ Green, E. G. T., Deschamps, J.-C., & Páez, D. (2005). Variation of individualism and collectivism within and between 20 countries: A typological analysis. *Journal of Cross-Cultural Psychology*, 36(3), 321-339. (p. 334). – DOI: <https://doi.org/10.1177/0022022104273654>.

³⁹ Green E. G. T. (2005). Individualism in cross-cultural psychology: separating self-reliance and success orientation. *International Review of Social Psychology* 18(1), 11-34.

⁴⁰ Triandis, H. C. (1995). *Individualism and Collectivism*. Boulder [u.a.]: Westview Press.

⁴¹ Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merken, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>.

⁴² Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merken, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>.

⁴³ Hagan, J., Gillis, A. R., & Simpson, J. (1985). The class structure of gender and delinquency: Toward a power-control theory of common delinquent behavior. *American Journal of Sociology*, 90(6), 1151-1178. – DOI: <https://doi.org/10.1086/228206>; Hagan, J., Simpson, J., & Gillis, A. R. (1987). Class in the household: A power-control theory of gender and delinquency. *American Journal of Sociology*, 92(4), 788-816. – DOI: <https://doi.org/10.1086/228583>.

innerhalb einer expliziten oder impliziten (Markt-)Hierarchie zu erlangen“.⁴⁴ Das Konstrukt des HSI beinhaltet Ideologien der Marktgesellschaften, die Dominanz und Ellenbogenmentalität erfordern.

Die HSI-Skala wurde ursprünglich als ein dreidimensionales Konstrukt entwickelt und in späteren Studien mit einer vierten Dimension „Machiavellismus“⁴⁵ ergänzt.

Das Hierarchische Selbstinteresse lässt sich nicht eindeutig in soziologische Wertkonzepte einordnen. „Eine Kategorisierung der HSI-Wertorientierungen nach der Unterscheidung in terminelle und instrumentelle Werte nach Rokeach“⁴⁶ ist wenig sinnvoll, da die Dimensionen des HSI sowohl auf instrumentelle Mittel verweisen, als auch Werte i.S. von Zielen in sich darstellen. Im Sinne der Schwartzschen Wertetheorie ist das Hierarchische Selbstinteresse der Dimension der Selbststärkung zuzuordnen, zu der Macht- und Leistungswerte gehören (Schwartz, 1992)⁴⁷. Im Vergleich zum Konzept der Wertesynthese von Klages⁴⁸ bezieht sich das HSI-Konzept nur auf die individuelle Ebene und hat keinen Bezug auf die Gesellschaft.

Dimension „Individualismus“ des latenten Konstrukts hierarchisches Selbstinteresse bestand in allen vorliegenden Studien⁴⁹ aus drei Items der Individualismus-Kollektivismus-Skala von Hui und Triandis⁵⁰ und geht auf das Individualismus-Kollektivismus-Konzept von Hofstede⁵¹ zurück. Der Individualismus wird hier als Streben von Individuen nach Unabhängigkeit von Gruppen, Orientierung auf Selbstbestimmung, eigene Bedürfnisse und Ressourcen sowie Durchsetzung individueller Interessen verstanden. Die anomische Amoralität ist in modernen Marktgesellschaften ein weiterer Wert, eine logische Nebenerscheinung der tiefen Tradition des hierarchischen Selbstinteresses. Die Marktgesellschaften setzen in dieser Hierarchie das Ziel des materiellen Erfolgs über dem Rechtsstaat und freie Neudefinitionen des Rechts werden gewürdigt.⁵²

5. Werteforschung in der Kriminologie

Die soziologische Werteforschung hat sich in erster Linie mit dem Wertediskurs befasst. Für die kriminologische Forschung ist die Frage nach Erklärungspotential der Werte für menschliches Handeln, näher für individuelles delinquentes Verhalten, von besonderer Bedeutung.

Die empirische Überprüfung der anomietheoretischen Annahmen Durkheims hat sich praktisch nur auf eine pathologische Entwicklungsform der Gesellschaft – die Unterregulation (oder Anomie) – beschränkt. Eine Prüfung der „klassischen“ Anomietheorie in den 1960er Jahren erfolgte durch McClosky und Schaar⁵³ mit einer Neun-Items-Batterie. Die Durkheimsche Theorie der sozialen Ordnung wurde u. a. durch Operationalisierung von Anomie und als Spezialfall von schulischer Anomie getestet.⁵⁴

⁴⁴ Hadjar, A. (2004). *Ellenbogenmentalität und Fremdenfeindlichkeit bei Jugendlichen: Die Rolle des Hierarchischen Selbstinteresses*. Wiesbaden: Verlag für Sozialwissenschaften. (S. 89). – DOI: <https://doi.org/10.1007/978-3-322-80537-9>.

⁴⁵ Christie, R. (1970). Scale construction. In Richard Christie & Florence L. Geis (Hrsg.), *Studies in Machiavellianism* (S. 10-34). New York [u.a.]: Academic Press.. – DOI: <https://doi.org/10.1016/c2013-0-10497-7>.

⁴⁶ Rokeach, M. (1973). *The nature of human values*. New York: The Free Press.

⁴⁷ Hadjar, A. (2004). *Ellenbogenmentalität und Fremdenfeindlichkeit bei Jugendlichen: Die Rolle des Hierarchischen Selbstinteresses*. Wiesbaden: Verlag für Sozialwissenschaften. (S. 90). – DOI: <https://doi.org/10.1007/978-3-322-80537-9>.

⁴⁸ Klages, H. (1985). *Wertorientierungen im Wandel: Rückblick, Gegenwartsanalyse, Prognosen*. Frankfurt [u. a.]: Campus.

⁴⁹ Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merckens, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>; Hadjar, A. (2004). *Ellenbogenmentalität und Fremdenfeindlichkeit bei Jugendlichen: Die Rolle des Hierarchischen Selbstinteresses*. Wiesbaden: Verlag für Sozialwissenschaften. – DOI: <https://doi.org/10.1007/978-3-322-80537-9>; Baier, D., & Hadjar, A. (2005). Alter Wein in neuen Schläuchen? Gemeinsamkeiten und Unterschiede zwischen Autoritarismus, sozialer Dominanzorientierung und hierarchischem Selbstinteresse. *Zeitschrift für Politische Psychologie*, 13(1/2), 7-29.

⁵⁰ Hui C. H., & Triandis, H. C. (1986). Individualism-collectivism: A study of cross-cultural researchers. *Journal of Cross-Cultural Psychology*, 17(2), 225-248. – DOI: <https://doi.org/10.1177/0022002186017002006>; Hui, C. H. (1988). Measurement of individualism-collectivism. *Journal of Research in Personality*, 22, 17-36. – DOI: [https://doi.org/10.1016/0092-6566\(88\)90022-0](https://doi.org/10.1016/0092-6566(88)90022-0).

⁵¹ Hofstede, G. (1980). *Culture's consequences: International differences in work-related values*. Beverly Hills: Sage.

⁵² Vgl. Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merckens, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. (pp. 318-319). – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>.

⁵³ McClosky, H., & Schaar, J. H. (1965). Psychological dimensions of anomy. *American Sociological Review*, 30(1), 14-40. – DOI: <https://doi.org/10.2307/2091771>.

⁵⁴ Thorlindsson, T., & Bernburg, J. G. (2004). Durkheim's theory of social order and deviance: a multi-level test. *European Sociological Review*, 20(4), 271-285. – DOI: <https://doi.org/10.1093/esr/jch025>.

5.1. Institutionelle Anomietheorie

Im Zuge der neuesten gesellschaftlichen Entwicklungen mit einer immer stärker ausgeprägten Dominanz des ökonomischen Sektors über allen anderen sozialen Bereichen, einer wachsenden Individualisierung und sinkender Moral scheint ein moderner anomietheoretischer Ansatz von Messner und Rosenfeld^{*55} eine gute Erklärung des delinquenten Verhaltens liefern zu können. Die *Institutionelle Anomietheorie* (IAT) geht davon aus, dass die Balance gesellschaftlicher Institutionen entscheidend für das Ausmaß und die Art der Kriminalitätsbelastung einer Gesellschaft ist.^{*56} Kapitalistische Marktwirtschaften, in welchen Ökonomie alle anderen Institutionen dominiert, haben eine starke anomische Tendenz, die zu einer allgemeinen Schwächung der regulierenden Kraft der grundlegenden Werte und Normen führt.^{*57}

Die IAT setzt in der Situation einer institutionellen Imbalance zugunsten der Ökonomie gegenüber der nicht-ökonomischen Institutionen, wie Kultur, Bildung und Familie, eine höhere Wahrscheinlichkeit voraus, dass die moralische Beurteilung des menschlichen Verhaltens bei Individuen nachlässt. In seinem Hintergrund stehen spezifische Wertorientierungen: Ungezügelter Bestrebungen nach Profit treffen in der Gesellschaft auf positive Bewertungen.

Sozialstrukturelle Merkmale schlagen sich auf der Ebene individueller Einstellungen sowie in Wert- und Normorientierungen nieder, die im Falle einer institutionellen Imbalance zu einer erhöhten Bereitschaft von strafrechtlich relevantem Verhalten beitragen. Die IAT erlaubt es – je nach Art der Imbalance der gesellschaftlichen Institutionen – Vorhersagen nicht nur zum Umfang, sondern auch zur Struktur der Kriminalität zu machen.

Eine Dominanz der Ökonomie mit herrschenden Wettbewerbsorientierungen und Streben nach Profit sollte zu einem häufigeren Auftreten von bestimmten normabweichenden Verhaltensformen, wie Eigentums- und Profit motivierte Gewaltdelikte, beitragen. Dieser Zusammenhang wird durch individualistische Wertorientierungen in ihrer unmoralischen Form vermittelt. Dominieren in der Gesellschaft zivile Institutionen, wie Familie oder Religion, ist mit einer starken informellen sozialen Kontrolle, unmäßiger Moralität sowie einer Unduldsamkeit gegenüber Fremden und Abweichenden zu rechnen. Solche Gesellschaft würde man als eine kollektivistische Gesellschaft bezeichnen, für die höhere Raten von Tötungsdelikten, aber auch Hasskriminalität und eine stark ausgeprägte Selbstjustiz typisch sind. In einer solchen Gesellschaft sollten traditionelle wie auch regressive kollektivistische Wertorientierungen stärker ausgeprägt sein.

5.2. Überprüfung der IAT

Aus einer Vielzahl von empirischen Studien zu IAT^{*58} werden im Weiteren beispielhaft die Ergebnisse einer Studie von Karstedt und Farrel^{*59} beschrieben. Diese Studie wurde im Jahr 2002 anhand vom selbstentwickelten Messinstrument und mit Hilfe großer Umfrageinstitute in West- und Ostdeutschland sowie in England und Wales durchgeführt. Drei Strukturgleichungsmodelle untersuchten institutionelle Anomie und ihren Einfluss auf Intentionen zum Begehen krimineller Handlungen, sowie Effekte von Wahrnehmung von ökonomischen Veränderungen (perceptions of economic change), unbeschränktes Gewinnstreben (unrestrained profit motives), Legitimität des Marktes (legitimacy of markets), Selbstinteresse (self-interestedness) und Werte des Gemeinwohls (commonwealth values).

⁵⁵ Messner, S. F., & Rosenfeld, R. (1994). *Crime and the American dream*. Belmont: Wadsworth Publishing Company; Messner, S. F., & Rosenfeld, R. (1997). Political restraint of the market and levels of criminal homicide: A cross-national application of institutional-anomie theory. *Social Forces*, 75(4), 1393-1416. – DOI: <https://doi.org/10.2307/2580676>.

⁵⁶ Messner, S. F., & Rosenfeld, R. (2001). An institutional-anomie theory of crime. In R. Paternoster & R. Bachman (Eds.), *Explaining criminals and crime* (pp. 151-160). Los Angeles, CA: Roxbury, p. 153.

⁵⁷ Messner, S. F., & Rosenfeld, R. (2001). An institutional-anomie theory of crime. In R. Paternoster & R. Bachman (Eds.), *Explaining criminals and crime* (pp. 151-160). Los Angeles, CA: Roxbury, p. 153.

⁵⁸ Z.B. Cullen, J. B., Parboteeah, K. P., & Hoegl, M. (2004). Cross-national differences in managers willingness to justify ethically suspect behaviors - a test of institutional anomie theory. *Academy of Management Journal*, 47, 411-421. – DOI: <https://doi.org/10.2307/20159590>; Muftic, L. R. (2006). Advancing institutional anomie theory: A microlevel examination connecting culture, institutions, and deviance. *International Journal of Offender Therapy and Comparative Criminology*, 50(6), 630-653. – DOI: <https://doi.org/10.1177/0306624x06287284>.

⁵⁹ Karstedt, S., & Farrall, S. (2006). The moral economy of everyday crime. *British Journal of Criminology*, 46, 1011-1036. – DOI: <https://doi.org/10.1093/bjc/azl082>.

Der Einflusseffekt vom Selbstinteresse war am größten von allen erklärenden Variablen in allen drei Ländern. Die Selbstinteresse-Items stammen aus zwei Skalen – aus der Egoismus-Skala von Weigel et al.⁶⁰ und Machiavellismus-Skala des Konstrukts des hierarchischen Selbstinteresses von Hagan et al.⁶¹. Die Analyse erfolgte auf der Individualebene. Die untersuchten Modelle zeigten im Allgemeinen: (1) die Befragten mit höherem Selbstinteresse sind eher misstrauisch gegenüber den Groß- und Kleinbetrieben; (2) sie haben mehr Angst in den wirtschaftlichen Beziehungen viktimisiert zu werden; (3) sie haben eher zynische Einstellungen gegenüber den Regeln. Die Werte des Gemeinwohls, die soziale Solidarität und die Gemeinsamkeit sind grundlegende Aspekte für die „Marktbürgerschaft“ und hemmen die Anomie des Marktes. In beiden bewiesenen Marktwirtschaften – England und Wales und Westdeutschland – mit alten funktionierenden demokratischen Systemen, zählen bürgerschaftliche Werte, trotz Egoismus und ungezügelterm Streben nach Profit.

5.3. Theoretische Überlegungen der empirischen Werteerfassung

Die gesellschaftliche Formation ist kein stabiles Merkmal. Angenommen, dass sich seit der Neuzeit alle Gesellschaften in einem ständigen Individualisierungsprozess befinden, sollten sich innerhalb einer Gesellschaft individualistische wie auch kollektivistische Merkmale finden. Der Unterschied zwischen Gesellschaften sollte dann lediglich an dem Grad liegen, wie stark die einen oder anderen Merkmale ausgeprägt sind.

Ausgehend von der Durkheimschen Analyse-Idee in der Interpretation von Thome⁶² bilden Dimensionen der Integration und der Regulation einen strukturellen Raum zum Verstehen von individualistischen bzw. kollektivistischen Merkmalen der sozialen Systeme. Das Durkheimsche Analyse-Schema bildet somit zwei orthogonal aufeinander stehende Achsen: Der „gesunde“ Individualisierungsprozess wird durch Integration und Übergang vom traditionellen Kollektivismus zum moralischen Individualismus geprägt. Die drei pathologischen Entwicklungsformen werden vom Kollektivbewusstsein (geteilten Werten) beeinflusst und werden als regressiver Kollektivismus (Überregulation), egoistischer Individualismus und Anomie (Unterregulation) bezeichnet.

Da die gesellschaftliche Entwicklung zum einen ein ständiger Prozess ist und zum anderen gleichzeitig Ausprägungen unterschiedlicher pathologischer Formen aufweisen kann, kann dieses Analyse-Schema in solcher Form nur bedingt benutzt werden. Angelehnt an dieses Schema kann ein Werte-Modell zur Erklärung delinquenten Verhaltens im Sinne der institutionellen Anomietheorie entwickelt werden.

Davon ausgehend, dass kollektivistische und individualistische Wertorientierungen keine Gegenpole innerhalb einer Gesellschaft darstellen, sollten sie separat erfasst werden. Ihre Ausprägungen sollten von gar nicht kollektivistisch bzw. individualistisch bis sehr kollektivistisch bzw. individualistisch reichen. Denkt man schematisch, kann die individualistische Haltung durch eine Mehrzahl von autonomen Individuen dargestellt werden. Diese verhalten sich nach ihren eigenen Prinzipien, nutzen ihre eigenen Ressourcen, glauben, dass Erfolg nur in ihrer eigenen Hand liegt und sind souverän und tolerant gegenüber Meinungen anderer. Die Bindungen an soziale Gruppen sind bei Individualisten schwach, und einzelne Meinungen sind wichtiger als die Meinung der Gruppe.

Eine kollektivistische Haltung kann als die Mehrzahl bedeutsamer ein- oder beidseitig abhängigen Beziehungen dargestellt werden. Diese basieren auf Tradition und beziehen sich nicht zuletzt auf Familie, wie auch auf Gemeinschaft und Nation. Bei den Kollektivisten besteht ein Bedürfnis nach Autoritäten und klarer Hierarchie. Die Wichtigkeit der Zugehörigkeit zu sozialen Gruppen zeigt sich durch das Entstehen stabiler sozialer Netzwerke, bis auf Vetternwirtschaft und ausgeprägte Fremdenfeindlichkeit und Nationalismus.

Innerhalb der Dimensionen „Individualismus“ und „Kollektivismus“ wird zuerst einmal nicht nach dem moralischen und dem egoistischen Individualismus bzw. dem traditionellen und dem regressiven

⁶⁰ Weigel, R. H., Hessing, D. J., & Elfers, H. (1999). Egoism - concept, measurement and implications for deviance. *Psychology Crime & Law*, 5, 349-378. – DOI: <https://doi.org/10.1080/10683169908401777>.

⁶¹ Hagan, J., Hefler, G., Classen, G., Boehnke, K., & Merckens, H. (1998). Subterranean sources of subcultural delinquency beyond the American Dream. *Criminology*, 36(2), 309-341. – DOI: <https://doi.org/10.1111/j.1745-9125.1998.tb01250.x>.

⁶² Thome, H. (2000). *Das Konzept sozialer Anomie als Analyseinstrument* (Unveröffentlichtes Manuskript). Augsburg: Universität Augsburg, Lehrstuhl für Soziologie.

Kollektivismus unterschieden. Um diese Unterscheidung trotz alledem zu ermöglichen, werden weitere Dimension erfasst, nämlich „Moral“ und „Fremdenfeindlichkeit“. Die Moral beinhaltet zwei Aspekte: Zum einen sind das die Bewertungen der Richtigkeit einzelner Handlungen, die von moralischen Prinzipien, wie Gerechtigkeit und Fairness, gesteuert werden. Zum anderen sind das die positiven Einstellungen gegenüber dem sozialverantwortlichen Verhalten. Diese moralischen Einstellungen sind im Gegensatz zu einigen gängigen Konzepten^{*63} nicht Merkmale der menschlichen Entwicklungsphasen. Somit werden sie nicht aus einer entwicklungspsychologischen Perspektive betrachtet, sondern sind die Ergebnisse gesellschaftlicher sozialer Prozesse. Die Fremdenfeindlichkeit besteht aus Einstellungen zu Ausländern bzw. zur Stellung des Volkes, zu dem man gehört.

Sollte auf der Aggregatebene bei überdurchschnittlich hohem Individualismus die Moral hohe Ausprägungen haben, sollte es sich in der Gesellschaft um den *moralischen Individualismus* handeln. Sollte stattdessen die Moral nur gering ausgeprägt sein, würde man vom *egoistischen Individualismus* sprechen. Wird die Fremdenfeindlichkeit bei überdurchschnittlich hohem Kollektivismus hoch ausgeprägt, spricht man vom *regressiven Kollektivismus*. Bei niedriger Fremdenfeindlichkeit geht es um den *traditionellen Kollektivismus*. Auf diese Art und Weise können vier Wertedimensionen erfasst werden.

In einem Modell zur Erklärung der Delinquenz, in dem die Annahmen der IAT getestet werden, haben die Werte eine vermittelnde Funktion. In einer etwas vereinfachten Interpretation der IAT sollten Gesellschaften entweder Dominanz der Ökonomie oder der zivilen (nichtökonomischen) Institutionen aufweisen. Eine institutionelle Balance wäre theoretisch auch möglich.

6. Zusammenfassung

Die allgemeine Entwicklung der Werteforschung beinhaltet einen Übergang von einem streng hierarchischen zu einem mehrdimensionalen Modell. Diese Tendenz soll in der künftigen Werteforschung berücksichtigt werden. Die Werte sind von anderen Elementen des sozialen Systems, wie soziale Normen und Einstellungen, zu unterscheiden, aber wie auch von Zielen, Ideologien, Motiven und Bedürfnissen. Die Wichtigkeit der Abgrenzung der o.g. Begriffe wird besonders deutlich, wenn es um die Operationalisierung dieser Konstrukte geht. Bei der Operationalisierung der Ziele sollte es sich um das Gewünschte handeln, z.B. „Ich *will* etw. erreichen“ oder Ich *will* etw. haben“. Bei den Einstellungen geht es um die Beurteilung des Geschehens, z.B. „Es ist gut, wenn ...“. Bei den Werten dagegen geht es um die Wichtigkeit des Geschehens, z.B. „Mir ist wichtig, dass ...“.

Die Wichtigkeit der Werteinstellungen für delinquentes Verhalten wurde bereits festgestellt.^{*64} Es bedarf weiterer Studien, die nicht nur den Zusammenhang von sozialen Werten und Kriminalität aufgreifen, sondern auch theorie-basierte Annahmen prüfen. Es gibt eine Reihe kriminologischer Ansätze, die Kriminalität durch soziale Werte und Normen erklären. Dazu gehört die Institutionelle Anomietheorie^{*65}, die ein hohes Erklärungspotenzial hat. Während die meisten theoretischen Ansätze entweder auf der Mikro- oder auf der Makroebene der Gesellschaft angesiedelt sind, gilt die IAT auf beiden Ebenen und verbindet die institutionelle Kraft mit dem individuellen Verhalten.

⁶³ Vgl. z.B. Kohlberg, L. (1995). *Die Psychologie der Moralentwicklung*. Frankfurt/m: Suhrkamp.

⁶⁴ Siegmunt, O., & Wetzels, P. (2017). Social Values and Delinquency of Russian Youth. *International Journal of Comparative and Applied Criminal Justice* 41(3), 211-230 (Print: ISSN: 0192-4036); Published online at 08 May 2017 (URL: <http://dx.doi.org/10.1080/01924036.2017.1322113>).

⁶⁵ Siegmunt, O. & Wetzels, P. (2015). Institutional Anomie Theory - Empirical Testing [Instituzionalnaja teorija anomii – empirizeskaja proverka]. *Sociological Studies* 42(4), 78-87 (ISSN 0132-1625); Enzmann, D., Kammigan, I., Siegmunt, O. & Wetzels, P. (2016). *Was scheren mich die anderen? Marktmoral als kriminogener Faktor: Eine Studie zu Jugendkriminalität in Russland und Deutschland*. Wissenschaftlicher Verlag Berlin: Berlin.



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Bringing about Penal Climate Change:

The Role of Social and Political Trust and of Perceptions
about the Aims for Punishment in Lowering
the Temperature of Punitiveness

1. Introduction

The purpose for this article is to analyse factors that are related to the public's punitiveness. Much of the discussion is based on data from an Estonian public poll, which makes it a novel contribution in several respects. With few exceptions¹ most studies on public punitiveness have thus far been conducted in Anglo-American countries where penal populism is a recognised phenomenon. In Estonia, the social environment is different and penal policy is rarely used to focus attention in election campaigns. At the same time, the importance of public opinion in penal policy formulation should not be underestimated. In the penal field, public opinion primarily influences policy-making by calling for the adoption of legislation that is tough on crime and for allocation of further resources to law enforcement. In its milder forms of appearance, public opinion makes politicians averse to initiatives aimed at softening penal laws. Reactionist provisions that more often than not represent stop-gap solutions due to panic-provoking events (e.g., a murder case with extensive media coverage) are a good example of public opinion's influence on penal policy-making. Needless to say, harsh punishments have not proved an effective tool against crime, as harsh measures destabilise society².

For many years, Estonia has struggled with high incarceration rates³ and has searched for avenues to bring the number of inmates down. Imprisonment rates have been shown to depend more on policy choices than on actual crime rates⁴, which means that reduction of the number of prisoners has to be a deliberate policy choice, unlikely to be achieved as a side-effect of the fight against crime. Changes in the legislation concerning parole release have allowed Estonia to reduce the number of prisoners by approximately 1,000

¹ E.g., J.C. Cochran, A.R. Piquero. Exploring sources of punitiveness among German citizens. – *Crime & Delinquency* 57 (2011) / 4, pp. 544–571. – DOI: <https://doi.org/10.1177/0011128711405002>; M.-L. Sööt. Trust and punitive attitudes. – *Crime, Law & Social Change* 59 (2013), pp. 537–554. – DOI: <https://doi.org/10.1007/s10611-013-9427-0>.

² B. Bakken. China, a punitive society? – *Asian Criminology* 6 (2011), pp. 33–50. – DOI: <https://doi.org/10.1007/s11417-010-9086-3>.

³ According to the International Centre of Prison Studies (2016), the country's prisoner population is 213 per 100,000 inhabitants, one of Europe's highest. See <http://www.prisonstudies.org/country/estonia> (most recently accessed on 22 June 2017).

⁴ P.K. Enns. The public's increasing punitiveness and its influence on mass incarceration in the United States. – *American Journal of Political Science* 58 (2014) / 4, pp. 857–872. – DOI: <https://doi.org/10.1111/ajps.12098>; T. Lappi-Seppälä. Trust, punitivity and imprisonment. Presentation at the Eurojustis conference Measuring Confidence and Public Attitudes to Justice, held in Parma, Italy, in 2010.

over five years but now appear to have exhausted their potential. Other examples of steps that governments have taken to bring down the number of inmates include reducing the capacity of prisons and managing prison queues. Recourse to such mechanical and short-term measures actually signals a need for more permanent changes in penal policy (dealing with high re-offending rates) as well as for a shift in people's attitudes. One way of achieving this is to find viable alternatives to imprisonment. However, most societies have yet to discover how to punish their offenders such that the punishment would satisfy the demands of various social groups and simultaneously reform the offender's ways. Existing sentencing options such as compulsory participation in social and treatment programmes, community work, fines, and reconciliation orders all represent alternatives to imprisonment yet fail to meet these two criteria fully. Moreover, scepticism and too little information about alternative sentences have made it difficult to rally public support for alternative ways of treating offenders⁵. Lowering the number of inmates remains an unpopular policy that governments cannot easily explain to the electorate.

The other option for achieving a reduction of imprisonment rates is to change the attitudes held by the public. Some researchers believe that offender-adverse public opinion is actually capable of leading to the imposition of tough sanctions⁶, while others hold punitive publics to be a reflection of public penal policy⁷. Regardless of the mechanism actually at work, the European Social Survey (2010)⁸ points to the Estonian population as being relatively punitively oriented. When people were asked which sentence they would impose on a 25-year-old house burglar, 64% of Estonians were in favour of imprisonment, making Estonia ninth from the top on the list of the countries favouring imprisonment (the average preference rate was 60%). The lowest preference for imprisonment was expressed in Finland (42%) and the highest in Ireland (73%). Irrespective of the criticism levelled against more public involvement in sentencing, recent years have witnessed appeals to increase it from the academic domain and seen a spate of corresponding policy initiatives – e.g., the introduction of lay assessors in courts⁹. The growing involvement of the public in punishment decisions makes studying penal attitudes and the factors that influence them a more valuable task that holds potential for considerable practical application. Besides other results, such studies are likely to highlight the legitimacy level of the sentencing practices really employed – discrepancies between the sentences actually imposed and people's understanding of proper punishment would suggest that practitioners of jurisprudence and policy-makers need to improve the communication and explanation of their decisions. Estonia has witnessed a number of 'pushmi-pullyu' approaches from politicians whose penal policy is at best described as inconsistent and who appear to lack information about what their constituents actually desire. The declared goal for their penal policy may be to reduce the number of prisoners, yet the decisions they make pave the way to construction of new mass-incarceration institutions and they preach condemnation and shaming as the purpose of sentencing.

This article analyses how public penal attitudes, and indirectly penal policy, can be shaped by social and political trust and the public's perceptions about the aims of punishment. A trust in the society and its institutions could reflect belief in the competency expressed in the institutions' choices, while trust in strangers could serve as an indicator of belief in the rights of people to be equal members of society¹⁰ and in people being capable of change¹¹. This could, furthermore, influence the way people perceive offenders (either as outcasts or as fellow members of society) and the choice as to their treatment (to impose either isolation or, on the contrary, more rehabilitative treatment)¹². There are several studies that have examined the

⁵ J.V. Roberts, M. Hough. Public attitudes to punishment: The context. – J.V. Roberts, M. Hough (eds). *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*. London, New York: Routledge 2011, pp. 1–14.

⁶ P.K. Enns (see Note 4).

⁷ F.E. Zimring, D.T. Johnson. Public opinion and the governance of punishment in democratic political systems. – *The Annals of the American Academy of Political and Social Science* 605 (2006), pp. 266–280. – DOI: <https://doi.org/10.1177/0002716205285949>.

⁸ European Social Survey (2010), Round 5. Available via <http://www.europeansocialsurvey.org/data/round-index.html> (most recently accessed on 7 June 2017).

⁹ J.V. Roberts, J.W. Keijser. Democratising punishment: Sentencing, community views and values. – *Punishment & Society* 16 (2014), pp. 474–498. – DOI: <https://doi.org/10.1177/1462474514539539>.

¹⁰ J. Soss et al. Why do white Americans support the death penalty? – *The Journal of Politics* 65 (2003) / 2, pp. 397–421. – DOI: <https://doi.org/10.1111/1468-2508.t01-2-00006>.

¹¹ S. Maruna, A. King. Once a criminal, always a criminal?: 'Redeemability' and the psychology of punitive public attitudes. – *European Journal of Criminal Policy Research* 15 (2009), pp. 7–24. – DOI: <https://doi.org/10.1007/s10610-008-9088-1>.

¹² V. Barker. The politics of pain: A political institutionalist analysis of crime victims' moral protests. – *Law & Society Review* 41 (2007) / 3, pp. 619–664. – DOI: <https://doi.org/10.1111/j.1540-5893.2007.00316.x>; M.T. Costelloe et al. The social

relationship between penal attitudes and various types of trust^{*13}. Similarly, research has explored the links between the aims behind punishment and punitive attitudes^{*14}. In this paper, we propose a single model to connect all these factors.

2. The theory

2.1. Aims behind punishment

The most commonplace way of classifying the aims for punishment is by grouping them under the headings 'preventive (utilitarian)' and 'retributive (non-utilitarian)'. The point of punishment according to utilitarians is to diminish future offending; utilitarians believe also that punishment should be proportionate to the gravity of the crime. For them, punishment is, above all, a functional response. In contrast, non-utilitarians aim at achieving justice – for them, reforming the offender is of secondary importance. According to non-utilitarians, each offence deserves a reaction. While utilitarians look to the future, non-utilitarians are focused on the past and seek to bring about fairness^{*15}.

Another way of understanding the aims for punishment is to distinguish between shaming and educative punishments. Shaming-oriented punishments as emotional responses to the acts of an offender are triggered by talionic eye-for-an-eye attitudes^{*16}. Such responses are derived from either sympathy for the victim or anger at the offender^{*17}. The principal idea with an educative punishment is to bring the offender and the victim together in order for the offender to better understand the consequences of his or her act. Shaming punishments are monologues by the state, while educative punishments promote dialogue, with the aim of repentance^{*18}.

Preference for a particular aim of punishment has to do with what people consider to be the causes of crime, which, in turn, is at least partially related to their worldview. Those who think that crime is a matter of personal choice favour justice-related punishment aims, while those who recognise that the causes of crime may have their roots in the offender's social setting are likely to prefer other goals. An earlier study showed that students who subscribed to labelling theory and structural positivism as explanations of crime tended to take a less punitive stance^{*19}. In other words, those who believe that crime can be explained by societal inequalities rather than by personal choice would opt for milder approaches in the treatment of offenders^{*20}.

Earlier studies have found also that those for whom the aim of sentencing is to incarcerate the offender are more punitive in their attitudes^{*21}. Similarly, people who are more vengeful tend to support retribution and incapacitation as punishment's aims^{*22}.

correlates of punitiveness toward criminals: A comparison of the Czech Republic and Florida. – *Justice System Journal* 23 (2002) / 2, pp. 191–220; J. Van Kesteren. Public attitudes and sentencing policies across the world. – *European Journal of Criminal Policy Research* 15 (2009), pp. 25–46. – DOI: <https://doi.org/10.1007/s10610-009-9098-7>.

¹³ M.-L. Sööt (see Note 1); M.T. Costelloe et al. (see Note 12); M.J. Hogan et al. Economic insecurity, blame, and punitive attitudes. – *Justice Quarterly* 22 (2007) / 3, pp. 392–412. – DOI: <https://doi.org/10.1080/07418820500219144>.

¹⁴ E.g., I.R. McKee, N.T. Feather. Revenge, retribution, and values: Social attitudes and punitive sentencing. – *Social Justice Research* 21 (2008), pp. 138–163. – DOI: <https://doi.org/10.1007/s11211-008-0066-z>; M.E. Oswald et al. Lay-perspectives on criminal deviance, goals of punishment, and punitivity. – *Social Justice Research* 15 (2002) / 2, pp. 85–98.

¹⁵ M.M. Plesničar. The individualization of punishment: Sentencing in Slovenia. – *European Journal of Criminology* 10 (2013) / 4, pp. 462–478. – DOI: <https://doi.org/10.1177/1477370812469858>; R.S. Frase. Punishment purposes. – *Stanford Law Review* 58 (2005) / 1, pp. 67–83.

¹⁶ P.S. Garvey. Can shaming punishments educate? – *The University of Chicago Law Review* 65 (1998) / 3, pp. 733–794. – DOI: <https://doi.org/10.2307/1600299>.

¹⁷ B.A. Gault, J. Sabini. The roles of empathy, anger, and gender in predicting attitudes toward punitive, reparative, and preventative public policies. – *Cognition & Emotion* 14 (2000) / 4, pp. 495–520. – DOI: <https://doi.org/10.1080/026999300402772>.

¹⁸ P.S. Garvey (see Note 16).

¹⁹ D.L. Falco, J.S. Martin. Examining punitiveness: Assessing views toward the punishment of offenders among criminology and non-criminology students. – *Journal of Criminal Justice Education* 23 (2012) / 2, pp. 205–232. – DOI: <https://doi.org/10.1080/10511253.2011.631931>.

²⁰ T.J. Hartnagel, L.J. Templeton. Emotions about crime and attitudes to punishment. – *Punishment & Society* 14 (2012) / 4, pp. 452–474. – DOI: <https://doi.org/10.1177/1462474512452519>.

²¹ M.E. Oswald et al. (see Note 14).

²² I.R. McKee, N.T. Feather (see Note 14).

Clarity about the aims for sentencing is one of the core aspects of deciding on the sentence itself. R.S. Frase^{*23} argues that vague intuitions related to the objectives behind punishment tend to give way to personal beliefs, which in situations wherein the decision is up to a single judge creates a risk of fragmentation of sentencing practices. An insufficiently clear understanding of the purpose for punishment is likely to distort the results, while a good sense of that purpose and of the type of punishment best suited to the case should reduce the subjective element in sentencing.

2.2. Trust

In the social-sciences literature, a distinction is commonly made between two types of social trust, generalised and specific^{*24}. This article looks predominantly at generalised trust, a measure of confidence that obtains among strangers. The complementary concept – specific trust – refers to trust among family members and friends. Generalised trust is a notion that better reflects people's confidence in anonymous members of society, offenders among them.

Generalised trust (trust in strangers) expresses people's perceptions about society^{*25}. Perceived group threat is one explanation for harsh, highly punitive attitudes – the dominant group protects its position, demonising the less fortunate by manipulating public opinion accordingly^{*26}. Antipathy towards 'the other' and making the less fortunate into scapegoats are predictors of harsher, more punitive feelings^{*27}. For the public, harsher punishments are a way of controlling a threatening group. It has been shown also that anger about and fear of crime evoke punitive feelings^{*28}. When news media encourage personal identification with the victims of crime, they thereby stoke anger against criminals, and tabloid-media consumption as the main source for one's news appears to add to fears of crime and amplify punitive attitudes^{*29}. People who are angry about crime are also people who feel less secure, and they therefore are likely to transform their anxiety into harsher punitive feelings^{*30}. People who are trusting, on the other hand, tend to be more tolerant of fellow members of society^{*31}. Trusting people believe in reforming the offender. They are prepared to share a certain degree of responsibility for the offender's acts and wish to avoid the suffering that would be caused by harsh punishment, for they see the offender as potentially valuable to their society^{*32}. In high-trust societies, the message of punishment to the offender includes an invitation to co-operate^{*33}. Moreover, high-trust societies are less concerned about crime^{*34}.

According to researchers, political trust, measured as confidence in the various political institutions (political parties, the government, the police force, etc.), is a strong predictor of social trust, which suggests

²³ R.S. Frase (see Note 15).

²⁴ E. Uslaner. The moral foundations of trust. 2003. Available at <http://gvptsites.umd.edu/uslaner/uslanermoralfoundations.pdf> (most recently accessed on 22 June 2017).

²⁵ K. Newton. Trust, social capital, civil society, and democracy. – *International Political Science Review* 22 (2001) / 2, pp. 201–214. – DOI: <https://doi.org/10.1177/0192512101222004>.

²⁶ D. Wheelock et al. Perceived group threat and punitive attitudes in Russia and the United States. – *British Journal of Criminology* 51 (2011), pp. 937–959. – DOI: <https://doi.org/10.1093/bjc/azr053>.

²⁷ M.T. Costelloe et al. (see Note 12); M.J. Hogan et al. (see Note 13).

²⁸ D. Johnson. Anger about crime and support for punitive criminal justice policies. – *Punishment & Society* 11 (2009), pp. 51–66. – DOI: <https://doi.org/10.1177/1462474508098132>.

²⁹ K. Demker et al. Fear and punishment in Sweden: Exploring penal attitudes. – *Punishment & Society* 10 (2008), pp. 319–332. – DOI: <https://doi.org/10.1177/1462474508090228>; K. Dowler. Media consumption and public attitudes toward crime and justice: The relationship between fear of crime, punitive attitudes, and perceived police effectiveness. – *Journal of Criminal Justice and Popular Culture* 10 (2003) / 2, pp. 109–126.

³⁰ D. Johnson (see Note 28).

³¹ E. Uslaner (see Note 24).

³² S. Maruna, A. King (see Note 11); T.R. Tyler, R.J. Boeckmann. Three strikes and you are out, but why? The psychology of public support for punishing rule breakers. – *Law and Society Review* 31 (1997) / 2, pp. 237–266. – DOI: <https://doi.org/10.2307/3053926>; M.T. Costelloe et al. (see Note 12); D. Johnson (see Note 28); V. Barker (see Note 12); J. Van Kesteren (see Note 12); J. Soss et al. (see Note 10).

³³ D. Baillet, P.A.M. Van Lange. Trust, punishment, and cooperation across 18 societies: A meta-analysis. – *Perspectives on Psychological Science* 8 (2013) / 4, pp. 363–379. – DOI: <https://doi.org/10.1177/1745691613488533>.

³⁴ R. Wike. Where trust is high, crime and corruption are low. Pew Research Center, 2008. Available at <http://www.pewglobal.org/2008/04/15/where-trust-is-high-crime-and-corruption-are-low/> (most recently accessed on 10 April 2015).

that to a certain extent social trust is a product of political trust^{*35} – a conclusion contested by other authors^{*36}. In comparison to social trust, political trust is impersonal and mediated. This means that the origins of social trust lie in personal connections, while political trust is shaped by news media and other mediated sources. Political trust is related to one's belief in open government, and its measure depends on how well the political system works^{*37}. People who do not trust politicians tend to be unhappy with the outcomes of their policies, including those intended to counter the perceived threat of crime. When people feel that crime is a problem they are more likely not to trust the government^{*38} and to believe that the government's response to the crime problem is inadequate. Crime salience and crime-specific concerns (e.g., worries about drug trafficking) have been found to predict punitiveness in attitudes at the level of the individual^{*39}. It has been argued that a decline in political trust is, in fact, behind the rise in imprisonment rates in the US^{*40}.

3. Data and methods

The data used in our analysis were obtained from a poll commissioned by the Estonian Ministry of Justice and conducted by Turu-uuringute AS in Estonia in January 2014 through a regular omnibus survey. The method used was simple completion of a questionnaire via face-to-face interviews, and the response rate was 27%. The sample consisted of 500 respondents over 15 years of age who were representative of the Estonian general population: The sample consisted of 42% men and 58% women, with 53% representing the 15–49 age band and 47% being 50 or older. As for education level, 16% had had an elementary or primary education, 58% had a secondary or vocational education, and 26% had received at least some higher education.

3.1. The variables

3.1.1. Length of sentences / severity of punishment

In many studies, punitiveness is measured as a complex index composed via multiple statements (that there should be a universal increase in the severity of sentences, that offenders should be harshly punished, etc.), for which respondents are invited to express their degree of support^{*41}. Another technique that is sometimes used involves having respondents choose between individual sentencing options, such as imprisonment vs. community service. This method is used by, amongst others, those administering the European Victimisation Survey^{*42}. Our study, following the example of Swiss researchers^{*43}, uses length of imprisonment as the measure of the severity of punishment. In addition to supporting simplicity, this technique aids in overcoming the complexity problem – i.e., the issue of the particular meaning that respondents attribute to certain types of punishment. The length of imprisonment as a measurement continuum is more apt to describe what people consider a severe punishment compared to choosing between different types of punishment. For example, although it is widely assumed that imprisonment is the harshest form of punishment (since it includes severe limitations on personal freedoms), researchers do not know which of the options presented is actually considered more/most severe by a particular respondent. After all, the myth of Sisyphus has it, the toughest punishment of all consists in being compelled to do work that serves no purpose.

³⁵ M. Freitag. Social capital in (dis)similar democracies: The development of generalized trust in Japan and Switzerland. – *Comparative Political Studies* 36 (2003) / 8, pp. 936–966. – DOI: <https://doi.org/10.1177/0010414003256116>.

³⁶ See K. Newton (see Note 25).

³⁷ *Ibid.*

³⁸ J. Upton, C. Mansell. Building cohesion and trust in London – a social marketing approach. – *International Review on Public and Non-Profit Marketing* 8 (2011), pp. 57–71. – DOI: <https://doi.org/10.1007/s12208-010-0062-5>.

³⁹ C.A. Spiranovic et al. What predicts punitiveness? An examination of predictors of punitive attitudes towards offenders in Australia. – *Psychiatry, Psychology and Law* 19 (2012) / 2, pp. 249–261. – DOI: <https://doi.org/10.1080/13218719.2011.561766>; T.J. Hartnagel, L.J. Templeton (see Note 20).

⁴⁰ F.E. Zimring, D.T. Johnson (see Note 7).

⁴¹ D.L. Falco, J.S. Martin (see Note 19); C.A. Spiranovic et al. (see Note 40); M.T. Costelloe et al. (see Note 12).

⁴² J. Van Kesteren (see Note 12).

⁴³ A. Kuhn, J. Vuille. Are judges too lenient according to public opinion? – *Criminology* 2011/October, pp. 75–80.

The questionnaire consisted of four vignettes, each containing a description of an offence and background information about the offender. The types of offences in these vignettes were domestic violence, embezzlement from a bank, violent robbery of a shop, and burglary by a repeat offender. For each scenario, the respondent was invited to answer a series of questions, about the type of sentence that would, in his or her view, be appropriate in the case at hand and – in the question that elicited the data for this paper – the length of the prison sentence that he or she would impose (as a number of days/weeks/months/years) in a situation in which imprisonment is the only option (without suspension of any portion of the sentence). Described in brief, the domestic-violence scenario involved a married couple whose quarrel, caused by jealousy, led to violent conflict, with the female needing medical help because of bruises and aching ribs. The embezzlement case involved a clerk who embezzled 360,000 euros in the course of five years. In the vignette presenting violent robbery of a shop, the robber threatened a saleswoman with a knife and made off with, in total, 2,200 euros. Finally, the burglary scenario involved intrusion to the cellars of a block of flats and causing 6,500 euros in damage. All of the perpetrators except the burglar, who was a repeat criminal, were first-time offenders. Also, apart from the bank employee, all the offenders were either drug or alcohol addicts. Some additional background details on the offenders were provided to the respondents, such as age, childhood circumstances, education, and/or employment status.

Of the four scenarios, the one attracting the most severe sanctions was that of the repeat burglar: the average imprisonment the respondents chose to impose here was 51.3 months (4.2 years). The shortest prison term was imposed for the domestic-violence offender (14.4 months, or 1.2 years). One of the reasons the burglar tended to be assigned the most severe punishment might be his prior convictions (according to the case write-up, he had already had eight convictions), while the other scenarios involved first-time offences.

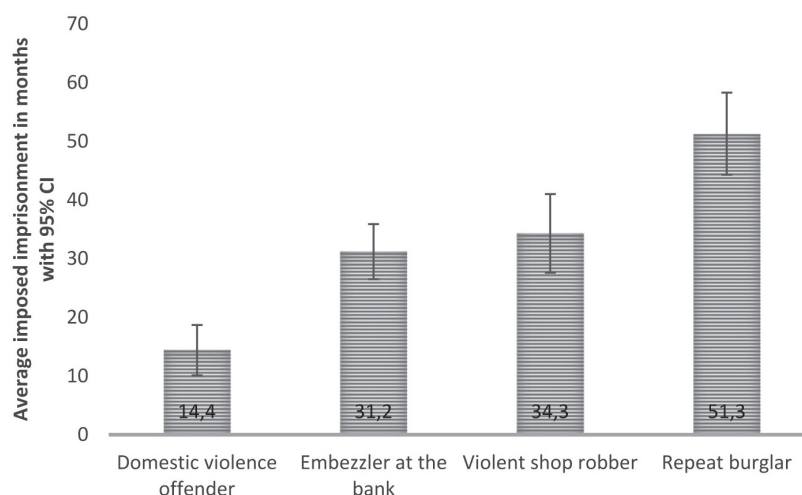


Figure 1. Average length of imprisonment imposed (in months)

For every scenario, the distribution of the prison sentence imposed was positively skewed. For primarily this reason, we decided to forgo analysis of average sentence lengths and to focus our further analysis on the most extreme sentences. In the first step, we separated the respondents who preferred harsh sentences from those who favoured milder ones: considering the length of the sentences, for each offence we classified the responses in the band of approximately 10% that represented opting for the longest terms of imprisonment as extremely punitive. In the case of the domestic-violence offender, the preferred term of imprisonment within this decile was 36 months or longer (accounting for 9.5% of the respondents); for the cases of embezzling and violent robbery, it was 60 months or longer (a sentence assigned by 15.8% and 16.5% of the respondents, respectively); and for the repeat burglar, it was 120 months or more (10.9% of the respondents). In total, 37% of respondents selected an extremely long sentence (i.e., one in the top decile) in at least one of the cases.

As the next step, we compiled a new composite index, according to which those who did not belong to the extremely punitive group for any of the offences were denoted with '0', while those whose response qualified as extremely punitive in one case received the indicator '1' and those who represented the top decile in two or more cases were designated as group 2. Respondents who gave no answer for at least one of

the questions were omitted from the analyses. The distribution of the extreme sentences by percentage and absolute number is shown in Table 1.

Choosing only extreme answers better reflects opinions of those people who are consistently more punitive-minded in more than just one scenario. Those who were less punitive in their attitudes, as reflected in **not** choosing such a value for more than one scenario, were used as a comparison category. This facilitated analysis by enabling us to describe punitively minded persons relative to the rest.

Table 1: The proportion of extreme sentences

	Frequency	Percentage
0	313	62.5
1	108	21.7
2 (≥ extreme choices)	67	13.4
Total	488	97.6
Data missing	12	2.4

3.1.2. Aims behind the sentencing

The respondents were given a list of general aims pursued via sentencing (not related to the scenarios above) and instructed to evaluate the importance of each on a four-point scale (with ‘1’ meaning ‘not important at all’ and 4 meaning ‘very important’).

Punishing the offender and reacting to the offence were seen as the most important aim (considered ‘very important’ and ‘important’ by 96% of respondents) together with compensating the victim (also 96%), while reconciliation between the parties to the offence was regarded as the least important (69%). In principle, respondents saw aims that are quite different and even contradictory as equally important – a finding that is consistent with the results of earlier studies⁴⁴. The results from our study are supported by previous studies also in that respondents elsewhere too appear to prefer punishment of the particular offender responsible and the prevention of further offences over rehabilitation of the offender⁴⁵. The modest support displayed for the goals of restorative justice, reconciliation among them, might be due to a lack of information about the principles and impact of restorative justice.

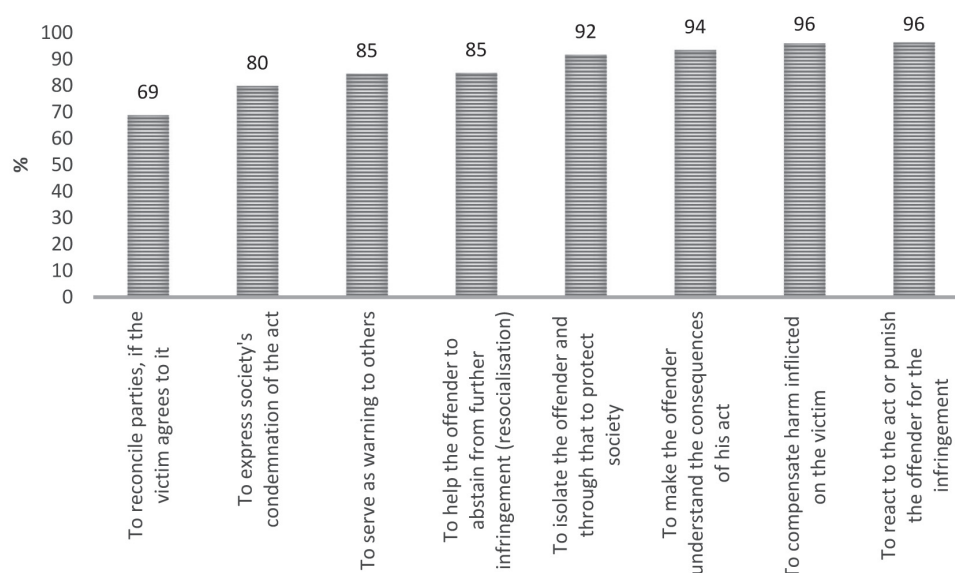


Figure 2. For various aims behind sentencing, the percentage of respondents who considered each aim either important or very important.

⁴⁴ R.S. Frase (see Note 15): J. Doble. Attitudes to punishment in the US – punitive and liberal opinions. – J.V. Roberts, M. Hough (eds). *Changing Attitudes to Punishment. Public Opinion, Crime and Justice*. London, New York: Routledge 2011, p. 163.

⁴⁵ *Ibid.*, pp. 150–152.

To understand whether certain aims of sentencing could be considered in combination, we performed a principal component analysis. This analysis showed that there were three aims that were strongly correlated with each other as compared to the rest: to isolate the offender and protect society, to serve as a warning to others, and to express society's condemnation of the act (see Table 2, below). This component clearly distinguishes a group of people for whom societally oriented aims of punishment are important. Societal aims revolve around the protection of society, while the others (i.e., individual- and victim-related goals) have to do with targeting the particular offender, along with his or her behaviour, or the victim. Because of their justice-seeking aspect, societal aims are linked mainly with non-utilitarian punishments. For making the best use of the information about correlations between distinct items under 'aims of sentencing' and to prevent multicollinearity effects, the component 'societal aims of sentencing' yielded by the principal component analysis was utilised in further analysis.

Table 2: Results from principal component analysis (the component explains 53% of the original variables)

	Component loadings	Communalities
To isolate the offender and protect society	0.78	0.42
To serve as a warning to others	0.76	0.61
To express society's condemnation of the act	0.65	0.57

3.1.3. Social (generalised) trust

On a four-point Likert scale, where '1' represented 'very trustworthy' and '4' 'untrustworthy', 62% of the respondents considered most people in Estonia to be very trustworthy or somewhat trustworthy ('1' or '2', respectively), while 34% considered them either not very trustworthy or untrustworthy. The 4% who did not respond were excluded from further analysis.

3.1.4. Political trust

In the opinion polls and questionnaires used in studies that investigate 'political trust', this term may refer to confidence in political parties, the government, the parliament, or politicians⁴⁶. Trust in parties and in politicians appear to reflect very similar attitudes. According to the European Social Survey 2012⁴⁷, the level of trust in political parties was almost identical to that in politicians in Estonia – politicians were considered untrustworthy by 14.8% of respondents and political parties by 14.6%, while 0.6% of respondents indicated that they completely trust politicians and 0.4% expressed the same attitude vis-à-vis political parties. Trust in the parliament was slightly higher, the corresponding figures being 11.6% and 1.4%. Political trust in our study means belief in politicians and was measured by means of the 4-point Likert scale, where '1' signified 'complete belief that the Estonian politicians are doing their best for the country' and '4' denoted total disbelief in that proposition. According to the results, 33% expressed 'complete belief...' or tended to believe in (trust) politicians, while 60% tended not to believe in them or had no belief (trust) in them. Seven per cent did not respond and hence were excluded from further analysis.

3.2. The results

To analyse the various factors contributing to the selection of an extreme sentence, we used multinomial logistic regression models (see Table 3). The choice of logistic regression over a linear model was based on data-related requirements: a linear model would not have been optimal in light of the data's skewness with respect to the lengths of sentences. The dependent variable was the number of extreme sentences on the scale 0 to 2. We

⁴⁶ M. Freitag (see Note 35); K. Newton (see Note 25).

⁴⁷ European Social Survey (2012), Round 6. Available via <http://www.europeansocialsurvey.org/data/round-index.html> (most recently accessed on 14 April 2015).

composed models to compare the likelihood of a respondent meting out one extreme sentence to that of him or her not choosing any extreme punishments and to compare the chances of handing out two or more extreme sentences to those of giving none. The independent variables were the aims for sentencing, political trust, and social trust. In addition, we used socio-demographic control variables: age, gender, ethnicity (Estonian vs. non-Estonian, as 2/3 of the Estonian population are Estonians while most of the rest are Russian, followed by smaller groups of Ukrainians and others), and education.

Table 3: Odds ratios from the logistic regression model for extreme sentences (reference category: no extreme sentences)

	1 extreme sentence	2 or more extreme sentences
Aim behind sentencing: protection of society	0.98	2.00**
Social trust: belief that people are very or somewhat trustworthy	0.44**	0.43**
Political trust: full belief or tendency to believe that politicians are doing their best for the country	0.52*	0.47*
Gender: male	1.36	2.26*
Ethnicity: non-Estonian	1.42	1.06
Education ¹ : primary or less	0.86	0.19**
Education: secondary	1.12	0.78
Education: vocational	0.87	0.50
Age	1.00	1.03**
Constant	-0.37	-2.29
N	436	
Nagelkerke R ²	0.192	
Model chi-squared	76.2***	

* $p < 0.05$; ** $p < 0.01$

¹ The reference category for level of education is at least some higher education.

We discovered that high social and high political trust both reduce the risk of imposing extreme sentences on offenders. In other words, trusting individuals are milder towards offenders. Looking at the aims of punishment, one can see that those who prefer emphasis on broad societal aims tend to be more punitive. However, the effect was statistically significant only in the case of two or more extreme sentences; i.e., it mattered only when respondents were systematically punitive and selected an extremely long imprisonment term in two or more cases. In the case of systematic punitiveness, the findings support earlier research suggesting that men are more punitive⁴⁸. Surprisingly, in a contrast to findings from some earlier studies⁴⁹, people with lower education levels appeared to be somewhat less punitive in our study. This could be explained by social affiliation – people belonging to the same social class are likely to experience group solidarity, and, since offenders usually have a modest education, those with lower educational qualifications would tend to be more tolerant towards offenders. It is appropriate to point out in this connection that, of the four vignettes presented in the questionnaire, three involved ‘ordinary’ (less-educated) criminals. A study conducted earlier in Estonia lends support to the solidarity hypothesis, under which people with a lower income would be expected to prefer community-service sentences over imprisonment⁵⁰. Another finding was that age had a positive effect on the severity of punishment – older people preferred harsher sentences, a finding consistent with those of some earlier research⁵¹. Ethnicity did not have an effect on the dependent variable.

⁴⁸ B. Kutaledze, A.M. Crossman. An exploratory analysis of gender differences in punitiveness in two countries. – *International Criminal Justice Review* 19 (2009), pp. 322–343. – DOI: <https://doi.org/10.1177/1057567709338921>; J. Van Kesteren (see Note 12); K. Dowler (see Note 29); B.A. Gault, J. Sabini (see Note 17).

⁴⁹ J.D. Unnever, F.T. Cullen. The social sources of Americans’ punitiveness: A test of three competing models. – *Criminology* 48 (2010) / 1, pp. 99–129. – DOI: <https://doi.org/10.1111/j.1745-9125.2010.00181.x>; B. Kutaledze, A.M. Crossman (see Note 49); J. Van Kesteren (see Note 12); S. Maruna, A. King (see Note 11).

⁵⁰ M.-L. Sööt (see Note 1).

⁵¹ C.D. Bader et al. Divine justice: The relationship between images of God and attitudes toward criminal punishment. – *Criminal Justice Review* 35 (2010) / 1, pp. 90–106. – DOI: <https://doi.org/10.1177/0734016809360329>; C. Fortete, J.D. Cesano.

4. Discussion and conclusions

The study demonstrates that social and political trust are good predictors with respect to punitive attitudes. People who do not trust strangers and are sceptical of politicians would impose longer sentences on offenders. The relationship between trust and punitiveness applies for incidental as well as systematic punitiveness – whether or not the respondent chose an extremely severe sentence for only one of the offenders (expressing incidental punitiveness) or imposed a harsh sentence on two or more offenders (expressing systematic punitiveness), the degree of trust that he or she had in strangers or in politicians would still largely determine the level of punitiveness. In addition, our study shows that one's notions of the aims behind punishment are a strong predictor with regard to systematically severe, highly punitive approaches. Those for whom the central aim with punishment is the protection of society are more punitive. That is, people for whom the main aims for sentencing involve isolating the offender, condemning him or her, and deterring other would-be offenders are more punitive than those who do not consider these aims to be of central importance.

The relative mildness of the sentences handed out by those who trust strangers is explained by their greater tolerance of and belief in other members of society. Trusting individuals are less apprehensive about outgroups and are, therefore, likely to be less punitive. Also, people who have faith in other members of society believe themselves not to be deliberately denied access to societal resources and hence do not see a need to defend themselves against 'others'. This stands in contrast to the concerns of those who feel that society (which they define narrowly, excluding those groups perceived as 'other') needs protection and who consequently express more punitiveness. Trusting people are more open towards others, while those who lack trust would rather exclude groups who are perceived as inherently different.

The less punitive attitudes of those who have trust in politicians are explained by their confidence in the government's actions in the fight against crime. The variable expresses people's belief that politicians act in the best interests of their country. Individuals who are trusting are less suspicious of government policy and its real-world ability to curb crime, and they are, accordingly, not prone to experience intense emotions with regard to crime. This makes them less punitive.

Thus, a narrow understanding of the aims behind punishment paves the way to experiencing pronounced punitive feelings. In other words, punishment being seen as for condemnation, waving a warning finger at would-be criminals, and isolation (that is, it being seen as applied to protect society) results in harsher, more punitive attitudes. **Isolation** makes further offences against members of society impossible; i.e., the longer the imprisonment, the more long-lasting the protection. **Condemnation** expresses the public's disapproval of the act of committing the offence; this reflects strong punitiveness and an eye-for-an-eye approach. Disapproval is an emotional assessment that feeds in to the vicious circle of punitiveness, since emotions have been shown to trigger harsher punitive feelings. **Warning** other potential offenders is a moralistic wagging of the finger at would-be criminals that is likely to have little effect (the effectiveness of general deterrence depends on various factors, such as the likelihood of getting caught, the target group's eventual addictions, and mental condition)⁵².

The findings presented above suggest several important conclusions. In an environment of high social and political trust, it is easier to reduce the public's punitiveness. Consequently it will be easier to find support for policies aimed at more individualised and therefore less harsh penal laws as opposed to 'one-size fits all' punishments where minimum punishment levels outweigh individual characteristics and needs of offenders. The latter can be achieved without controversy only when the corresponding measures are supported by public opinion – i.e., in a climate of enlightened penal attitudes. Any long-term reduction in the number of prisoners must come through a deliberate policy choice; it is unlikely to be achieved as an incidental side effect of crime-reduction.

On the practical side, besides measures directly targeted at reducing prisoner numbers, the focus of incarceration-rate reduction programmes should be on shifting the opinions of systematically punitive social groups, whose views about the aims behind punishment may warp public opinion and, in so doing, have a negative impact on the fulfilment of those programmes' aims. Swiss researchers⁵³ demonstrated

Punitive attitudes in Latin America. – *European Journal of Criminal Policy Research* 15 (2009), pp. 121–136. – DOI: <https://doi.org/10.1007/s10610-008-9093-4>.

⁵² R.S. Frase (see Note 15).

⁵³ A. Kuhn, J. Vuille (see Note 44).

that it is not the general public who hold abnormally punitive attitudes but, rather, a certain part of the population. Only a small percentage of the population (in the case of the study reported upon here, about 13% of the respondents) are systematically punitive, yet their voices often drown out milder and more reasonable opinions, thereby giving politicians an incentive to shoot down policies that would bring imprisonment rates down. Educating this group through explaining the aims of punishment and their relationship to various types of sentences is a way of overcoming systematic punitiveness, and it appears to be a good start for shaping a social environment that is conducive to introducing individualised penalties and reducing the number of prisoners. Other important ways of preparing the ground for a downward shift in incarceration rates include fostering social ties between people and enacting policies that support and intensify social involvement – all measures strengthening social trust⁵⁴.

⁵⁴ J.L. Glanville et al. Do social connections create trust? An examination using new longitudinal data. – *Social Forces* 92 (2013) / 2, pp. 545–562. – DOI: <https://doi.org/10.1093/sf/sot079>.



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Corruption as Presented in the Lithuanian Internet Media^{*1}

1. Introduction

In the modern information age, citizens' perceptions and evaluation of corruption, as well as of many other social problems, are based not only on personal experience but also on the subject's presentation in the mass media. Media have become a natural actor taking part in constructing the public discourse on corruption, shaping attitudes towards corrupt persons, and illuminating and promoting possible measures for tackling and preventing the spread of corruption through society. Although Lithuania belongs to the group of countries in which the level of perceived corruption is assessed as rather positive^{*2}, themes related to corruption are very popular in the Lithuanian mass media. Early on, the first diagnostic survey in the 'Map of Corruption in Lithuania' series, conducted regularly since 2001, demonstrated that more than half of the Lithuanian population considered the media to be the source of information that allows forming 'the most reliable opinion about the scale of corruption in Lithuania'. Television was cited as the most reliable source among media-centred means.^{*3}

However, the situation has changed radically since then. While in 2001–2003 the second and third most reliable sources of information were considered to be 'personal experience' and reports from 'friends, acquaintances', the second-place spot behind television in 2016 was occupied by the Internet, which had been statistically 'invisible' in previous years. Personal experience or the experiences of relatives and peers today is considered to be less important than, and not as reliable as, the information obtained via other means, stemming from media sources^{*4}. These changes provide empirical support to the idea that the majority of Lithuanian society follows the general trends of the information society.

The 'informational' character of Lithuanian society can be illustrated well by the results of the Annual Review of Media Surveys. According to the 2015 survey in this series, in the period 2014–2015, the overall percentage of citizens of Lithuania using the Internet underwent no changes, remaining at 75%. Meanwhile,

¹ The article has been prepared within the framework of a project titled 'Social Context of Corruption: An Analysis of Macro, Meso and Micro Level Factors', which is funded by the Research Council of Lithuania (MIP-005/2015).

² For example, the Transparency International Corruption Perceptions Index (CPI) for Lithuania over the last few years has been around 60 on a scale of 0 ('highly corrupt') to 100 ('very clean'); see Transparency International. Corruption Perceptions Index. Available at <http://www.transparency.org/research/cpi/> (most recently accessed on 8.1.2017).

³ *Lithuanian Map of Corruption 2001–2005*. Vilnius: Eugrimas 2006, pp. 62, 138.

⁴ *Lietuvos korupcijos žemėlapis 2016* ['Lithuanian Map of Corruption 2016']. Available at http://www.stt.lt/documents/soc_tyrimai/2016_Korupcijos_zemelapis_ataskaita.ppt (most recently accessed on 8.1.2017) (in Lithuanian).

in contrast, the number of people using the Internet on a regular basis is growing. Over the past three years, the daily-use Internet audience grew the most – from 59% to 63%. This trend is forecast to continue for the next few years – the number of Lithuanian citizens for whom the Internet is a daily-consumption medium will increase.^{*5}

The average time spent on the Internet each day among the general population is two hours, most of which is spent browsing the news portals, with a little less devoted to using various social networks. According to the 84th Eurobarometer Survey, the Internet is mostly trusted as a source of information in Eastern European countries; the figure is highest in Poland, with Lithuania being in third place.^{*6}

Taking into account this context, one should not be surprised that in 2016, according to the above-mentioned results from national-level diagnostic surveys focused on corruption, 15% of the general public, 18% of public servants, and 23% of business representatives considered the Internet the most credible source of information on corruption. The corresponding figures in 2008 were only 4%, 4%, and 7%, respectively. Although television, as it still does, took a leading role with respect to the perceived reliability of information in general and information on corruption in particular, it is clear that the role of the Internet in informing society about corruption is continuously increasing.

Although analysis of media publications on corruption is becoming a popular academic topic^{*7}, analysis of Internet-media publications on corruption is rather rare and still demands more insights from academia and discussion of its methodology and results. The intent with the present article is to contribute, at least at local, national level, to filling the gap in research analysing the presentation of corruption-related problems via Internet media. For this purpose, material on corruption published in 2015 via the two main Lithuanian Internet portals, DELFI.lt and Lrytas.lt, have been scrutinised for purposes of revealing their structural and semantic peculiarities. This article presents the methodology of our empirical study and its main results, along with comments on the construction of the virtual image of corruption in the Lithuanian Internet media.

2. The context and nature of DELFI.lt and Lrytas.lt's corruption-related publications

Both portals, DELFI.lt and Lrytas.lt, are classic examples of the 'middlebrows'; i.e., they are engaged with issues that occupy the position between what could be called higher ('quality-ends') and lower ('tabloid') media in terms of standards.^{*8} DELFI.lt is the leading news portal, receiving the largest number of unique visitors – around 1.2 million during the full-year monitoring period – whereas Lrytas.lt over the same period had around 900,000 visitors.^{*9} In contrast to the DELFI.lt medium, Lrytas.lt has a paper version also, *Lietuvos Rytas*, which, according to the market-research company TNS, is the most widely circulated daily newspaper in Lithuania.^{*10}

Since 2007, DELFI.lt has belonged to the Estonian media group Ekspress Grupp, which operates in the three Baltic states and Ukraine and whose activities include publishing, provision of printing services, and production of online media content. Besides running Lithuanian, Russian, Polish, and English versions of

⁵ Annual review of media surveys 2015. Available at <http://www.tns.lt/file/repository/Annual%20review%20of%20Media%20Surveys%202015m.pdf> (most recently accessed on 8.1.2017).

⁶ Trust in media 2016. Available at <https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-MIS%20-%20Trust%20in%20Media%202016.pdf> (most recently accessed on 8.1.2017).

⁷ For example, see the following recent publications: from the project titled 'Crime As a Cultural Problem: The Relevance of Perceptions of Corruption to Crime Prevention. A Comparative Cultural Study in the EU-Accession States Bulgaria and Romania, the EU-Candidate States Turkey and Croatia and the EU-States Germany, Greece and United Kingdom', with a January 2006 to December 2008 programme period, materials available at http://www.uni-konstanz.de/crimeandculture/docs/CRIME_AND_CULTURE_Flyer.pdf (most recently accessed on 8.1.2017); from the project titled 'Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption', which ran from January 2012 to February 2017, the publication available at <http://anticorrupt.eu/wp-content/uploads/2016/09/D6.1.1-Executive-Summary.pdf> (most recently accessed on 8.1.2017).

⁸ On the standards of Lithuanian media, see A. Dobryninas. *Virtual Reality of Crime*. Vilnius: Eugrimas 2001, pp. 214–215.

⁹ Gemius Balti, gemiusAudience, December 2016. Available at <http://archive.audience.lt/pages/display/reach> (most recently accessed on 8.1.2017).

¹⁰ Annual review of media surveys 2015 (see Note 5).

the Web-based portal, the DELFI group broadcasts DELFI TV. The DELFI group is responsible, in addition, for developing other media content, such as that of Moteris.lt, Cosmopolitan.lt, Panele.lt, 1000receptu.lt, and a few others the content of which is (by and large) dedicated to various forms and topics of entertainment.

Lrytas.lt began operation as a Web-based version of the *Lietuvos Rytas* daily in 1997 and is part of the Lietuvos Rytas Media Group. Since 2006, it has been run as a news Web site company. Two years after these operations commenced, the video service Lrytas.tv was launched, which offers real-time streaming of Lietuvos Rytas television. Lrytas.lt consists of several sub-portals that are dedicated to specific topics, such as advertisements, animals, and recipes.^{*11}

As was mentioned above, the monitoring period for our content analysis extended from 1.1.2015 to 31.12.2015. The articles have been selected by reference to nine keywords: 'corruption', 'corrupted', 'bribe', 'bribery of intermediary', 'abuse of office', 'anti-corruption', 'nepotism', 'conflict of interests', and 'transparency'. The articles selected were analysed with regard to the following indicators:

- publication date and time
- the title of the article
- author's name
- author's gender
- place of publication (in terms of first-level and second-level rubrics)
- information sources (main and secondary)
- whether the publication title matches its content
- whether the headline makes reference to the theme of corruption
- the mood (sentiments) of the presentation (positive, negative, or neutral)
- whether the publication is of analytical or instead descriptive type
- what kind of corruption is referred to (bribery, abuse of office, broker bribery, nepotism, or other)
- whether the publication refers to any anti-corruption activity (prosecution, prevention efforts, education, or other)

In 2015, the two news portals published similar quantities of publications related to matters of corruption: 1,312 articles (or 49% of all selected publications) came from DELFI.lt and 1,367 (51%) from Lrytas.lt. For some of these, however, corruption was not the main topic, and the content overall had little, if anything, to do with the problems of corruption in society. In addition, some of the publications identified were not related to Lithuania, addressing corruption issues primarily in other countries. Hence, for further analysis, the articles about corruption in Lithuania were selected.

Of the 819 publications chosen for further analysis, 306 (37%) were published by DELFI.lt and 513 (63%) by Lrytas.lt. As one can see, the number of articles devoted to the problem of corruption in Lithuania is considerably lower than the initial quantity of publications found to make general reference to corruption. The reduction was significantly greater in the case of DELFI.lt (more than four times) than in that of Lrytas.lt (a little over two and a half times). This can be partly explained by the fact that DELFI.lt expresses stronger interest in corruption problems in foreign countries, especially in Russia and Ukraine (within the context of all the publications on corruption). In comparison with DELFI.lt, Lrytas.lt paid more attention to the domestic problems and less to the international ones (again, when the context of evaluation covers all the publications on corruption).

Further analysis of the selected publications revealed that in 2015, the two Internet portals shared the same media policy with regard to the collection and the processing of information on matters of corruption. With both media portals, the majority of publications referred to their own sources of information as the main one (63% for DELFI.lt, and 71% for Lrytas.lt). Also, for both portals the second main source of information was the news agency Baltic News Service (BNS). It was mentioned in 27% of the DELFI.lt publications and in 21% of the Lrytas.lt pieces (see Figure 1).

¹¹ Mapping digital media: Lithuania. Available at <https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-lithuania-20110923.pdf> (most recently accessed on 28.1.2017); Baltic media health check 2014–2015. Available at https://www.sseriga.edu/download.php?file=/files/news/baltic_media_health_check_2015.pdf (most recently accessed on 28.1.2017).

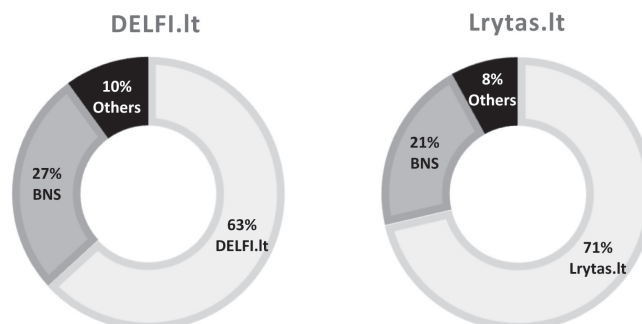


Figure 1. The main sources of information for corruption-related articles of DELFI.lt and Lrytas.lt.

In both portal services, the corruption-related information was hierarchically organised. On the most general ('first') level, the absolute majority of corruption-related publications were situated within such popular rubrics as 'DELFI news' and 'Daily news' in the case of DELFI.lt (86% of all publications) and 'Lithuanian daily' and 'Lrytas.lt' for Lrytas.lt (94% of all publications). However, the themes forming the context for corruption-related articles under second-level rubrics were different:

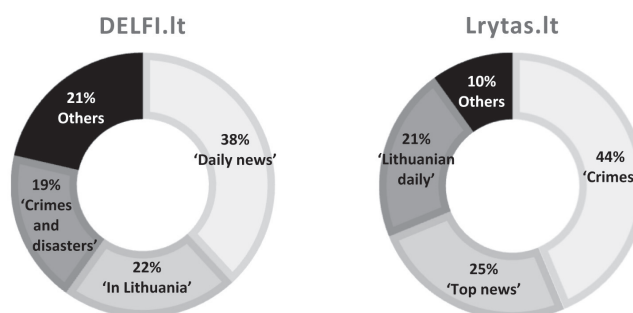


Figure 2. The second-level rubrics for corruption-related publications of DELFI.lt and Lrytas.lt.

As one can see from Figure 2, corruption-related publications from Lrytas.lt were often linked with criminal events (44% of all publications), while the DELFI.lt publications were connected to 'daily' (38% of all publications) rather than to 'criminal' (19%) events. It appears that corruption-related publications were marked as on 'criminal' matters more often by Lrytas.lt than by DELFI.lt, where they were usually interpreted as referring to 'ordinary, daily' events.

The results of the analysis demonstrate also that the portals considered were similar in their attempt to represent the content of the publications accurately in their headlines: 97% of the DELFI.lt publications and 96% of the Lrytas.lt publications had headlines that corresponded to their content. Furthermore, a healthy share of these headlines (63% in DELFI.lt and a similar 66% in Lrytas.lt) referred to the theme of corruption, making them easier to spot for an eye that is hungry for 'hot' news, which, thereby, can contribute to the attractiveness of these publications for a significant proportion of possible readers ('clickers'). Also, as is typical for 'middlebrows', both Internet portals showed a certain pattern in the proportion of analytical to descriptive articles on corruption: 12% to 88% for DELFI.lt and 16% to 84% for Lrytas.lt.

The next important issue is their reference to the concrete corruption problems in society. Formally, by comparing the above-mentioned numbers of publications from both sources with the number of prosecutions for acts of corruption as cited by official statistical data sources¹², it is possible to predict the level of 'overrepresentation' of corruption by Lithuanian Internet media, a phenomenon usually found with 'crime

¹² In 2015, Lithuania's national anti-corruption body, the Special Investigation Service (SIS), started 77 pre-trial investigations of corruption issues; in the same period, 110 persons were accused and sentenced by Lithuanian courts for related crimes. See section 'Nusikaltimų tyrimai' ('Corruption Investigation') on STT's Web site at <http://www.stt.lt/lt/menu/tyrimai-ir-analizes/> (most recently accessed on 2.1.2017) (in Lithuanian).

news^{*13}. Indeed, as one can observe, the number of publications is disproportionately larger than the number of corruption cases. However, ‘dark figures’, not represented in official statistics, are a well-known phenomenon: presenting institutional efforts to control social problems (e.g., corruption) rather than providing a ‘real’ account based on precise measurement of corresponding facts. From this perspective, analysis of the ‘structure’ of corruption-related publications proceeds better via comparison with the results from various diagnostic surveys on corruption, which can shed additional lights on corrupt interactions in society, as well as on their possible control and prevention.

Closer analysis of the selected publications allowed us to observe that, as Figure 3 shows, the two portals’ publications are about the same in their breakdown by the main forms of corruption. The absolute majority of publications from both portals consists of articles devoted to issues of bribery (58% in DELFI.lt and 59% in Lrytas.lt). The next most visible topic is abuse of office (19% in DELFI.lt and 23% in Lrytas.lt). The two also were similar in their percentage of publications on solicitation or ‘bribery of intermediary’ (5% in DELFI.lt and 6% in Lrytas.lt) and nepotism (4% and 3%, respectively).

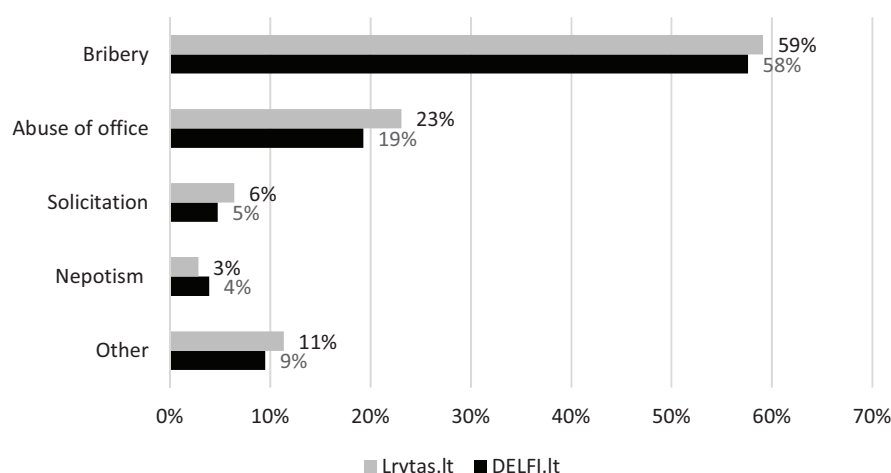


Figure 3. The percentage of DELFI.lt and Lrytas.lt articles devoted to the various forms of corruption.

At first glance, these results perfectly illustrate one of the biggest problems of Lithuanian society – bribery. For example, they correspond to the findings of the most recent Global Corruption Barometer survey, which revealed that in 2013 about 24% of households reported having paid a bribe (the second worst result in Europe)^{*14}. However, when these findings are compared with the ‘Map of Corruption in Lithuania 2016’ results, one can notice that this structure only partially corresponds to the public’s evaluations of how much the various types of corruption permeate society. Thus, one sees that 75% of respondents in 2014 marked bribe-giving as a ‘common’ or ‘very common’ phenomenon in society and put it in first place among the forms of corruption listed, followed by taking bribes (74%) and engaging in nepotism (68%). By 2016, however, public attitudes with regard to the pervasiveness of various forms of corruption had changed: nepotism took first place (74%), while the forms of bribery mentioned above dropped to third and fourth place (72% for bribe-giving and 71% for bribe-taking). Abuse of power was ranked in ninth place in 2014 (51%) and occupied sixth place in 2016 (61%).^{*15} This breakdown from the survey results is quite different from that of our media data from 2015, as presented in Figure 3: both portals paid less attention to the problem of nepotism and more to that of abuse of office. It seems that the Lithuanian population had a slightly different vision of the problem of corruption in society than was visible through the lens of Internet media.

A difference between the two portals is visible in relation to the presentation of anti-corruption measures, such as criminal prosecution, prevention work, and education. These measures are the key elements of the national anti-corruption policy and are often used in anti-corruption rhetoric by politicians and law-enforcement professionals. In general, anti-corruption measures were mentioned in 89 of the DELFI.lt

¹³ See A. Dobryninas (see Note 8), pp. 174–182.

¹⁴ C. Pring, *People and Corruption: Europe and Central Asia 2016*. Global Corruption Barometer. Transparency International 2016, p. 28.

¹⁵ *Lietuvos korupcijos žemėlapis 2016* (see Note 4).

articles (29% of all DELFI.lt publications analysed) and in 267 articles from Lrytas.lt (52% of all Lrytas.lt publications analysed). The numbers for publications in which anti-corruption measures were mentioned are presented below, in Figure 4, where they are broken down by type.

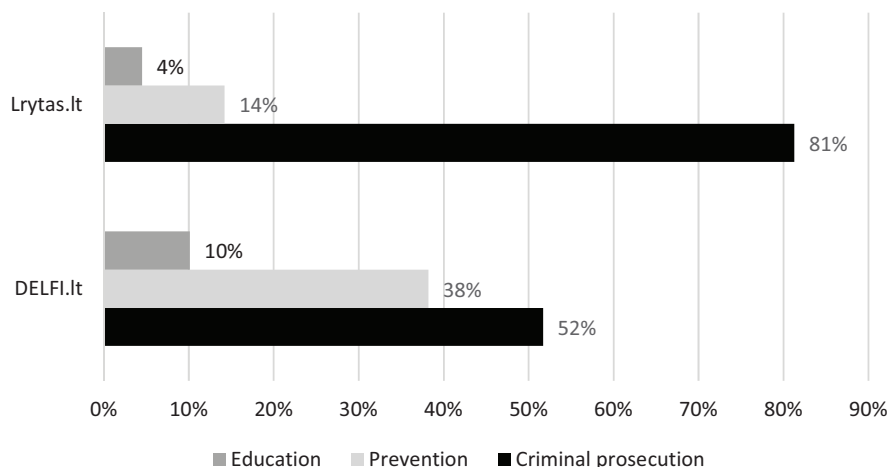


Figure 4. The main anti-corruption measures mentioned in DELFI.lt and Lrytas.lt pieces.

It is clear that both media portals' materials mentioned criminal prosecution more often than prevention or education. At the same time, it is obvious also that the share of Lrytas.lt publications referring to criminal prosecution was much greater than the corresponding DELFI.lt figure, and the share of Lrytas.lt publications making reference to prevention and education was significantly smaller than DELFI.lt's equivalent. It is worth noting that, according to the Map of Corruption in Lithuania 2016 data¹⁶, 50% of respondents held that criminal prosecution is the most effective measure against corruption, 27% cited prevention, and 11% education. From this perspective, the presentation of anti-corruption measures by DELFI.lt mirrors public attitudes towards these issues more closely than Lrytas.lt does.

To what extent the observed peculiarities of the presentation of corruption-related information via Lithuanian Internet portals could influence the perception of corruption among their visitors is a matter for further sociological and psychological research. However, under the current approach, simple sentiment analysis allows evaluation, albeit indirect, of the emotional impact that the publications considered could have had on potential readers. Results of such analysis are presented in Figure 5. The distribution of attitudes towards the most effective measures against corruption is a closer match to the sentimental character of publications in DELFI.lt than to Lrytas.lt articles.

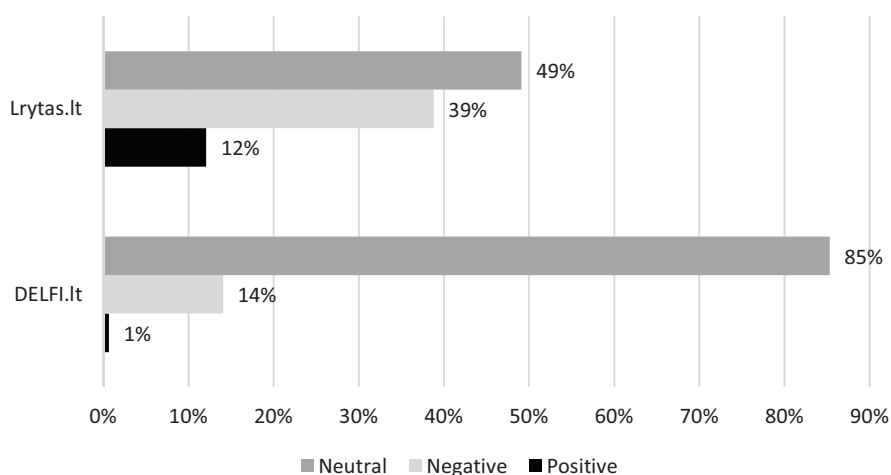


Figure 5. Sentimental aspects of the corruption-related publications of DELFI.lt and Lrytas.lt.

¹⁶ *Ibid.*

Firstly, it is noticeable that both Internet portals preferred to use neutral mode in their writing on the corruption-related matters. A possible explanation for this result might be found by considering the typical (i.e., neutral) attitude of the Lithuanian population towards bribery. While, according to the results of the national representative survey entitled 'Map of Corruption in Lithuania 2016'¹⁷, already mentioned, the attitude towards corruption held by the majority of respondents in general was negative (65% of respondents considered corruption to be an obstacle to a better personal life and 78% to the well-being of society), their attitude towards bribery was strikingly different: 68% of the respondents (69% in 2014) insisted that bribes 'help to solve the problem', whereas 40% (48% in 2014) 'would give a bribe in order to solve a problem'. One shall not be surprised that in such a social context the information about cases of bribery and similar acts could be associated with an ordinary (i.e., not unusual or abnormal) phenomenon.

Simultaneously, it is worth noting that publications from Lrytas.lt were more emotionally coloured than DELFI.lt's, with both negative (39% for Lrytas.lt as opposed to 14% for DELFI.lt) and positive attitudes (12% and 1%, respectively) being more prevalent in Lrytas.lt articles. This can be explained by the fact that, as was shown above, Lrytas.lt provided criminally-oriented framing for corruption-related information while in DELFI.lt this kind of information was framed as an element of day-to-day life. Since the time of É. Durkheim, it has been recognised that criminal events are a strong emotional trigger for social solidarity¹⁸; accordingly, their prevalence in media publications inevitably renders the information that is presented less neutral and more emotionally flavoured.

3. Semantic analysis of the corruption-related publications from Lithuanian Internet media

Examination of the general semantic structure of corruption-related information is another angle for research, which can be treated as supplementary to the starting point for the foregoing analysis. Given that the media play an important role in shaping and initiating public discussions of various social issues¹⁹, it is of crucial importance and interest to learn what the basic referents of messages on corruption are conveying to the public audience via the various media.

The semantic analysis of corruption-related publications in both the DELFI.lt and the Lrytas.lt service was carried out by means of the quantitative content analysis software HAMLET II 3.0.²⁰ The program allows one to calculate frequencies for the selected words and their binary combinations within the semantic units (in this case, at sentence level) across the array of publications. The analysis of words' frequencies enables figuring out the combinations of words (termed 'clusters') that were most often used across the corpus of publications in presenting cases of corruption.

The cluster analysis has been carried out separately for two arrays of publications: from DELFI.lt (135,211 words; 9,923 sentences) and from Lrytas.lt (183,600 words; 12,626 sentences). The first step in a quantitative analysis of textual data is to compile a dictionary consisting of a set of terms that would be conceptually relevant for the analysis in question. In the body of properly selected publications, the words that get used most often should be semantically connected to the topic of research: in this case, the theme of corruption.

A compilation of the most relevant terms has been created through use of HAMLET's 'wordlist' function. Based on the word-list analysis, two semantic dictionaries were created, separately for the DELFI.lt and Lrytas.lt textual compendia.

¹⁷ *Ibid.*

¹⁸ See E. Durkheim. *The Division of Labour in Society*. London: The Macmillan Press Ltd 1984.

¹⁹ See A. Dobryninas et al. *Perception of Criminal Justice in Society*. Vilnius: Baltijos kopija 2014.

²⁰ More details about HAMLET II 3.0 can be found at <http://apb.newmdsx.com/hamlet2.pdf> (at least as recently as 19.1.2017).

Table 1: The vocabularies for the DELFI.lt and Lrytas.lt text arrays

DELFI.lt		Lrytas.lt	
Initial cluster name	Main term ²¹	Initial cluster name	Main term
'Foreign countries and cities'	vRusij	'Foreign countries and cities'	Rusij*
'Lithuania'	VLietuv	'Lithuania'	vLietuv
'Lithuanian politicians'	lppolitik	'Lithuanian politicians'	lppolitik
'Officials'	pareigyb	'Officials'	pareigyb*
'Law-enforcement institutions'	ttarnyb	'Law-enforcement institutions'	ttarnyb
'Law-enforcement personnel'	pareiguuun	'Law-enforcement personnel'	pareiguuun*
'Corruption'	kysh	'Corruption'	korupcij*
'Finance'	pajam	'Finance'	grynais*
'Illegal activities'	neteiseet	'Illegal activities'	neteiseet*
'Prevention'	prevencij*	'Prevention'	prevencij*
'Control'	control	'Control'	ikiteismin*
'Official institutions'	seim	'Official institutions'	seim*
'Political parties'	partij	'Political parties'	sartij*
'Business'	versl	'Business'	vbank

Each initial-cluster name in the above vocabularies is an abstract designator for the main term and its synonyms, which are presented at the top in the word list (i.e., are most frequently used in the text). For example, the cluster name 'Finance' in the DELFI.lt vocabulary stands for the main term 'pajamos' (Lithuanian for 'income') and its synonyms, meaning 'bank', 'dollar', 'euro', and 'litas', that were found in the word lists²². Once the semantic 'fine-tuning' of clusters has been carried out, it emerges not only that both dictionaries are constituted by the same number of clusters but also that the clusters themselves (the categories they signify) are semantically identical. However, this does not allow one to conclude that the two news portals are exactly alike semantically, for identity of clusters does not imply identity of the terms (or their number) used in the publications. But it does show that on a more general level, matters of corruption were presented by using the same categorial framework.

Completed by HAMLET, the calculation of words' frequencies on the basis of the compiled dictionaries across the compendia of selected publications (separately for DELFI.lt and Lrytas.lt) allowed revealing two groups of clusters²³ for each portal. The peculiarities of the clusters constructed can be seen from further semantic analysis.

DELFI.lt

Cluster 1: 'Prevention', 'Lithuanian politicians', 'Official institutions', 'Business', 'Officials', 'Political parties', 'Lithuania'.

Cluster 2: 'Illegal activity', 'Crime control', 'Corruption', 'Law-enforcement personnel', 'Law-enforcement institutions', 'Finance', 'Foreign countries'.

As one can see, the sub-clusters from the domain of 'Cluster 1' are related to the macro-level social context of corruption and associated with political and business activities on the national level. In turn, the sub-clusters from the domain of 'Cluster 2' are connected to the law-enforcement agencies and their activities. The semantic particularities of these sub-clusters are made visible in Figure 6 and Figure 7, which represent their hierarchical structure.

²¹ 'Main term' is a linguistically modified term for HAMLET purposes that is created by using the root (plus asterisk) of each of the most frequent words in the textual corpus, which, together with its 'synonyms', refers to the content of the initial cluster.

²² All of the terms that have been used in the analysis were taken in their original linguistic forms.

²³ Word clusters' significance level for inclusion: 0.01.

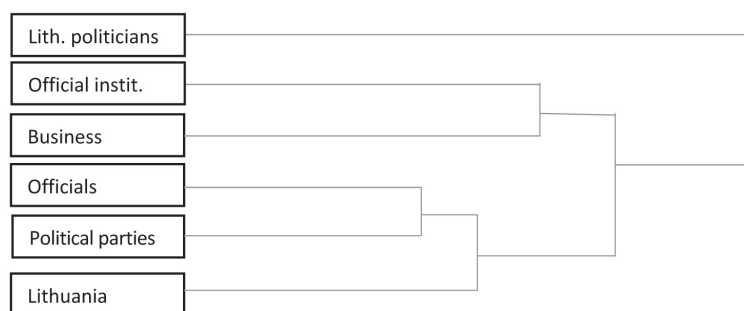


Figure 6. The core elements of Cluster 1 for DELFI.lt.

In Cluster 1, corruption issues are covered in the context of the activities of political organisations and Lithuanian officials, both at national and at local level. Two examples from DELFI.lt news can be cited in this connection:

It is alleged that, during the first tour of elections, at night, the Labour Party representative, after sending the members of the electoral commission from the other parties home, invited another Labour Party member, from another electoral district, and, as suspected, filled in 55 blank ballots with the surnames of the Labour Party representatives. (DELFI.lt, at <http://www.delfi.lt/news/daily/lithuania/alytuje-itarima-idel-rinkimu-balsu-klastojimo.d?id=67402728> – authors’ translation.)

The parties that have abused the roots of politics – justice – act as gangs robbing from the city (state) budget. However, they represent only 4% of the Lithuanian population. It appears to be a suitable time to send these new nomenklatura parties – first of all, at municipality level – to a deserved rest. (DELFI.lt, at <http://www.delfi.lt/news/ringas/politics/e-dzezulskis-duonys-ar-per-lausime-sistema.d?id=67074380> – authors’ translation.)

It is worth noting that, although the notion of prevention is related to the core elements of Cluster 1, the link is statistically weak and is insignificant within the textual corpus of DELFI.lt publications.

Cluster 2 and, especially, the three sub-clusters ‘Law-enforcement personnel’, ‘Law-enforcement institutions’, and ‘Corruption’ indicate an intention to present corruption control as being a matter of law-enforcement activities. Here are some illustrative examples from DELFI.lt:

The court has declared that fines must be paid within two years. The court has also confiscated from customs officers various sums of money – 30 or 60 litas – which had been revealed during operations. Most of the custom officers are temporarily suspended from their duties; all convicted persons are ordinary civil servants. (DELFI.lt, at <http://www.delfi.lt/verslas/transportas/neteisetas-rinkliavas-eme-medininku-muitininkai-nubausti-beveik-puses-milijono-euru-baudomis.d?id=66814836> – authors’ translation.)

After the new search at Order and Justice party headquarters and in the Ministry of the Interior and related institutions that had been carried by the Special Investigation Service (SIS) officers, [...] new allegations have been released with regard to an estimated five more persons. (DELFI.lt, at <http://www.delfi.lt/news/daily/lithuania/po-kratu-partijos-tvarka-ir-teisingumas-bustineje-nauji-itariamieji.d?id=66844144> – authors’ translation.)

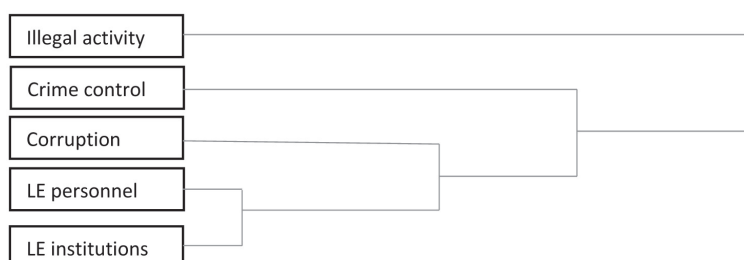


Figure 7. The core elements of Cluster 2 for DELFI.lt.

The sub-cluster under the title 'Foreign countries' is linked with another sub-cluster – 'Finance'. However, statistically the link does not meet the necessary level for inclusion as significant and hence cannot be taken into consideration as a valid element for further analysis.

Lrytas.lt

Cluster 1: 'Prevention', 'Lithuanian politicians', 'Official institutions', 'Political parties'.

Cluster 2: 'Illegal activity', 'Crime control', 'Corruption', 'Law-enforcement personnel', 'Law-enforcement institutions', 'Finance', 'Officials', 'Business', 'Foreign countries', 'Lithuania'.

The clusters representing Lrytas.lt are similar to those of DELFI.lt. The sub-clusters belonging to Cluster 1 tie prevention issues with Lithuanian political and government institutions. The sub-clusters from Cluster 2 refer primarily to law-enforcement activities for controlling corruption. However, in a difference from DELFI.lt, in Lrytas.lt this set of sub-clusters is connected with institutional, business, and financial issues. The dendrograms below (in Figures 8 and 9) reveal the hierarchical composition of the elements of both clusters.

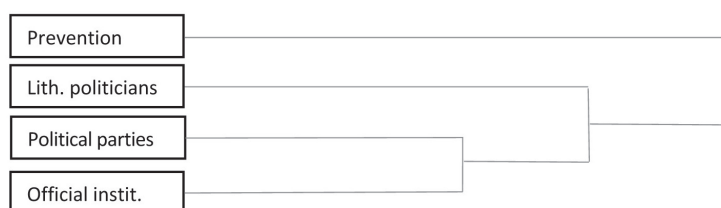


Figure 8. The structure of Cluster 1 for Lrytas.lt.

Similarly, as in the case of DELFI.lt, the semantic analysis of Cluster 1 revealed that prevention issues in Lrytas.lt publications usually appeared in the political-institutional context. However, the links between sub-clusters within Cluster 1 are statistically weak; therefore, the following examples represent rare cases of the links between the sub-clusters in the overall context of the publications of Lrytas.lt:

That would most likely be the most dangerous violation of the law, which, if proved, would probably lead to the nullification of election results. Obviously, these cases should be investigated by law enforcement, whereas Parliament should take care of the rules of law that would prevent fictitious voters' migration. (Lrytas.lt, at <http://lietuvosdiena.Lrytas.lt/aktualijos/isankstinis-balsavimas-sukele-itarimu.htm> – authors' translation.)

While looking forward, the president of the International Chamber of Commerce has noted that it would be useful to form a guide for corruption prevention in business, which could be prepared by the associated business structures and the Special Investigation Service. According to V. Sutkus²⁴, this guide could become a useful indicative document for both companies and the society. (Lrytas.lt, at <http://verslas.Lrytas.lt/rinkos-pulas/verslo-zvilgsnis-i-korupcijos-prevencija.htm> – authors' translation.)

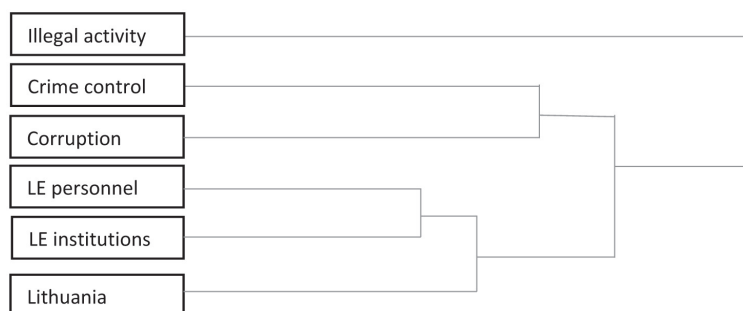


Figure 9. The core elements of Cluster 2 for Lrytas.lt.

²⁴ V. Sutkus is an individual who was interviewed by the Lrytas.lt journalist.

Irrespective of the fact that ‘civil’ elements are present in Cluster 2, the statistically reliable core elements consist of ‘criminal’-oriented sub-clusters: the ‘Corruption’ sub-cluster is more closely related to the ‘Crime control’ sub-cluster, and this link in its turn is connected with the ‘Lithuanian law enforcement’ sub-cluster. The following examples extracted from Lrytas.lt illustrate this interconnection:

While continuing the pre-trial investigation of the corruptive actions of the representatives of a pharmaceutical company and the doctors belonging to the medical institutions from various countries, the officers from the Special Investigation Service have also raised allegations pertaining to large-scale bribery and fraudulent accounting against two more persons – the director of the pharmaceutical company and the development manager. (Lrytas.lt, at <http://lietuvosdiena.Lrytas.lt/kriminalai/stt-pareikst-iitarimai-farmacijos-bendroves-vadovams.htm> – authors’ translation.)

The Chief Official Ethics Commission has a list consisting of 33 persons who are suspected of violating public and private interests, while investigating the possible corruption scandal at Druskininkai Aquapark. However, its representatives cannot begin the investigation so long as the pre-trial investigation carried out by the Special Investigation Service is not finished. (Lrytas.lt, at <http://lietuvosdiena.Lrytas.lt/aktualijos/isivelusiu-i-druskininku-vandens-parko-skandala-33-asmenys.htm> – authors’ translation.)

As one can see, the semantic analysis of the corruption-related publications issued by DELFI.lt and Lrytas.lt allows concluding that corruption-linked issues are presented in a very similar way between the two Internet portals. More specifically, the phenomenon of corruption is virtually criminalised; i.e., by and large, it is considered to be a matter for law-enforcement activities (in the Lrytas.lt materials, this feature is presented in a more obvious manner) whereas the political, governmental, or business aspects appear to be less important, with the articles not speaking about the prevention-of-corruption topic, which is rather marginalised.

4. Conclusions

The growing role of Internet media has become a significant factor in providing vital information to the members of society, as well as in initiating and shaping public discussion of the most acute social problems. Corruption, being one of the most discussion-prone topics in contemporary communities, is also positioned as among the most popular themes of the Internet media. As recent studies have shown, in Lithuania the Internet media rapidly became one of the most relied-upon sources of corruption-related information.

Our structural and semantic analysis of the corruption-related publications of the two most influential Internet portals in Lithuania, DELFI.lt and Lrytas.lt, has revealed that they both fit the so-called middle-brows position: the articles in general are more descriptive than analytic, and the mode of publications is rather more neutral than emotional. In comparison of the results of the study with the findings from the diagnostic survey Map of Corruption in Lithuania 2016, it is important to notice that both Internet portals reflected the public concern about the spreading of bribery in Lithuanian society and paid close attention to this topic in their publications. However, at the same time, they both underrepresented the problem of nepotism, which, according to the survey results, is another acute corruption problem in society.

The analysis of the selected publications has revealed, in addition, a tendency toward virtual criminalisation of corruption, with framing of corruption problems in a criminal-justice context (more prevalent with Lrytas.lt, less so with DELFI.lt). In consequence of said framing, important elements of anti-corruption policy – prevention and education – were underrepresented in the publications examined. In contrast, both portals paid much more attention to criminal prosecution, which, as the results of the diagnostic survey have shown, has also been cited as a favourable anti-corruption measure by the majority of Lithuania’s population.

The study reported upon here cannot be treated as a comprehensive analysis of the coverage of corruption by the Lithuanian Internet media. It concentrated on the most commonly present and visible (in a quantitative sense) aspects of the presentation of corruption in a relatively narrow domain (two Internet portals) and in the short term (a one-year publication period). Obviously, new research in this area could address itself to a broader space of information sources, including social networks, and consider dynamic changes in the context of media presentations, and it could embark upon their deeper quantitative and qualitative analysis and interpretation.



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Changes in the Estonian Cannabis Debate

1. Introduction

In recent years, a shift in drug-politics discourse has taken place in various Western countries from a punitive towards a more liberal approach. The Global Commission on Drug Policy (GCDP) stressed in its 2011 report that the war on drugs has failed and that fundamental reforms of global drug-control policies are urgently needed¹. A report recently published by the group recommended that countries put an end to civil and criminal penalties for drug use and possession². By 2016, four states³ in the US had legalised recreational use of cannabis, and 23 states have legalised marijuana for medical use⁴. Federal marijuana legalisation in Canada will be introduced in the coming years⁵. Even in the states of Latin America, as varied as they are, an urgent need to reform drug policy has been spoken of lately⁶. In Uruguay, use and sale of cannabis have been allowed since 2013⁷. However, there is no consensus on regulation of illicit drugs in the world. At the UN General Assembly held in April 2016, it was generally acknowledged that the objectives of the prohibition policy have not been achieved, yet it was decided, though not unanimously, to carry on as before⁸.

As of today, no government in Europe has legalised cannabis. Contrary to the common perception that cannabis is legal in the Netherlands, this is not entirely true pursuant to the Dutch legislation⁹. They have merely arrived at a consensus that cannabis use will not be punished by the authorities. Several European countries, among them Portugal, Spain, the Czech Republic, and Italy, have decriminalised the use

¹ GCDP. War On Drugs: Report of the Global Commission on Drug Policy. 2011. Available at http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf (most recently accessed on 29.11.2016).

² GCDP. Advancing drug policy reform: A new approach to decriminalization. 2016. Geneva: Global Commission on Drug Policy. Available at <http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/> (most recently accessed on 30.11.2016).

³ These states are Washington, Colorado, Alaska, and Oregon.

⁴ S.T. Wilkinson et al. Marijuana legalization: Impact on physicians and public health. – *Annual Review of Medicine* 67 (2015), pp. 453–466. DOI: <https://doi.org/10.1146/annurev-med-050214-013454>.

⁵ Canada plans marijuana legalization by spring 2017: Minister. NBC News, 20.4.2016. Available at <http://www.nbcnews.com/business/consumer/canada-plans-marijuana-legalization-spring-2017-minister-n559361> (most recently accessed on 27.11.2016).

⁶ See materials from Drug Law Reform on the situation in Latin America, from 2016, at <http://www.druglawreform.info/en/country-information> (most recently accessed on 10.10.2106).

⁷ Uruguay's drug policy: Major innovations, major challenges: Improving global drug policy. Comparative Perspectives and UNGASS 2016. Available at <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf> (most recently accessed on 3.8.2017).

⁸ UNODC. Outcome document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Available at <http://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf> (most recently accessed on 14.8.2017).

⁹ EMCDDA. Legal topic overviews: Possession of cannabis for personal use. 2016. Available at <http://www.emcdda.europa.eu/legal-topic-overviews/cannabis-possession-for-personal-use> (most recently accessed on 27.11.2016).

of cannabis; i.e., it is not a criminal offence but a misdemeanour. The Estonian media's oversimplified approach to the Portuguese depenalisation model has reinforced the common misconception that consumption is perfectly legal over there. Unlike in Estonia, large amounts of attention are paid to treatment and rehabilitation of addicts in Portugal. Nonetheless, according to that country's laws, possession of the substance for more than 10 days' average consumption constitutes a criminal offence, that is quite similar to the situation in Estonia (*resp.* ten average doses)^{*10}. Recently, attempts to embrace a 'softer' cannabis policy have become visible in various parts of Europe. For instance, Copenhagen's mayor is working to legalise cannabis sale^{*11}. The prohibitionist cannabis policy is even being challenged in Sweden^{*12}. In recent years, pro-legalisation sentiments are emanating from various media outlets of additional countries; e.g., the *Times* has openly declared its support for the pro-legalisation camp in the UK^{*13}.

In Estonia, some prominent jurists (J. Sootak, P. Randma, and P. Vahur) have recognised the need to reduce sentences for use and possession of cannabis or even legalise its use, as the existing punishments in place are a clear indication of overcriminalisation^{*14}. According to them, when it comes to punishment, generally there is no holding back^{*15}. In substantial numbers, Estonians are eager to experiment with this drug. Recently published results of a survey on drug use among Estonian students reveal that 38% of 15–16-year-olds have tried some illicit drug^{*16}. Hence, there are quite a few potential lawbreakers in Estonia^{*17}. Several scholars have considered it immoral to maintain such a desperate gap between reality and the laws^{*18}. In Estonia, cannabis legalisation has become the subject of wider public discussion too in the last few years^{*19}. According to the media-monitoring company Baltic Media Monitoring Group (BMMG), regulation of cannabis was high on the media agenda in Estonia in 2015^{*20}.

It is important to study the press coverage of drug-policy issues because the media's role in shaping opinion on drug-regulation issues among the leading politicians, governments, and general public should not be underestimated^{*21}. News portals and online versions of the major newspapers are, alongside scientific publications, health magazines, television, and social media outlets, an important factor in raising public awareness of drugs^{*22} and in forming relevant drug policy^{*23}. News-media coverage both reflects and

¹⁰ Act on Narcotic Drugs and Psychotropic Substances and Precursors Thereof. Available at <https://www.riigiteataja.ee/en/eli/506052016001/consolidate> (most recently accessed on 14.8.2017), paragraph 31.

¹¹ O. Rogeberg. Drug policy, values and the public health approach: Four lessons from drug policy reform movements. – *Nordic Studies on Alcohol and Drugs* 32 (2015) / 4, pp. 347–364. DOI: <https://doi.org/10.1515/nsad-2015-0034>.

¹² J. Månsson, M. Ekendahl. Protecting prohibition: *The role of Swedish information symposia in keeping cannabis a high-profile problem*. – *Contemporary Drug Problems* 42 (2015) / 3, pp. 209–225. DOI: <https://doi.org/10.1177/0091450915599348>.

¹³ The Times calls for decriminalisation of all illegal drugs. – *The Guardian*, 16.6.2016. Available at <https://www.theguardian.com/media/greenslade/2016/jun/16/the-times-decriminalisation-drugs> (most recently accessed on 25.11.2016).

¹⁴ J. Sootak, P. Randma. Narkokriminaalpoliitika või narkopoliitika? ['Criminal drug policy or drug policy?']. – *Akadeemia* 2006/6, pp. 1325–1364 (in Estonian).

¹⁵ J. Sootak. Narkokurjategijaks saada on liiga lihtne ['It's too easy to become a drug offender']. – *Postimees*, 7.7.2009 (in Estonian).

¹⁶ NIHD. Uimastite tarvitamine koolinoorte seas: 15-16-aastaste õpilaste legaalse ja illegaalse narkootikumide kasutamine Eestis ['Drug use among schoolchildren: Use of legal and illegal drugs by 15–16-year-old students in Estonia']. National Institute of Health Development, pp. 17–18 (in Estonian).

¹⁷ J. Sootak (see Note 15).

¹⁸ R. Villems. Kanepi pruukimise võiks dekriminaliseerida! ['Use of cannabis could be decriminalised']. – *Eesti Päevaleht*, 30.12.2009. Available at <http://forte.delfi.ee/news/teadus/akadeemik-kanepi-pruukimise-voiks-dekriminaliseerida?id=28190511> (most recently accessed on 3.8.2017); M. Järvelaid. Keelatud kanep mõjub ohutumalt kui seadustatud alkohol ja tubakas ['Forbidden hemp is more safe than the allowed alcohol and tobacco']. – *Eesti Ekspress*, 8.8.2009 (in Estonian).

¹⁹ F. Elkind. Narkootikumid ühiskonnas ja nende representatsioonid Eesti ajalehtede online versioonides ['Illicit drugs in society and their representations in the online versions of the Estonian newspapers']. MA thesis. Tallinn: Tartu Ülikool 2016 (in Estonian).

²⁰ Kanep eesti ajakirjanduses, 01.01 – 13.12 2015 ['Hemp in the Estonian press, 1.1–13.12.2015']. Tallinn: Baltic Media Monitoring Group 2016 (in Estonian).

²¹ S. Lenton. Pot, politics and the press – reflections on cannabis law reform in Western Australia. – *Drug and Alcohol Review* 23 (2004) / 2, pp. 223–233. DOI: <https://doi.org/10.1080/09595230410001704226>.

²² P. Bell. Drugs and the media. – *Australian Alcohol/Drug Review* 4 (1985) / 2, pp. 235–242. DOI: <https://doi.org/10.1080/09595238580000401>; W.D. Crano, M. Burgoon. *Mass Media and Drug Prevention: Classic and Contemporary Theories and Research*. 2002. DOI: <https://doi.org/10.4324/9781410603845>; K. Lancaster et al. Illicit drugs and the media: Models of media effects for use in drug policy research. – *Drug and Alcohol Review* 30 (2011) / 4, pp. 397–402. DOI: <https://doi.org/10.1111/j.1465-3362.2010.00239.x>.

²³ S. Lenton (see Note 21); *ibid.*

influences the national dialogue about policy issues^{*24}. Mass media have been identified as a ‘battleground’ in the drug field^{*25}. According to N. Fairclough, the media should be seen as offering valuable material for researching social change^{*26} and newspaper articles are very relevant material for investigating shifts in public debate^{*27}.

This paper is intended to describe how the issue of cannabis regulation has been addressed in online versions of Estonia’s major dailies (*Postimees* and *Eesti Päevaleht*) and by the main news portal, Delfi. The author of this article is interested in how the Estonian press has reacted to a situation wherein Estonia’s biggest role model, the US (along with Canada), pursues a more lenient drug policy while the official policy in Estonia continues on a rather punitive course: how is the press responding to all this? Is the press open to diverse views on drug policies, or is it rather focused on the official discourse? Who is given voice by journalists in the drug-politics debate? Which approach to cannabis (continuing to ban it vs. advocating legalisation) prevails in opinion pieces? What are the main arguments both for and against cannabis legalisation? How has the coverage changed with time?

The remainder of the article is organised such that the next section gives an overview of the major studies on cannabis and the media, with the third section then discussing cannabis use and regulation in Estonia. After this, methodology of the study presented here is introduced, and the main parts of the article present results of press analysis. A summary closes the article.

2. Earlier studies on cannabis representations in the news media

Many studies have focused on media and illicit drugs^{*28}. Some scholars have found that marijuana has long been portrayed negatively through purported ties to violence and racial/ethnic stereotypes in the US press^{*29}. Researchers from various countries have found that media coverage of cannabis has been predominantly associated with law enforcement, criminality, and legal issues^{*30}. Studies show that press pieces tend to echo law-enforcement claims surrounding issues of drug policy^{*31}. Recently it has been found that the situation is changing in the Western world^{*32}.

²⁴ E. McGinty et al. The emerging public discourse on state legalization of marijuana for recreational use in the US: Analysis of news media coverage, 2010–2014. – *Preventive Medicine* 90 (2016), pp. 114–120. DOI: <https://doi.org/10.1016/j.ypmed.2016.06.040>; D.A. Graber, J. Dunaway. *Mass Media and American Politics*. CQ Press 2014.

²⁵ J. Månsson, M. Ekendahl (see Note 12).

²⁶ N. Fairclough. *Media Discourse*. London; New York; Sydney; Auckland: Arnold 1995.

²⁷ J. Månsson, M. Ekendahl (see Note 12).

²⁸ S.J. Bright et al. What can we say about substance use? Dominant discourses and narratives emergent from Australian media. – *Addiction Research and Theory* 6 (2008) / 2, pp. 135–148. DOI: <https://doi.org/10.1080/16066350701794972>; C. Reinerman et al. Crack in context: Politics and media in the making of a drug scare. – *Contemporary Drug Problems* 16 (1985) / 4, pp. 535–577; M. McArthur. Pushing the drug debate: The media’s role in policy reform. – *Australian Journal of Social Issues* 1999/May, pp. 149–165. DOI: <https://doi.org/10.1002/j.1839-4655.1999.tb01075.x>; G. Lawrence et al. Sending the wrong message: Analysis of print media reportage of the ACT heroin prescription trial proposal, August 1997. – *Australian and New Zealand Journal of Public Health* 24 (2000), pp. 254–264. DOI: <https://doi.org/10.1111/j.1467-842x.2000.tb01565.x>; A. Elliott, S. Chapman. ‘Heroin hell their own making’: Construction of heroin users in the Australian press 1992–97. *Drug & Alcohol Review* 19 (2000), pp. 191–201. DOI: <https://doi.org/10.1080/713659328>; K. Beckett. Setting the public agenda: Street crime and drug use in American politics. – *Social Problems* 41 (1994) / 3, pp. 425–447. DOI: <https://doi.org/10.2307/3096971>; etc.

²⁹ M.A. Kleinman. *Against Excess: Drug Policy for Results*. New York: Basic Books 1992; B. Kilmer et al. *Marijuana Legalization: What Everyone Needs to Know*. New York: Oxford University Press 2012.

³⁰ C.E. Hughes et al. How do Australian news media depict illicit drug issues? An analysis of print media reporting across and between illicit drugs, 2003–2008. – *International Journal of Drug Policy* 22 (2011) / 4, pp. 285–291. DOI: <https://doi.org/10.1016/j.drugpo.2011.05.008>; S. Cross. Under a cloud: Morality, ambivalence and uncertainty in news discourse of cannabis law reform in Great Britain. In P. Manning (ed.). *Drugs and Popular Culture: Drugs, Media and Identity in Contemporary Society*, pp. 134–149. Cullompton: Willan Publishing 2007.

³¹ S. Taylor. Outside the outsiders: Media representations of drug use. – *Probation Journal* 55 (2008) / 4, pp. 369–387. DOI: <https://doi.org/10.1177/0264550508096493>; S. Boyd, C. Carter. Methamphetamine discourse: Media, law, and policy. – *Canadian Journal of Communication* 35 (2010) / 2, pp. 219–237. DOI: <https://doi.org/10.22230/cjc.2010v35n2a2207>.

³² J. Månsson, M. Ekendahl (see Note 12); J. Månsson. A dawning demand for a new cannabis policy: A study of Swedish online drug discussions. – *International Journal of Drug Policy* 25 (2014) / 4, pp. 673–681. DOI: <https://doi.org/10.1016/j.drugpo.2014.04.001>.

In the last three years, some in-depth studies on cannabis and the media have been carried out. E. McGinty and colleagues recently studied the emerging public discourse on state legalisation of marijuana for recreational use in the US³³. They explored the volume and content of news stories on drug-politics issues and found that news-media coverage of recreational marijuana policy was heavily concentrated in the news outlets from the four states that had recently legalised marijuana. The most frequent pro-legalisation arguments posited that legalisation would reduce criminal-justice involvement/costs and increase tax revenue. Anti-legalisation arguments were centred on adverse public-health consequences. They concluded that, as additional states continue to debate legalisation of marijuana for recreational use, it is critical for the public-health community to develop communication strategies that accurately convey the rapidly evolving research evidence related to recreational-marijuana policy.

J. Månsson analysed how cannabis is constructed in Swedish print media and whether this has changed over time³⁴. Sweden is known for its prohibitionist cannabis policy, but this approach seems to be increasingly challenged in both international and domestic arenas. It was, therefore, important to understand whether and how this international change was mirrored and processed in a key arena such as print media. Newspaper articles from 2002 and 2012 were analysed, for exploring of continuity and change. The analysis showed that print media in both years seemed to draw mainly on a juridical, a social-problems, and a medical discourse when portraying cannabis. While there was strong continuity in these cannabis constructions, the analysis also showed signs of change. For example, in 2012 there were articles drawing on economic and recreational discourses. There was a global outlook enabling new cannabis constructions. The author concluded that the Swedish print media generally have a crime-centred and deterrent approach towards cannabis, with prohibition at the heart of the reporting. International events, however, introduced discursive alternatives by 2012.

O.H. Griffin and colleagues studied how marijuana was depicted in The New York Times from 1851 to 1950³⁵. The researchers did not provide evidence that the coverage of marijuana escalated to a level of media hysteria. However, there was certainly a considerable number of articles providing coverage of the drug in that time. Several scholars have argued that in the earlier part of the twentieth century, especially in the 1930s, the media associated marijuana mainly with violence and mental illness and they often linked marijuana with Mexican immigrants. Conversely, the authors found that depictions of violence occurred but were not prevalent. There was some evidence to support a conclusion that marijuana was often linked to people of Mexican descent, but these reports were not particularly frequent and were primarily restricted to the 1930s. The published articles rarely mentioned addiction, and in a few instances they actually implied that marijuana did not pose a great danger. Moreover, reports of marijuana being associated with mental illness or organised crime were not common.

In Belgium, J. Tieberghien and T. Decorte explored the complex relationship between policy and science in the drugs field. Using the Belgian drug-policy debate (1996–2003) as a case study, they critically explored the role of scientific knowledge in this debate. An examination of how scientific knowledge was used in policy documents has demonstrated rather strong utilisation. However, utilisation was often subordinate to the complexity of the policy-making process, involving not only scientific knowledge but also interests, electoral ambitions, etc. Likewise, scientific knowledge was also shaped and distorted by conflicting values and interests³⁶. S.R. Sznitman and N. Lewis examined the framing of cannabis for therapeutic purposes (CTP) in Israeli media coverage (2007–2013) and the association between media coverage and trends in the granting of CTP licences in Israel over time³⁷. They found that in the majority of the news articles analysed (69%), cannabis was framed as a medicine, although in almost a third of the articles (31%) cannabis was framed as an illicit drug. The authors concluded that the relatively large proportion of news items framing cannabis as a medicine is consistent with growing support for the expansion of Israel's CTP

³³ E. McGinty et al. (see Note 24).

³⁴ J. Månsson. The same old story? Continuity and change in Swedish print media constructions of cannabis. – *Nordic Studies on Alcohol and Drugs* 33 (2016) / 3, pp. 267–285. DOI: <https://doi-org.ezproxy.utlib.ut.ee/10.1515/nsad-2016-0021>.

³⁵ O.H. Griffin et al. Sifting through the hyperbole: One hundred years of marijuana coverage in The New York Times. *Deviant Behavior* 34 (2013) / 10, pp. 767–781. DOI: <https://doi.org/10.1080/01639625.2013.766548>.

³⁶ J. Tieberghien, T. Decorte. Understanding the science-policy nexus in Belgium: An analysis of the drug policy debate (1996–2003). – *Drugs: Education, Prevention and Policy* 20 (2013) / 3, pp. 241–248. DOI: <https://doi.org/10.3109/09687637.2012.759904>.

³⁷ S.R. Sznitman, N. Lewis. Is cannabis an illicit drug or a medicine? A quantitative framing analysis of Israeli newspaper coverage. – *International Journal of Drug Policy* 26 (2015) / 5, pp. 446–452. DOI: <https://doi.org/10.1016/j.drugpo.2015.01.010>.

programme. Thus, in the wide world, only a few studies focus on the role of the media in the cannabis debate in recent years, which have witnessed change in the global drug-related political discourse. This article fills the gap, analysing the discussion of cannabis legalisation in the Estonian media.

3. Cannabis use and regulation in Estonia

Although cannabis has been around as a recreational drug for quite some time now in Europe, Estonians became more acquainted with the plant only in the 1990s. According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 6% of adults in Estonia (between the ages of 15 and 64) have tried cannabis within the past 12 months, remaining slightly below the European average of 7%^{*38}. Among adults, 27% have used cannabis at some point in their life^{*39}. Cannabis is relatively popular with the younger generation: 53% of Estonian men of ages 25–34 claim to have used cannabis at some point^{*40}. According to the last ESPAD survey (European School Survey Project on Alcohol and Other Drugs), 25% of 15–16-year-olds have tried cannabis in Estonia, a figure much higher than the corresponding ones for the Nordic countries (7% for Sweden and Norway, 8% for Finland, and 12% in Denmark)^{*41}.

Under the Estonian legislation, all strains of cannabis (*Cannabis sativa*) containing over 0.2% of tetrahydrocannabinol are illegal and have been entered on the list of most highly prohibited substances^{*42}. In Estonia, cultivation of cannabis, handling of cannabis products, trafficking or distribution, production, acquisition or possession, and also inducing a person to engage in illegal use are deemed offences to be followed by criminal prosecution. The use of cannabis, as with any other drug entered on the list of psychotropic or narcotic substances, is not a criminal offence (this has been true since 2002); rather, it is viewed as a misdemeanour punishable by detention or a fine. However, having quite a small quantity of cannabis (7.5 grams) could already be punishable under the Estonian Penal Code^{*43}.

It has been suggested that in respect of criminal offences the laws should be amended so as to classify illicit drugs into distinct categories in line with their harmfulness^{*44}. Although the effects of cannabis on health are less severe than those of heroin or amphetamine, the punishments for cannabis-related offences prescribed by law are comparable to those for any other narcotic or psychotropic substance on the list. In Estonia, the average fine for a cannabis-related misdemeanour is 80 euros, while it is 100 euros for other illicit drugs. Penal practice indicates that, for the most part (i.e., in 80–90% of cases), fines are imposed in cases involving small quantities of psychotropic or narcotic substances for personal use (misdemeanour cases), and in 10–20% of the cases the court orders detention of the convicted offender for up to 30 days^{*45}. According to the Ministry of Justice, the difference comes about in the courtroom, with cannabis-related criminal offences carrying a lighter sentence in practice^{*46}. Most of the drugs-related criminal cases prosecuted involve small quantities of illicit drugs.

³⁸ EMCDDA. Prevalence maps — prevalence of drug use in Europe. 2016. Available at <http://www.emcdda.europa.eu/countries/prevalence-maps> (most recently accessed on 4.8.2017).

³⁹ NIHD. *Eesti täiskasvanud rahvastiku tervisekäitumise uuring, 2014* [‘Health Behaviour among the Estonian Adult Population’]. 2015 (in Estonian), p. 95.

⁴⁰ *Ibid.*

⁴¹ ESPAD. Illicit drug use: ESPAD Report 2015. Available at <http://www.espad.org/report/situation/illicit-drug-use> (most recently accessed on 29.11.2016).

⁴² Sotsiaalministri 18.mai 2005.a määrus nr 73 „Narkootiliste ja psühhotroopsete ainete meditsiinilisel ja teaduslikul eesmärgil käitlemise ning sellealase arvestuse ja aruandluse tingimused ja kord ning narkootiliste ja psühhotroopsete ainete nimekirjad“ [‘Conditions and procedure for the handling and reporting of narcotic drugs and psychotropic substances for medical and scientific purposes, and the list of narcotic drugs and psychotropic substances’]. Available at <https://www.riigiteataja.ee/akt/12998582> (most recently accessed on 4.8.2017) (in Estonian).

⁴³ Karistusseadustik (Penal Code). Available in Estonian at [https://www.riigiteataja.ee/akt/117122015009\(06.02.2016\)](https://www.riigiteataja.ee/akt/117122015009(06.02.2016)) most recently accessed on 4.8.2017), Chapter 12, Section 1.

⁴⁴ J. Ginter. Lahjem narkootikum väärib kergemat karistust [‘Softer drug deserves lighter sentence’]. – *Postimees*, 15.7.2009 (in Estonian).

⁴⁵ J. Salla. Uimastid, kuritegu ja karistus – mida, kui palju ja kellele? Ettekanne konverentsil „Uimastid, kuritegu ja karistus – kuhu tõmmata piirid?“ [‘Presentation “Drugs, crime and punishment – what, how much, and to whom?” at the conference Drugs and Crime’], from 7–8 March 2016. Tallinna Ülikool (in Estonian).

⁴⁶ The author of this article conducted interviews with Mr Andri Ahven, from the Ministry of Justice, on 1.12.2015 and 8.3.2016.

Encouraged by changes in the global drug scene, activists in Estonian civil society have been campaigning for a more liberal/humane and up-to-date drug policy in recent years. Various events have been organised in their advocating for legalisation of cannabis in Estonia. They have exerted pressure on Parliament and expressed their views in the media^{*47}. A Web site on medical cannabis (ravikanep.ee) was established by the NGO Ravikanep. Facebook pages of proponents of legalisation are utilised to connect interested persons. The Estonian Green Party has pledged to regulate cannabis at national level.

Several opinion polls have revealed that public opinion on legalisation matters varies greatly. While the poll results reported by newspapers' online editions and by news portals indicate strong public support for legal cannabis^{*48}, a recent study by Turu-Uuringute AS showed fierce public opposition to the plan^{*49}. Two years ago, a study conducted by TNS Emor revealed that 67% of Estonians would like to see cannabis regulated along the same lines as tobacco, alcohol, and medicinal products^{*50}. This means primarily that one should be cautious in interpreting results of polls, at least on this topic.

Today, discussion on public-policy issues often takes place via social media. However, the traditional mass media are still the principal platform for the wider debate on drugs in general^{*51}.

4. The sample and methods

To enable the study of discussion of cannabis in the Estonian press, online versions of two national dailies, *Postimees* (PM) and *Eesti Päevaleht* (EPL), and the highest-circulation weekly, *Eesti Ekspress* (EE), along with the major news portal *Delfi*, were selected. Years 2009 and 2015 were chosen, because in both of those years the media interest in respect of cannabis regulation was higher than usual. The two months when the discussion was most intense were picked from each of those years – July and August of 2009 and September and October of 2015. Editorials, opinion pieces, experts' comments, and interviews were examined; in other words, the study focused solely on articles introducing someone's opinion and people's viewpoints. In total, 57 articles were selected, 25 from 2009 and 32 from 2015.

The study employed a mixed method of analysis, consisting of content analysis^{*52} and close reading^{*53}. The former allowed ascertaining, among other things, the total number of articles published, the authors' identity and professional background, and which of the stories were for or against legalisation. The close reading method enabled delving deeply into the most influential texts for purposes such as examining standpoints and arguments more closely.

⁴⁷ Toompeal toimus Eesti narkopoliitikat muuta püüdev meelevaldus "Laske elada, raisk!" ['A demonstration, "Let us live!", took place on Toompea orienting toward change to Estonian drug policy']. Delfi, 17.9.2015. Available at <http://publik.delfi.ee/news/mitmesugust/taispikkuses-toompeal-toimus-eesti-narkopoliitikat-muuta-puudev-meelevaldus-laske-elada-raisk?id=72476305> (most recently accessed on 4.8.2017) (in Estonian).

⁴⁸ Gallup: lahjad narkootikumid tuleks legaliseerida ['Gallup poll: Softer drugs should be legalised']. – *Postimees*, 7.7.2009. Available at <http://arvamus.postimees.ee/v2/139394/gallup-lahjad-narkootikumid-tuleks-legaliseerida> (most recently accessed on 4.8.2017) (in Estonian).

⁴⁹ Uuring: 93 protsenti on vastu kanepi tarvitamisele ['93 per cent are opposed to cannabis use']. ERR.ee, 5.8.2016. Available at <http://www.err.ee/571598/uuring-93-protsenti-on-vastu-kanepi-tarvitamisele> (most recently accessed on 4.8.2017) (in Estonian).

⁵⁰ TNS Emor. Elanikkonna teadlikkus kanepi ravitoimest ja hoiakud kanepi laialdasemast kasutamisest Eesti meditsiinis ['The population's awareness about the therapeutic effect of cannabis and attitudes towards the use of cannabis in medical treatment in Estonia']. 2014. Available at <https://drive.google.com/file/d/0BxV86uYJfhXjcy1yc2ZCNUtTVzZg/view?pref=2&pli=1> (most recently accessed on 4.8.2017) (in Estonian).

⁵¹ E. McGinty et al. (see Note 24).

⁵² A. Berger. *Media Analysis Techniques*. California: SAGE 1998. DOI: <https://doi.org/10.4135/9781452243160>; D. Riffe et al. *Analysing Media Messages: Using Quantitative Analysis in Research*. Mahwah, New Jersey: Lawrence Erlbaum 2005. DOI: <https://doi.org/10.4324/9781410613424>.

⁵³ P. Kain. How to do a close reading. Writing Center of Harvard University 1998. Available at <http://www.fas.harvard.edu/~wrcntr/documents/CloseReading.html> (most recently accessed on 12.7.2016); S.A. McClennen. Dr. McClennen's close reading guide. Pennsylvania State University 2001.

5. Findings from the press analysis

5.1. In July 2009, cannabis as a new focus of experts' media debate

Although cannabis had made occasional appearances in the Estonian press since the 1990s, it became a subject of wider public discussion only in the summer of 2009. The 1 July issue of *Postimees*, elaborating on excessive punishments, was the first, with many to follow. The PM editorial referred to the fact that there were too many people in Estonia (almost one third of the population) punished either for criminal or for misdemeanour offences. It was suggested that punishing is not the only means to promote law-abiding behaviour and that the government should focus on crime prevention instead. In the same day's PM, the issue of overcriminalisation was explained – with drugs as an illustrative example – by Jaan Sootak, Professor of Criminal Law at the University of Tartu. He wrote that a person is already deemed a criminal offender in Estonia for the possession of a rather modest quantity of illicit drugs, and he also pointed out that in most cases the state comes down hard on the perpetrator.

Proponents of legalisation

The discussion proper started only after a week had passed (on 7 July), when PM journalist A. Raun communicated the position of Prof. Sootak and P. Vahur, the head of the Estonian Free Society Institute, a liberal think tank, that Estonia should move towards gradual legalisation of illicit drugs. It was stressed that a democratic criminal-justice system based on the rule of law should treat addicts not as criminals but as people in need of assistance and treatment. There is no conclusive scientific proof that the effects of cannabis are more harmful to the human body than tobacco; therefore, it is not fair that cannabis users are prosecuted while tobacco smokers go free. The following positive aspects entailed by possible legalisation were mentioned: a chance to tackle drug problems more meaningfully, more efficient use of public funds, depriving the underworld of their illegally-gained proceeds, putting an end to the stigmatisation of young people caught with cannabis, and others. Legalisation of cannabis was, in principle, endorsed by one more jurist, J. Ginter, Professor of Criminology at Tartu University, who mentioned on 15 July that he believes in more lenient punishments for offences involving soft drugs. Only six articles out of the 25 from 2009 (24%) advocated the legalisation of cannabis.

Opponents of legalisation

The above-mentioned ideas of jurists inspired widespread resentment in members of the medical profession, prevention experts, politicians, and even journalists. Views held by experts vigorously opposing legalisation in Estonia constituted the overwhelming majority (82%). Medical and prevention staff were especially critical of more lenient drug policy, most of them dismissing the jurists' ideas as misguided. An illustration of this is that on 7 July PM interviewed K. Abel-Ollo, a researcher from the National Institute for Health Development (NIHD), who emphasised that drug abuse can be associated with deaths, proliferation of infectious diseases, crime, increased health-care costs, and exclusion of young people from the labour market. In a PM piece from 24 July, A. Kurbatova, from the NIHD, tried to dispel the common misconception that the Dutch liberal drug policy was not riddled with serious problems. A. Talu, a third drugs expert from the NIHD, who painted a grim picture of the drug situation in Estonia in her opinion piece in EPL on 28 July, was of the opinion that legal cannabis would eventually result in additional trouble alongside added costs.

M. Liiger, an emergency-room doctor who has regular contact with drug addicts, told PM journalist P. Pullerits on 14 July that legalisation of drugs is plainly unconstitutional since it would dramatically hasten the extinction of Estonia's population in a couple of decades. She stated ironically: 'I admire people's (e.g., Sootak and Vahur's) ability to construct fascinating scientific theories, which they have every right to, much the same way as a Finnish scholar had an academic right to claim that Soviet occupation was the best thing that ever happened to Estonians. They cannot possibly fathom this issue the same way I, surrounded by drugs and addiction on a daily basis, see it.' Psychiatrist J. Mumma suggested on 18 July in EPL that after legalisation of cannabis, the number of addicts would most likely grow: 'If the share of first-time users increases, then there is a real danger that we will also see growth in the number of habitual users.' He agreed

with the lawyers that hard drugs and cannabis should be viewed separately. However, he did point out the role of cannabis in causing psychosis. Mari Järvelaid was the only member of the medical profession who called the efficacy of punishment into question (in EE on 8 August).

Experts and politicians largely remained central to the discussion in the summer of 2009: 26% of the articles reflected ideas of medical doctors and prevention experts, and lawyers explained their views in 22%. Several leading journalists argued passionately against legalisation. Among them were A. Ruusaaar (in PM on 11 July), A. Samost (in PM on 12 July), and K. Muuli (in PM on 12 July). On 11 July, PM referenced journalist Priit Hõbemägi, who on Radio Kuku's programme *Keskpäevatund* ('The Midday Hour') had called the drug debate initiated by Prof. Sootak 'a senseless waste of time'. Later, a comment followed that 'we only wanted to draw attention to the fact that in times of trouble our distinguished professors should deal with more pressing matters'.

PM conducted a number of polls on drugs regulation among its readers. On 6 July, they asked 'Should punishments for drug use in Estonia be reduced?' To this, 79% of the 1,813 respondents answered with a 'no', as they thought it would have disastrous consequences for the society at large. Only a day later (on 7 July), we saw a complete change of heart. When answering the question 'How should drug users be punished?', 69% of the 683 respondents actually indicated favouring the legalisation of soft drugs. It is probably safe to say, again, that, irrespective of their popularity with the masses, the results of online-media polling should be taken with a grain of salt.

All things considered, it seems that in the summer of 2009 the concept of legalisation proposed by jurists brought a breath of fresh air to an Estonian media scene otherwise preoccupied with news of economic recession. The theories of legal scholars were regarded as unrealistic and misplaced by those experts whose jobs involved day-to-day contact with drug addicts. In much the same vein, several leading journalists dismissed the topic as lacking any real substance.

5.2. In 2015, non-experts feeding the discussion on cannabis regulation

More heated debate about cannabis regulation ensued in autumn 2015. In contrast to 2009, this time the issue did not appear 'out of nowhere'. Several articles on drug policy had been published in 2014, with the increased media interest having been inspired mainly by the fact that purchasing cannabis in some US states was now perfectly legal⁵⁴. In 2015, most of the articles on cannabis issues revolved around public events. For instance, springtime demonstrations organised by cannabis activists in larger towns were covered by the media (e.g., on 9 April, a meeting was held in Tallinn on Viru Street, and on 17 April, a protest in support of legal cannabis was carried out in Tartu). For August in Paide, a debate on cannabis was arranged as part of the Opinion Festival's programme, also reported on by the electronic edition of PM. In September and October, the discussion of drug-politics issues reached its peak.

Proponents of legalisation

On 12 September, an opinion piece titled 'Illegal drugs should be decriminalised' was published via the online news portal of PM. The author, A.-R. Tereping, is a psychologist with the University of Tallinn who had never publicly commented on cannabis issues before. In his piece, he suggested that Estonia should follow the example of Portugal, where the liberalisation of legislation had improved the drug situation considerably. Three days later, on 15 September, the editorial board of PM ran an article in its section for Estonian news titled 'Portuguese drug policy – a magic wand for Estonia?', explaining the Portuguese drug laws in more detail while giving a general overview of cannabis consumption in Estonia in comparison to other European countries.

⁵⁴ See, for example, the *Postimees* piece of 1.2.2014.

The pro-legalisation event 'Let us live!'

Tereping's article seemed like a warm-up act to the pro-legalisation event 'Let us live!', held on Tallinn's Dome Hill. Organised via the Web site Nihilist.fm, this was led by writer K. Kender. The participants in the demonstration, which took place on 17 September in front of the Parliament building, were eager to change the course of Estonian drug policy. It was broadcast live on Delfi.ee. People from various walks of life contributed to this discussion. These included politicians and other public figures (E.-N. Kross, H. Purga, and Y. Alender), opinion leaders (H. Pajula), civil activists (L. Kampus), and creative professionals (writers O. Ruitlane and J. Rooste and several rap artists). It inspired people who had not been very vocal about drugs until then. In their petition, they invited Parliament to revise the principles underpinning the official drug policy, which was characterised as destroying the youth. The need for legal cannabis was emphasised by reminders that we are strongly influenced by American culture and therefore should abide by the same rules that apply in some of its states.

Media outlets concentrated on the public statements of E.-N. Kross, a high-profile member of the Reform Party, who blamed Estonian politicians for not thinking about or dealing with this burning issue. He was adamant that it is 'the duty of our elected representatives to find new solutions [...]. I feel sick in my stomach when somebody says that our drug policy works just fine'. They also quoted Kross's party colleague H. Purga (mainly because she had burst into tears while speaking), who had urged setting up a relevant study committee in Parliament. Y. Alender, also from the Reform Party, noted that if mistakes have been made, then it is time to correct them. The press (Delfi, on 17 September) also picked up on a word of advice from L. Kampus, a champion of minorities' rights: 'Don't let them ask you why cannabis should be legal; instead, ask them at every chance you get why cannabis isn't legal.' On 15 October, the Delfi news portal asked its readers whether consumption and cultivation of cannabis for one's own use should be decriminalised. Of the 4,093 respondents, 91.7% voted in favour of that idea.

The Kuperjanov Infantry Battalion in late September

An event that made headlines in the middle of October involved a number of conscripts being caught with illicit substances: 76 out of 200 recruits had failed the drug test administered at the Kuperjanov Infantry Battalion in late September. Civil-society activists S. Tuisk and M. Kalvet maintained that cannabis use in the military is an open secret and that these random checks are unproductive in practice and only cause needless confusion. The situation could be much worse if the young men were to start using hard drugs, they opined. The incident in the Defence Forces gave further momentum to the larger drug-policy debate. A reader's letter was published that expressed preference for a more liberal approach to cannabis and blamed mainly the media for distorted information on the drug. Columnist A. Lobjakas pointed out in his article 'Cannabis should be legal', published on 22 October in PM, that there is no meaningful debate on drug policy in Estonia. At the same time, the author argued, the global drug paradigm is undergoing major changes. For instance, Canada is about to legalise cannabis. His message was loud and clear: 'For want of a better alternative, Estonia has decided to preserve its depressing *status quo*.'

Opponents of legalisation

Unlike 2009, in 2015 the most active opponents of cannabis legalisation were from law-enforcement agencies. For example, in response to Tereping's article, U. Tambre, Chief of the North Prefecture Criminal Police, expressed his opinion in PM in a 16 September piece titled 'Decriminalisation is not a magic wand that cures social ills'. In a similarity to the rhetoric of 2009, that author justified the ban in place in terms of the government's failure to reduce heavy alcohol consumption. He took pride in the hard-line approach: there are no drug labs operating out of blocks of flats, no shops selling synthetic cannabinoids have been established, and criminals have not opted for Estonia as their favourite trafficking route. Former Interior Minister MP K.-M. Vaher's opinion piece 'It is prudent to keep drugs illegal' was published in PM on 15 September. On 19 September, PM printed a piece by A. Kurbatova, head of the Infectious Diseases and Drug Abuse Prevention Department of the NIHD, titled 'Decriminalisation – only a tiny piece of a more complex puzzle'. In it, she explained that the difference between Estonia and Portugal lies not in the decriminalisation as such but, rather, in the fact that Portugal looks after the people caught using drugs while Estonia prefers to issue fines instead.

In response to the Kuperjanov Battalion case, the 17 October PM editorial 'A shocking drugs bust in the Defence Forces' condemned use of drugs in the army and expressed hope that the drugs problem will be tackled head-on in the future. On 16 September, PM had invited comments from K. Tommingas, South Prefecture drug-police chief, who stated that the dramatic growth in the number of users among conscripts is a reflection of an overall trend in society and an inevitable result of the recent propaganda campaigns. The incident in the Defence Forces gave further momentum to the larger drug-policy debate. Experts asked to comment on this issue included L. Laur, head of the Drugs and Organised Crime Bureau of the Police and Border Guard Board (this interview can be found in Delfi materials from 20 October), and M. Medar, head of the Estonian Union for Child Welfare (Delfi, 16 October). Both of them defended the ban. The Police and Border Guard Board justified their position by introducing the age-old parallel with alcohol – if Estonia has not been able to put an end to alcoholism, how could it possibly cope with legal cannabis? Hence, Estonia is not ready for legalisation.

The entire 2015 drug debate could be characterised by the fact that the press had managed to invent two fierce adversaries: the progressive pro-legalisation camp, open to change and knowledgeable of the global trends, and, in opposition, the police officials, a group of die-hard fans of the 'old regime'. As physicians and health promoters still preferred to keep a low media profile on this issue in 2015, the bulk of the counter-arguments to the more liberal ideas were voiced by the law-enforcement authorities.

As the end of October neared, a great deal of media furore arose surrounding head of Estonian Public Broadcasting M. Allikmaa's statement that state-owned media should stay out of the cannabis debate (see 28 October PM). He explained his position thus: 'Any discussion on this subject could be eventually construed as some form of cannabis promotion.' Ethics consultant to the public broadcasting body T. Tammerk emphasised that the level of public awareness of these problems is so low that television and radio programmes should not even attempt to elaborate on the traditional pros and cons. Cannabis lobbyists should not gain easy access to a public platform so as to publicise their message in interviews. Opinions of scientists and independent experts should be preferred. Ironically, these were the very opinions that were mostly absent from the media in 2015. The position of Allikmaa and Tammerk did not gain much support from society. For example, the EPL editorial 'Public Broadcasting chief's cannabis faux pas', from 29 October, dubbed Allikmaa's statements censorship incompatible with free media. As no newsworthy events involving illicit drugs took place in the final part of the year, the media interest started to gradually subside. In 2016, cannabis and the larger drug-policy issues did make occasional appearances in the press.

In 2015, 56% of the pieces analysed showed tolerance for legalisation. The proponents represented people from diverse walks of life (politicians, writers, columnists, civil activists, etc.). The main opponents were from the police (representing 53% of cases in which the existing drug policy was approved). When compared to various non-experts (civil activists, columnists, writers, etc.), medical stuff and lawyers were not very visible in the drug debate in 2015. In 2009 and 2015 both, various media outlets proved a valuable arena for the individual camps to air their views on cannabis. In a difference from 2009, alternative media channels were largely responsible for keeping the matter in the spotlight in 2015. For instance, Nihilist.fm was the driving force behind the 'Let us live!' campaign.

6. Whether media debate on cannabis regulation has any impact on Estonian drug policy

One might ask whether media coverage of cannabis and the related issues has in any way affected Estonian drug policy at large. There have been a few positive signs that attempts are being made to move from punishment toward treatment and prevention. But these attempts are not directly related to the cannabis debate. Since March 2015, new provisions of penal law have allowed termination of criminal proceedings if the defendant agrees to undergo treatment and termination of misdemeanour proceedings if the defendant undertakes to participate in social programmes⁵⁵. 'Social programmes' refers to various cognitive-behavioural and other programmes that pay attention to the problems specific to the offender. The goal is to help

⁵⁵ Väärteomenetluse seadustik (Code of Misdemeanour Procedure), clause 30 (1) 3. Available in English at <https://www.riigi-teataja.ee/en/eli/513072017004/consolide> (accessed on 13.8.2017); Sotsiaalprogrammid. ['Social programmes']. Available at <http://www.kriminaalpoliitika.ee/et/teemalehed/sotsiaalprogrammid> (accessed on 14.8.2017) (in Estonian).

the offender avoid new crimes. So far, these options have not been applied in practice. In February 2016, the Legal Affairs Committee invited experts to hear the petition from the above-mentioned 'Let us live!' campaign, aimed at legalisation of cannabis and reduction in drug-related deaths in Estonia. Although MPs dismissed any plans for legalisation, they did promise to look into the use of medical cannabis (see 9 February PM). It was decided to set up a Parliamentary study committee to analyse and enhance prevention efforts with regard to illicit drugs and HIV. According to the Ministry of Justice, there are plans to increase the substance quantities constituting a misdemeanour or a criminal offence, such as deciding that the possession of below 20 or 30 grams for personal use would have the elements of a misdemeanour only. The Ministry of Justice has indicated as well that possible liberalisation of drug laws and/or judicial practice has been analysed by several working groups. More practical alternatives to punishment are constantly being sought. One possible example of this trend is a drug-policy conference that was held in March 2016; regretfully, while it recognised that, in general terms, the current policy is not working, it concluded that there is no good reason to change course at present. However, the positive experience of other countries in reforming drug policy has encouraged Estonian officials to experiment with more flexible methods in attempts at grappling with issues of illicit drugs. Some practical changes could be detected in the field at least in respect of the Ministry of Justice taking initiative to update drug policy. For example, in 2016 the Ministry of Justice launched a project to test the Portuguese model in Estonia. Hence, it is quite difficult to estimate the media's exact role alongside changes in global drug policy and other factors in effecting the political changes described earlier in this paper. It could be argued that Estonia's professional press has been very eager to keep drug-related political issues on the media agenda for the last few years. In parallel with this, experts in the drug-regulation field too have been exposed to newer trends in global drug policy.

7. Summary and conclusions

Although the Estonian media have been criticised on many occasions by scientists and drug-abuse prevention workers for not generating enough discussion and meaningful analysis of the drug theme, the summer of 2009 and autumn 2015 proved to be an exception in this respect. In 2009, jurists (J. Sootak and P. Vahur) calling for legalisation of cannabis had a major role in cannabis garnering a large amount of media attention. Postimees provided the main forum for the debate. In 2009, the pro-legalisation camp clearly represented the minority and consisted mainly of jurists. All other experts cited, including medical doctors, prevention experts, and others, opposed the jurists' idea of legalising softer drugs, along with the majority of political-party representatives. Several prominent journalists stated openly that this topic does not deserve media attention, and they asked why, since cannabis constitutes a public-health hazard, this theme should be pursued further.

By 2015, the global drug-policy situation had slightly changed. Some US states had legalised marijuana, and in autumn Canada elected a new prime minister, who promised to make cannabis legal throughout the country. All this news inspired Estonian cannabis proponents to organise various events and introduce their arguments in public. These events and views were covered by newspapers and online portals. In 2015, most of the public opponents were law-enforcement officials. A clear distinction can be drawn between police officers still holding on to the obsolete policy and the open-minded intellectuals. The cannabis proponents outdid their opponents by exploiting the media in promoting their cause. The medical profession kept their distance in 2015. Police representatives relied on the same well-worn arguments as always – for instance, that cannabis is a gateway drug or that it should remain illegal because Estonia has been unsuccessful in its fight against alcoholism, not to mention drug addiction. Also, the question of media ethics came up, with the chief of Estonian Public Broadcasting maintaining that state-owned media are not the place for a cannabis debate, as such a debate would promote illicit drugs. Moreover, a dilemma became evident as to whether the aspiration to protect public health should take precedence over freedom of speech.

In conclusion, one can say that over the last few years, a noticeable shift has taken place with regard to representation of cannabis issues in the Estonian press. In the press, there has been a move toward a more humane attitude and toward favouring legalisation. The Estonian press seems to be more democratic and more in sync with the emerging global drug-policy trends than is the official drug-policy discourse. The chorus of 'voices' has become more complex – in 2015, it was not only the experts who gave or were invited to give their comments but also opinion leaders, average news readers, and experts and politicians who had

no professional contact with addicts and had until that point refrained from making any public statements in the media. All of this testifies to the natural progression of the drug debate in the Estonian press.

The author is of the opinion that a shift in the global drug-policy debate in combination with the more mature media approach may pave the way for changes in the national drug policy. However, at the moment, the Estonian drug laws still have not become less punitive, with the exception of a couple of amendments providing for the option to choose treatment or social programmes instead of punishment. That said, the Ministry of Justice has informed the author that several working groups have discussed the possibility of ‘softening’ the laws and/or judicial practice. Thus, positive practice of other countries in cannabis regulation also encourages a more flexible approach to national drug policy.



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Children's Rights and the Juvenile Justice System in Estonia

1. Introduction

The history of juvenile justice systems in various European and North American countries shows oscillation between the welfare-based and the punitive model of responding to juvenile offences. Both models have positive and negative sides; neither is perfect¹. In both models, the most negative effect of the juvenile justice system is its stigmatising and excluding impact on the youth. That is why alternative measures are needed to prevent and react to delinquent behaviour. Since the UN Convention on the Rights of the Child (UNCRC) entered into force, in September 1990, a new, so-called rights-focused approach has been introduced in treatment of juvenile offenders. According to the UNCRC, juvenile offenders are children and therefore are subject to the specific rights specified in that convention. B. Goldson and J. Muncie note that, with its coming into force in 1990, the UNCRC bolstered the core provisions contained within the 'Beijing Rules', the 'Riyadh Guidelines', and the 'JDL Rules' / 'Havana Rules'.² The articles of the UNCRC with the greatest relevance for juvenile justice systems are these:

Article 3: In all actions concerning children [...], the best interests of the child shall be a primary consideration.

Article 12 (1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 12 (2): For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16 (1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence [...].

¹ See, e.g., John A. Winterdyk (ed.). *Juvenile Justice: International Perspectives, Models and Trends*. CRC Press 2015. – DOI: <https://doi.org/10.1201/b17528>; John Muncie. *Youth & Crime*, 3rd ed. Los Angeles; London; New Delhi; Singapore; Washington, DC: SAGE 2015; Cliff Roberson. *Juvenile Justice: Theory and Practice*. CRC Press 2010.

² B. Goldson, J. Muncie. Article in *International Journal of Law, Crime and Justice* 40 (2012), pp. 47–64 DOI: <https://doi.org/10.1016/j.ijlcrj.2011.09.004>.

Article 37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...]

Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 37(c): Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so [...]

Article 37(d): Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40 (1): States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 40 (3): States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*³

Two important legal documents in provision of foundations for juvenile justice based on the rights of a child are those titled 'European Rules for Juvenile Offenders Subject to Sanctions or Measures' (Council of Europe, 2009) and 'Guidelines for Child Friendly Justice' (Council of Europe, 2010), adopted by the Committee of Ministers. In addition, the *Handbook on European Law Relating to the Rights of the Child*⁴, jointly prepared by the European Union Agency for Fundamental Rights (FRA) and the Council of Europe, together with the Registry of the European Court of Human Rights, provides a useful framework for the European law for developing child-friendly justice and protection of those offenders who have not reached the age of majority from ill treatment. Collectively, the United Nations and Council of Europe human-rights standards, treaties, rules, conventions, and guidelines offer a solid base for globalised human-rights-compliant and child-friendly juvenile justice.*⁵

However, as Goldson and Muncie note, 'the UNCRC is ultimately permissive and breach attracts no formal sanction. In this sense, it may be the most ratified of all international human rights instruments but it also appears to be the most violated, particularly with regard to juvenile justice and, moreover, such violations occur within a context of relative impunity'.*⁶ To some extent, the problems with application of rights-based and child-friendly juvenile justice are related to differences in definition and in interpretation of the UNCRC articles. Special attention is needed when the rights of a child deprived of liberty are at issue. Research demonstrates that deprivation of liberty and any kind of isolation of a child from his or her natural environment have a serious negative impact on the development of that child and stand in contradiction to the principle of the best interests of the child*⁷. Well-being at any stage in a child's life supports his or her development and,

³ United Nations General Assembly, 1989. United Nations Convention on the Rights of the Child. New York: United Nations.

⁴ See Chapter 11, 'Children's rights within criminal justice and alternative (non-judicial) proceedings', pp. 195–211.

⁵ B. Goldson, J. Muncie (see Note 2), p. 50.

⁶ *Ibid.*, pp. 51–52.

⁷ J. Dmitrieva et al. Arrested development: The effects of incarceration on the development of psychosocial maturity. – *Development and Psychopathology* 24 (2012), pp. 1073–1090. – DOI: <http://dx.doi.org/10.1017/S0954579412000545>; G. Gaes, S.D. Camp. Unintended consequences: Experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism. – *Journal of Experimental Criminology* 5 (2009) / 2, pp. 139–162. DOI: <http://dx.doi.org/10.1007/>

thereby, future well-being^{*8}. More than 25 years of visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the places of their detention shows that children deprived of their liberty are at higher risk of ill treatment than adult offenders are^{*9}. Beside pointing to negative effects on a child's development on personal level, evidence from research shows that incarceration has little positive effect in terms of reducing crime (see Mulvey 2011^{*10}; Myers 2003^{*11}). Statistics indicate that 70–80% of young people are re-arrested within three years once they have been incarceration (Mendel 2011^{*12}).

When children are placed in detention, they should benefit from special rights and guarantees. International legal acts and regulations include several mechanisms (e.g., national and international monitoring of detention locations and the right of inmates to present complaints) and provide for special training for practitioners working with young offenders, all supposed to prevent ill treatment in the juvenile justice system. Wouter Vandenhoele emphasises the 'three "P"s' as central rights of the child in a juvenile justice system – the right to protection, to provision, and to participation^{*13}. The aim with this paper is to give an overview of the situation of how well the rights of Estonian children in detention are honoured and what main tendencies are present in everyday practice. The results presented are based on findings from two international action research projects.

2. Juvenile justice in Estonia

With regard to the years since the country regained independence, the building of, and reforms to, the juvenile justice system in Estonia could be characterised as oscillating between adult-like punishment in cases of serious crime and soft response plus rehabilitation in cases of mundane ('light') crime. There are neither special juvenile courts nor family courts – these criminal cases are processed in the general court system. The Estonian Penal Code, the Code of Criminal Procedure, and the Imprisonment Act regulate the detention of children. The only legal act specific to juvenile justice is the Juvenile Sanctions Act (JSA) (which came into force on 1 September 1998), which regulates, among other elements, the function of juvenile committees – an alternative, non-judicial organ dealing with young offenders. Juvenile committees are formed by county governors and work within the limits of local cities or rural municipalities. Members of these committees are experts in the areas of education, social welfare and health care, police operations, and probation. A secretary of the committee is employed and paid by the local government.^{*14} The aim with the JSA and juvenile committees is to keep minors out of criminal proceedings as long as possible, and the entire system is built as an alternative to detention that can be applied in response to unlawful activity of children. If the seriousness of the case and the particulars of the child offender (age, psychosocial characteristics, family background, etc.) so dictate, the court may direct the minor's case to a juvenile committee. However, nearly 20 years of juvenile committees' work experience revealed this mechanism's weak capability to help

s11292-009-9070-z; B. Holman et al. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Congregate Facilities*. Baltimore: Annie E Casey Foundation 2006; S. Koffman et al. Impact of a comprehensive whole child intervention and prevention program among youths at risk of gang involvement and other forms of delinquency. – *Children & Schools* 31 (2009) / 4, pp. 239–245. – DOI: <https://doi.org/10.1093/cs/31.4.239>; I. Lambie, I. Randell. The impact of incarceration on juvenile offenders. – *Clinical Psychology Review* 33 (2013), pp. 448–459. – DOI: <http://dx.doi.org/10.1016/j.cpr.2013.01.007>; R.A. Mendel. *No Place for Kids: The Case for Reducing Juvenile Incarceration*. Baltimore: Annie E. Casey Foundation 2011 (available at <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>, most recently accessed on 12 March 2017).

⁸ For discussion of the connections among general human rights, the present well-being of the child in the here and now, and future well-being, see Tom D. Campbell. The rights of the minor: As person, as child, as juvenile, as future adult. – *International Journal of Law and the Family* 6 (1992), pp. 1–23. – DOI: <https://doi.org/10.1093/lawfam/6.1.1>.

⁹ See I. Lambie, I. Randell (see Note 7), pp. 452–453.

¹⁰ E.P. Mulvey et al. An examination in dynamic risk of offending over time among serious juvenile offenders. – *Journal of Criminal Justice* 45 (2016), pp. 48–53. – DOI: <https://doi.org/10.1016/j.jcrimjus.2016.02.008>.

¹¹ D.L. Myers. The recidivism of violent youths in juvenile and adult court: A consideration of selection bias. *Youth Violence and Juvenile Justice* 1 (2003) / 1, pp. 79–101. – DOI: <http://dx.doi.org/10.1177/1541204002238365>.

¹² R.A. Mendel (see Note 7).

¹³ W. Vandenhoele. Children's rights from a legal perspective: Children's rights law. – Wouter Vandenhoele et al. (eds), *Routledge International Handbook of Children's Rights Studies*. London, New York: Routledge 2015, pp. 27–42. – DOI: <https://doi.org/10.4324/9781315769530>.

¹⁴ JSA, §12 (2).

young offenders keep away from crime.^{*15} Therefore, the whole legal framework of juvenile justice is now undergoing reorganisation, and according to the development plan, everything connected with children's life should belong to the realm of child protection^{*16}.

Juvenile crime has decreased considerably within the last 10 years: from 2,056 young offenders (263 per 10,000 members of the population in the relevant age band) in 2006 to 541 (114 per 10,000) in 2016^{*17}. The number of adolescent prisoners too declined: in 2006, there were 89 minors in prison, while there were 29 in 2016 (16 convicted and 13 on remand). In August 2014, when the research considered below took place, there were 36 adolescents in Estonian prisons. Also, the number of residents of closed-type special schools fell over the last decade: in 2005, there were 143 pupils at these special schools, and the equivalent number for 2012 was 67^{*18}.

3. Action grants

Starting in 2014, the authors participated in two projects under action grants financed by the EC. Both projects were led by Defence for Children International (DCI), a non-governmental children's-rights-focused movement with local organisations active in 47 countries, around the world. The aims for these projects were to assess the local situation and participate in development of a practical guide for monitoring places where children are deprived of their liberty^{*19} and the preparation of a handbook dealing with implementation of the UNCRC's Article 12 in day-to-day practice with juvenile offenders.

The first project's title is 'Children's Rights behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms' (JUST/2013/JPEN/AG/4581), and the programme period was 2014–2016, with 14 EU member states' participation, under the leadership of DCI Belgium. Every country collected data and prepared a national report about the situation of the monitoring system related to institutions wherein children are deprived of liberty within its borders. The data sources in the project include relevant statistics, material from desk research on laws and regulations, site visits, 10 interviews with experts, an interview with a child, and non-recorded conversation with two young prisoners. The Estonian report was prepared by the authors of the present paper in late 2014^{*20}. Based on the materials in the national reports, a comparative overview of the situation in 14 EU countries was written by Marine Braun and Pierre-Yves Rosset (2015)^{*21}. On the basis of these documents, the above-mentioned practical guide was compiled^{*22}.

The second project, titled 'TWELVE – Promoting the Implementation of Article 12 of the CRC in the Juvenile Justice System' (JUST/2013/FRAC/AG/6099), took place in 2014–2016 under the leadership of the DCI Italy branch and with the participation of six EU countries^{*23}. In the course of the project, we engaged in several group conversations with Estonian practitioners working with young offenders. All told, 62 practitioners participated in these sessions, among them social workers from several local municipalities and NGOs, prosecutors, lawyers, police officers focusing on the youth, child-protection workers, youth

¹⁵ See, e.g., I.-E. Rannala *Dialoogi olulisusest töös riskikäitumisega noortega. Alaealiste komisjonide näitel* ['About Significance of Dialogue in Work with Risk Behaving Youth: Based on Example of Juvenile Committees']. Tallinn: Tallinn University 2014 (PhD dissertation in social work).

¹⁶ For more about this topic, see the Third and Fourth Periodic Report of the Republic of Estonia on the Implementation of the UN Convention on the Rights of the Child. Available at http://vm.ee/sites/default/files/elfinder/article_files/report_of_estonia.pdf (most recently accessed on 20 September 2017).

¹⁷ K. Tamm. Alaealiste kuritegevus ['Adolescents' Crime']. – *Kuritegevus Eestis* ['Crime in Estonia']. Estonia: Justiitsministeerium (24) 2017.

¹⁸ J. Salla et al. Safety of Children. – Dagmar Kutsar (ed.), *Child Well-being*. Tallinn: Estonian Statistics 2013, pp. 107–153.

¹⁹ See the project homepage, <http://www.childrensrightrbehindbars.eu/> (most recently accessed on 20 September 2017).

²⁰ See the Estonian national report 'Children's rights behind bars – human rights of children deprived of liberty: Improving monitoring mechanisms', available at <http://www.childrensrightrbehindbars.eu/images/national-reports-2014/ESTONIA-FINAL-REPORT.pdf> (most recently accessed on 20 September 2017).

²¹ The European overview document has been published at <http://www.childrensrightrbehindbars.eu/images/Childrens-Rights-Behind-Bars-A-European-Overview.pdf> (most recently accessed on 20 September 2017).

²² For more about the project and the Practical Guide materials, see <http://www.childrensrightrbehindbars.eu/outputs/practical-guide> (most recently accessed on 20 September 2017).

²³ The members of the Estonian team were Anita Kärner, Dagmar Narusson, and (as national co-ordinator) Judit Strömpl, all from the Institute of Social Studies of the University of Tartu. More information about the project can be found at <http://www.defenceforchildren.it/projects/118-twelve-promoting-the-implementation-of-article-12-of-the-crc-in-the-juvenile-justice-system.html> (most recently accessed on 20 September 2017).

workers, secretaries of some juvenile committees, one representative from the Ministry of Justice, and the head of the Ombudsman's Office of the Department of Children. All interviews and group conversations were audio-recorded and later transcribed. During the field visits, field notes were taken. All these data were analysed by means of qualitative thematic analysis methods^{*24}. On the basis of the training sessions, the handbook for professionals working in the relevant domain in EU countries was developed^{*25}.

4. Findings and discussion

In Estonia, young offenders may be isolated in six distinct kinds of institution: 1) closed-type special schools for children with behavioural problems^{*26}, 2) special shelters for children with alcohol or drug addiction^{*27}, 3) closed-access departments of psychiatric hospitals, 4) welfare institutions for mentally disabled children, 5) the Youth Department of Viru Prison (boys) and of Tallinn Prison (girls), and 6) 'arrest houses' / 'arrest chambers'. In the event that unaccompanied children who are asylum-seekers are detained, they would be placed in a substitute home that is not a closed institution.^{*28} Some of the institutions are specifically youth institutions; others are special departments within 'adult' institutions where children are separated from adults. One of the first demands under international regulations for juvenile justice systems is that adolescents be separated from adult offenders. Estonia follows this principle in general, but there are still problems with this demand. At the arrest houses, for example, the placement of children is handled in such a manner that they do not share a cell with adults. When there is just one person under 18 in the arrest house, fulfilling the demand for separation means that this person will be alone in the cell. Even in cases wherein there is a separate unit for children at an adult institution, as with Viru Prison, the arrangements are not without problems. Being placed in the same prison where adult criminals are serving their punishment creates a self-image of being one of the prisoners. Such a 'prisoner' identity stigmatises children and has an important negative effect on their personal development.

The conditions in the youth department of Viru Prison are sufficient to guarantee prisoners' well-being: the living conditions and equipment are good, rooms are clean, and the boys are placed there alone or in pairs. Every room has a water top and toilet separate from the rest of the space. There are nicely equipped classrooms, rooms for handicrafts, and a library, and well-appointed sports grounds exist outside the building, suitable for playing football and basketball. There is a problem only in that most rooms for leisure activities are used as motivation tools; for instance, when the boys behave well, they can go out and play football, or go to the library and get a book, or use the room for handicrafts. The reason for not using the sports grounds and equipment on an everyday basis, according to the staff, is that, because, prisoners are aggressive and break the equipment or steal materials, their access to all these good opportunities is limited. Staff members also mentioned that boys at the prison are full of energy and for them it would be better to work somewhere in the forest or in agriculture, where they can channel that energy into a positive activity. But because the boys are aggressive and break the rules, damaging the equipment etc., they are locked up in their cells for days. This forms a vicious circle: the more the boys are closed away in their rooms, the more violent they are. International research shows that misconduct, especially violent misconduct, is a natural reaction to the deprivation, stress, and oppression following incarceration^{*29} and is more commonplace in young inmates than in the general population^{*30}.

²⁴ D. Ezzy. *Qualitative Analysis: Practice and Innovation*. London: Routledge 2002.

²⁵ The TWELVE handbook is available in English at http://www.defenceforchildren.it/files/training_module_twelve.compressed.pdf (most recently accessed on 20 September 2017).

²⁶ Until 2015, there were two special schools in Estonia, one for male and the other for female young people with behavioural problems. In that year, the two special schools were merged into a single institution and a name change was made accordingly. Despite the closed character of the institution, which carries out 24/7 supervision of residents, the treatment emphasises rehabilitation through education and therapy.

²⁷ At the Children's Shelter in Tallinn; see http://lasteturva.ee/?page_id=160&lang=et (in Estonian) (most recently accessed on 20 September 2017).

²⁸ More about the Estonian system can be found in the national report for 2014.

²⁹ See I. Lambie, I. Randell (see Note 7); A. van der Laan, V. Eichelsheim. Juvenile adaptation to imprisonment: Feeling of safety, autonomy and well-being, and behaviour in prison. – *European Journal of Criminology* 10 (2013) 4, pp. 424–443.

³⁰ C.M. Anderson, A.S. Ranckin. The relation between argumentativeness, verbal aggressiveness, and communication satisfaction in incarcerated male youth. – *The Prison Journal* 87 (2007) / 3, pp. 328–343. – DOI: <http://dx.doi.org/10.1177/0032885507304433>.

Limitation of physical well-being is not the worst thing that can happen to young people in prison. Worse is limitation of contact with the outside world. Young prisoners in Estonia are much more isolated than their peers in other EU countries. One of the possibilities for maintaining contact with the community involves using volunteers, NGOs, and other organisations in the rehabilitation process. In comparison to Italy, Spain, or Belgium, where volunteers play a significant role in the process of rehabilitation of young people at youth detention centres³¹, in Estonia the non-governmental sector has little part in the rehabilitation process of young offenders. In Estonian prisons, all rehabilitation work is done by official staff. The Council of Europe and international organisations emphasise that social contacts with family and the outside world for young people deprived of their liberty constitute one of the most important rights³². The literature pays attention to the fact that in correctional institutions young people communicate more with peer offenders, with communication with non-delinquent youth being almost entirely absent. This all rather supports antisocial behaviour³³. The problem could be lessened via intensive communication of imprisoned children with educators, psychologists, social workers, other staff, family members, and volunteers. Good practice is followed when educators or other contact persons spend time with the children, participating in and sometimes organising their activities (cooking, reading, playing games, working on homework, etc.). Such a model of communication is already used by the special school in Estonia, while the youth prison still needs to make some changes in this respect.

The rehabilitation work at prisons focuses not so much on the child's well-being and rights as on the safety of society. That is why the emphasis is on risk assessment for the child. On the basis of this risk assessment, a rehabilitation plan is prepared for every prisoner that includes co-operation with the local authorities and with the child's family (or the institution taking the family's place). At the time of the research, there was a plan to use multidimensional family therapy for young prisoners if possible³⁴.

All juveniles in prison are obliged to attend school; therefore, the child's right to education is honoured in Estonian prisons. Additionally, as the head of the department stated when interviewed, also vocational training in cooking, room-service work, soldering, and carpentry is available to the young prisoners.

The situation in special educational institutions is different. The physical environment is not so closed: children's isolation here means, first of all, permanent supervision by staff members and not closed rooms. Pupils at special schools can have much more contact with the outside world, and the outside world has more access to the institution. This includes volunteers and various NGOs and professionals working for children's well-being.

From the conversations with children in prison and at the special school, we could learn that they are informed about human rights; however, this is quite an abstract notion for them, one they cannot tie in with their day-to-day life. In particular, children are not always informed about their right to complain³⁵. If they are told of the right to complain, the procedure described requires filing a written complaint. Although formally the possibility to complain exists, presenting a written complaint necessitates quite a high level of literacy and other skills, which these children do not possess.

When a child writes a letter of complaint, it will be directed to the staff of the closed institution. Children are not informed about the option of complaining to independent organisations such as the children's ombudsman or child-protection entities. According to the staff, the reason for the procedure utilised is that the staff members have real power to resolve the problem and correct mistakes at the institution. Nonetheless, children do not complain, because they are afraid of the staff members who have power to punish them and even more of other children – because the reason for the complaint is often violence between inmates.

Often children do complain about small things such as food that they can control. For example, children in prison complained that the portions are too small / are not enough for them or they wish for more desserts or sweet items. However, rules and regulations established by the institution that limit children's rights – for example, restricting their access to fresh air, to physical exercises in the yard, to engaging

³¹ For more information, see the national reports, which are available via <http://www.defenceforchildren.it/risorse/pubblicazioni/134-twelve-rapporti-nazionali.html> (most recently accessed on 20 September 2017).

³² See U. Kilkelly, *Children's Rights and the European Committee for the Prevention of Torture*. Council of Europe 2012.

³³ I. Lambie, I. Randell (see Note 7).

³⁴ Today, both prisons and the special school use multi-dimensional family therapy (MDFT), which serves as one of the best-working methods for rehabilitation of children deprived of liberty.

³⁵ In the statutes of Maarjamaa Hariduskollegium, for example, there is no language about a right of the pupil to present complaints.

in sport, to contact with volunteers from outside the prison, and to obtaining information from different sources – are perceived by the children as givens and are taken for granted as being part of the institution's regime. Therefore, one cannot take lack of inmate complaints as an adequate indication of the extent to which children's rights are abridged by the institution.

As was mentioned above, alongside protection and provision, participation is one of the most important of children's rights. However, children in detention are still highly limited in respect of exercising this right. The UNCRC's Article 12 (on the right to be heard) and, in combination with it, some connected articles – e.g., those on the right to freedom of expression (Art. 13); freedom of thought, conscience, and religion (Art. 14); freedom of association (Art. 15); access to information and materials from diverse sources (Art. 17); rest and leisure (Art. 31); and challenging the legality of the deprivation of liberty (Art. 37) – encompass the right of the child to participation. Without really carrying these rights through into practice in the day-to-day life of every child, we cannot hope that one day we will have a self-conscious, responsible adult^{*36}. Therefore, when today we put a child behind bars, we have to think very carefully about the opportunities for participation. The highly structured and restrictive environment of prisons and other closed institutions that give too little opportunity to an individual to participate in decision-making rather cramps the development of an independent and responsible person^{*37}. Building a system that will respect children's rights and ensure each child's development and rehabilitation is not possible without competent specialists. A specialist working with children in closed institutions has to have solid knowledge of children's development, social pedagogy, communication skills, and both national and international law. Our research revealed that some practitioners doubted whether young offenders deserve the same rights as other children. This finding demonstrates the need for training in the provisions of the UNCRC for specialists working with children. We also concluded that the principles of the convention should be introduced and explained to all actors involved in the process of rehabilitation of young offenders, including their teachers, parents or the equivalent, and the children themselves.

The importance of children's participation is not only required by the UNCRC but also perceived by the experts as an important part of the rehabilitation process. The interviews with practitioners highlighted the importance of interpersonal communication. According to the specialists, there is need to stop the 'one-direction communication' in which adults, especially teachers, lawyers, or police officers, simply declare their thoughts and do not listen to the child. Many practitioners, though, brought up as a problem also the low level of children's communication skills and self-expression ability. International research too emphasises the importance of interactions within the correctional institutions for better adaptation of young offenders, with good relations with staff members being cited as especially important^{*38}. To exercise their right to participate and to be heard, children should be assisted in development of their interpersonal communication and self-expression skills.

The specialists stressed that a juvenile justice system shall focus on solving problems, not just punishing young offenders. A truly caring professional should not work routinely and has to remain aware that no two cases are similar – every case and every child is unique and requires unique understanding. Focusing on each child's own story and on telling one's story should be everyday practice in working with young offenders. This approach would guarantee respect for children's rights, including the best interests of the child, with attention to the right to participate, that to be heard, and that to be treated with dignity and respect.

5. Conclusions

Estonia was eager to sign on to international acts and standards, but changing the system requires time and effort. Participation in the action-grant work gave us good opportunities to engage with professionals both in Estonia and in partner countries in the EU and discuss such important topics as working with young offenders from the angle of a rights-based approach.

³⁶ See, e.g., Tom D. Campbell (Note 8). The author analyses the connections among three facets of the rights of the child: rights as a human being, as a child or young person in the here and now, and as a future adult.

³⁷ J. Lane et al. Adult versus juvenile sanctions: Voices of incarcerated youths. – *Crime & Delinquency* 48 (2002) / 3, pp. 431–455. – DOI: <http://dx.doi.org/10.1177/0011128702048003004>.

³⁸ A. van der Laan, V. Eichelsheim (see Note 29).

Prison is the worst place for a child to be and, therefore, is to be used as a last resort. Even when incarceration of a child is inevitable, it should be done in special institutions. Placing children in a large 'adult' institution such as a prison stigmatises them and creates a negative self-image that leads to secondary delinquency and re-offending. Therefore, having special separate institutions for children not only is in the best interests of the child but serves the interest of society at large.

When young offenders are placed in special separate institution for children, more opportunities are created for the child to have contact with the outside world. This, again, is important for guaranteeing other rights, such as that to being treated with dignity, all in a manner that takes into account the needs of persons his or her age.

It is important to stress also that respect for children's rights demands more than ratifying the UNCRC and other legal instruments. Equally important is that the principles of the convention should be introduced and explained to all actors involved in the process of rehabilitation of young offenders, including their teachers, parents, and the children themselves. Needless to say, international and national standards should be individual-centred and followed more flexibly.



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Life without Crime as a Fundamental Right of the Child:

On the Prevention of Juvenile Delinquency^{*1}

1. Introduction

The understanding of the rights of the child and their meaning differs between countries, as does the situation in the field of protection of children's rights. Very often, contradictory opinions flourish in society: some think that children have too many rights, while others recognise violation of the rights of the child even in cases wherein there is no violation at all. Although professional debate on topical problems, this issue among them, can be considered a part of diversity of opinion and therefore favourable, extreme opinions or actions that are based on common law instead of knowledge do not enhance healthy development of society, of which the children are an integral part. Still, there are several European countries where the rights of the child are not addressed by a separate branch of law and legal science; therefore, questions pertaining to the rights of the child fail to be brought into those states' academic debate and the knowledge of future lawyers and students of other sciences.

Rights of the child belong to a horizontal branch of law and legal sciences, and, in fact, issues of them permeate every part of the legal framework and social activity. This is because the rights of the child are the child's human rights. These are the rights of a human who grows, develops, learns, and gains life experience and maturity every day. They are the rights of a human who has not yet reached maturity but is in the process of personal development. This is what makes a child not a 'small adult'. Lack of such understanding sparks heated debate in cases that involve limitations to the rights of the child or, *vice versa*, the violation of these rights and appropriate reactions to it. Today, one such area of debate in Latvia surrounds juvenile-delinquency prevention, responses to offences committed by children, and attitudes towards child victims involved in various proceedings of formal justice.

In 2007, analysis of the influence of traditional justice on children who are on the line of committing a crime or have already crossed this border led to the conclusion that it is important to understand that an offence committed by a juvenile as socially 'deformed' behaviour shows that the rights of this child have already been violated, earlier in his or her life, and that the child's interests have been neglected. Lack of care/consideration, indifference by parents and other adults, and reluctance to understand and to satisfy a child's needs all can lead to the child committing an offence. The child should be blamed for commission

¹ This publication has been prepared on the basis of conclusions from studies in the fields of protection of children's rights and juvenile-delinquency prevention in Latvia and other European countries over the last six years.

of the specific criminal offence at issue, while the state and the community should be held accountable for having created circumstances under which the child has decided to resolve his or her problems to the detriment of the community in violation of criminal law's taboos. However, instead of recognising its co-liability for the offence that has been committed and instead of considering ways in which to compensate for the negligence, the state contemplates the extent of the repression to impose on the offender for making him or her repent for the act committed and for preventing him or her from committing new criminal offences^{*2}.

It may be concluded from the foregoing that children who have been guaranteed an environment favourable for their development – who are loved, are cared for, and feel safe in their families – do not commit crimes and do not become crime victims as often as those who lack these conditions^{*3}. In line with this hypothesis, a study was conducted in 2012 through which it was verified that with the aid of timely and efficient prevention measures it is possible to decrease the number of children who are influenced by criminality^{*4}. In addition, the research allowed concluding that within the scope of prevention measures it is essential to strengthen the bond between the child and parents / parental surrogates, to ensure good relationships within the family, which ensure positive social relations and positive experience. The information gathered in the study confirmed, at the same time, the existence of deficiencies in the protection of the rights of the child and children's protection against crime: the respondents in the survey that formed part of the study indicated that it is extremely necessary in Latvia to develop a new legal framework in the field of juvenile justice as soon as possible, pointing out that the current mechanism is directed towards the child's inclusion in the formal system of justice whenever this is possible.

Studies conducted in the years since have shed light on two more problems that are significant from the perspective of protecting children from the impact of criminal surroundings. Problem 1 is that prevention activities cannot be organised as 'campaigns'; they have to be systematic and must be compulsory for parents (including other guardians etc.), involving them in order to enhance parents' participation in the building of their children's future and their taking of responsibility jointly with the children.^{*5} The second problem is that prevention activities for children and their parents have to be carried out in a timely manner, from the birth of the child until the child comes of age; early prevention and intervention methods have to be used both to promote the child's personal development and to enhance parenting skills^{*6}.

2. The legal framework in Latvia: A brief overview

The State of Latvia safeguards every individual's human rights as stipulated in the Constitution of the Republic of Latvia (*Satversme*) and also honours legal acts of the European Union and European Council, along with other international legislation. In consideration of the age, maturity, and stage of development of each person, the rights of the child are separated from this general legal framework for purposes of ensuring the necessary legal protection for this segment of society. The principle is of a horizontal nature; accordingly, it extends to all fields of rights.

² A. Judins. *Restorative Justice vs Juvenile Delinquency: The Baltic States in European Dimension*. Riga: PROVIDUS 2010. Available at http://providus.foo.lv/upload_file/Projekti/Kriminalitesibas/RJ_research.pdf (most recently accessed on 12.8.2016).

³ Latvijas Valsts policijas pārskats par nepilngadīgo noziedzības stāvokli, noziedzīgos nodarījumus cietušajiem bērniem un noziedzības novēršanas problēmām 2015. gadā [‘The State Police of Latvia: Report on the situation with juvenile criminality, juvenile-crime victims, and crime-prevention problems, 2015’] (in Latvian). Available at http://www.vp.gov.lv/faili/sadalas/parskats_2015.docx (most recently accessed on 12.8.2016).

⁴ I. Kronberga, J. Zermatten. *Child-Friendly Justice in Latvia: Focusing on Crime Prevention*. Riga: PROVIDUS 2012. Available at http://providus.lv/upload_file/Projekti/Kriminalitesibas/Child-friendly%20Justice%20in%20Latvia.pdf (most recently accessed on 12.8.2016).

⁵ For description of a relevant project and research results, see the document ‘Keeping Youth Away from Crime: Searching for Best European Practices’, available at <http://providus.lv/en/article/keeping-youth-away-from-crime-searching-for-best-european-practices> (most recently accessed on 12.8.2016).

⁶ Description of the project and research results can be found in the document ‘Supporting Children. Early Prevention Methods for Anti-social Behaviour Working with Pre-school and Primary School Children and Their Parents’, available at http://providus.lv/article_files/3172/original/Supporting_children_PROVIDUS_2015_eng.pdf?1457623278 (most recently accessed on 12.8.2016).

Article 110 of the Constitution of the Republic of Latvia^{*7} stipulates that the state protects and supports marriage as a union between a man and a woman, the family, the rights of parents, and rights of the child. The state shall ensure particular assistance to disabled children, orphans, and victimised children. This legal provision, specifying special protection with regard to several institutions, has a close relationship with material in other articles of the Constitution, stipulating the rights to social security, education, and protection of health^{*8}. Thus, special status is given not only to the child as an ‘under-age’ person^{*9} but also to the child’s family and parents with regard to the responsibility of taking care of the child. Special attention is paid also to national responsibility with respect to children with health problems, children in situations of social risk, and children who have been victimised through other persons’ illegal actions. Article 3, Part 2 of the Protection of the Rights of the Child Law^{*10}, in its turn, stipulates that the state guarantees special rights and freedoms to all children, irrespective of race, nationality, gender, language, political party alliance, political or religious convictions, national/ethnic or social origin, place of residence within the state, property or health status, and birth or other circumstances of the child (or of the child’s parents, guardians, or family members). Thus, on one hand, the special legal status of the child – i.e., a person who has not reached the age of majority stipulated by law – has been established as valid until he or she reaches the legally stipulated age (representing a particular level of maturity), while, simultaneously, Article 177 of the Civil Law provides for the duties of those people who have a special status relative to the child as stipulated in the Constitution of the Republic of Latvia. Accordingly, the child is under the custody of his or her parents until reaching the age of majority. This custody confers the duties of parents to care for the child and the child’s property and to represent the child in his or her personal and property relations, where ‘care’ refers to looking after the child, supervising him or her, and appropriately exercising the right to determine the child’s place of residence. It is specified that care of the child includes the provision of food, clothing, a dwelling, and health care, along with tending of the child, seeing to his or her education, and ensuring the child’s proper mental and physical development, while taking into account to the greatest extent possible the child’s individuality, abilities, and interests and preparing the child for socially useful work. With regard to the safety of the child, it is indicated that supervision of the child means care for the child’s safety and the prevention of endangerment by third parties.

The aim for this publication has been defined in consideration of the above: to provide the reader with analysis as a result of which it would be possible to conclude that a) the child’s right to live without encountering criminality or its consequences^{*11} and b) the existence of child-friendly justice^{*12} are constitutional rights of the child provided for both in the Constitution of the Republic of Latvia and in other legal acts. International legal enactments, recommendations of the European Council, and legal provisions of the Republic of Latvia are analysed, and the analysis is followed by conclusions on the implementation of these legal provisions in the practice of the protection of children’s rights.

3. Child-friendly justice: The essence and content of the concept

The concept of child-friendly justice encompasses not only the legal framework but also the aggregate of institutions, specialists, and procedures working particularly for children and youth to ensure their best interests. Although recommendations of the European Council and various international legal enactments require a child-appropriate system of justice, such a system does not function in Latvia, either in theory or in practice.

⁷ *Latvijas Republikas Satversme: LR likums* [‘The Constitution of the Republic of Latvia: Law of the Republic of Latvia’]. Latvijas Vēstnesis (official state publisher) 1993 (publication of 1 July, No. 43) (in Latvian).

⁸ *Ibid.*, articles 109, 111, and 112.

⁹ In accordance with Article 219 of the Civil Law, people’s minority continues until they attain the age of 18, whereas according to the Protection of the Rights of the Child Law (Article 3, Part 1), a child is a person who has not reached 18 years of age, excepting such persons as have been declared to be of legal age in accordance with the law or have entered into marriage before reaching 18 years of age.

¹⁰ *Bērnu tiesību aizsardzības likums: LR likums* [‘The Protection of the Rights of the Child Law: Law of the Republic of Latvia’]. Latvijas Vēstnesis (official state publisher) 1998 (publication of 8 July, No. 199/200 (1260/1261)) (in Latvian).

¹¹ Fundamental Rights Report 2016: Rights of the child. Available at http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-frr-chapter-6-rights-of-the-child_en.pdf (most recently accessed on 12.6.2016).

¹² Child-friendly justice. Available at <http://www.coe.int/en/web/children/child-friendly-justice> (most recently accessed on 12.6.2016).

The concept of child-friendly justice was first explained in detail in 2010, when the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice^{*13} came into force. This concept includes the notion of justice appropriate for children and young people, with the claim that children's and youth justice is a special provision for legal norms, institutions, specialists, and procedures ensuring, in particular, acting in the best interests of a child.^{*14} At the same time, the concept of child-friendly justice encompasses also the stipulation that a system of justice may be recognised as child-friendly only if it is accessible, age-appropriate for the child, fast, respectful, and in correspondence with and suitable for meeting the child's needs, and there is a requirement that its procedures honour all rights of the child, respect the child's right to participate and understand the process, and operate in line with the right to private and family life and integrity. Conformity or nonconformity with the principles mentioned above gives the answer as to whether or not the particular procedures or the overall system of justice in place may be deemed child-friendly. A child-friendly justice system extends beyond judicial power institutions, to every institution or process that a child may come across. The European Council gives an explanation on its Web site indicating that there are many distinct ways in which a child can come into contact with the justice system. It may be in relation to family matters such as divorce or adoption, or it might be the child's experience of administrative justice connected with nationality or immigration issues or of criminal justice as a victim of, witness to, or perpetrator of crime. It is pointed out that when faced with the justice system, children are thrown into an adult-managed system of relationships, which children, for reason of their age and lack of life experience and maturity, cannot understand, and that, therefore, judicial procedures wherein children are involved need to be adapted so as to be understandable for them.^{*15} In this case, it does not matter whether the contact is with the police, a family court, or some other law-enforcement institution.

The concept of child-friendly justice is included in the concept of the welfare state^{*16}, where the duty of a welfare state is to support family, a solid education policy, and individuals who need special care. The welfare state is a 'social state' wherein the state takes the key role in seeing to provision of assistance also in burdensome life situations and ensuring suitable remuneration for other accidents of life; it entails caring about refugees, those who have lost their sight, etc.; helping in cases of natural disaster and failures; and compensating victims of crime or similar acts for the harm they have suffered.^{*17} A social state, in turn, is a state that has not only rights but also duties to be active and interfere with the legal order in social life to take responsibility for its inhabitants and their social protection.^{*18} Protection of children as a special category of inhabitants has to be included in this social protection. The Constitutional Court of the Republic of Latvia has indicated that also the duty to protect the weak and ensure social justice and protection in the event of social risks is included in the concept of the socially responsible state.^{*19}

The practical part of the implementation of legal norms, however, differs from what is stipulated in legal enactments and recommendations of the European Council. Often, there are cases wherein the best interests of the child play a secondary role especially with regard to the practical issues of implementing prevention of child delinquency.^{*20} Studies show that for taking into consideration the problems in creating a child-friendly environment (including difficulties in the judicial realm), presented in the 2013–2014 guidelines for prevention of children's crime and protection of children against criminal offences^{*21}, the

¹³ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3 (most recently accessed on 12.6.2016).

¹⁴ I. Kronberga, S. Sīle. *Kā radīt bērnu attīstībai labvēlīgu vidi?* ['How to Create an Environment Favourable for a Child's Development']. Riga: Providus 2015 (in Latvian), on p. 3.

¹⁵ Child-friendly justice (see Note 12).

¹⁶ R. Cipelius. *Vispārējā mācība par valsti* ['General Theory of State']. Riga: AGB 1998 (in Latvian), on pp. 275–276.

¹⁷ *Ibid.*, p. 275.

¹⁸ J. Pleps et al. *Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums* ['Constitutional Rights, Revised and Expanded Edition']. Riga: Latvijas Vēstnesis (official state publisher) 2014 (in Latvian).

¹⁹ *Ibid.*, p. 148.

²⁰ I. Kronberga, S. Sīle. Antisociālas uzvedības agrīnās prevencijas metodes darbam ar pirmsskolas un sākumskolas bērniem un viņu vecākiem ['A method of early prevention of anti-social behaviour for pre-school and primary-school children and their parents']. Riga: Providus 2015 (in Latvian), pp. 36–39. Available at http://providus.foo.lv/upload_file/Publikācijas/Kriminalt/2014/Visi.raksti_LV.pdf (most recently accessed on 12.6.2016).

²¹ Bērnu noziedzības novēršanas un bērnu aizsardzības pret noziedzīgu nodarījumu pamatnostādnes 2013.-2019.gadam ['Prevention of crime among children and protection of children against criminal offence, guidelines for 2013–2019'] (in Latvian). Available at <http://likumi.lv/doc.php?id=259219> (most recently accessed on 12.6.2016).

National Family Policy Guidelines for 2011–2017 should be consulted. The latter guidelines list several problems that have not yet received any solution, including those of the absence of an effective system for preventing child delinquency and crimes against children, a high number of cases of children being traumatised, social vulnerability, and social rejection.^{*22}

4. The child's right to avoid criminality and its harmful consequences

Contact with crime has a particularly negative impact on a child (on account of the child's specific needs related to maturity, age, and development-linked considerations), whatever the formal status or reason for that contact – whether the child is an offender, a witness, or a victim. Therefore, it is essential to develop such methods in the system of rights protection as would reduce the number of cases in which children face formal justice. One of the ways to protect a child from the effects of coming in contact with criminal actions and to ensure the child's right to avoid criminality and its harmful consequences is prevention. Among the rights of the child is the right to full, holistic development. If a child commits a crime or is subject to physically or emotionally traumatic experiences as a victim or witness to crime, this influences his or her future well-being. Therefore, prevention is clearly among the ways to protect a child from effects of contact with criminality in all its possible variations. Effective development and functioning of the prevention system is a tool for ensuring that the child's basic rights to development and protection are honoured in a qualitative manner in accordance with the Constitution of the Republic of Latvia and other legal norms.

Recommendations from the Committee of Ministers of the Council of Europe on the role of early psychosocial intervention in the prevention of criminality^{*23} define the prevention of criminality as including activities aimed at preventing the likelihood of criminal action and future persistent criminal behaviour. If one is to prevent children from encountering criminality, it is necessary to:

- a) create a system aimed at **recognition and prevention of risk factors** in the child's social environment and the child's behaviour in a timely manner, in which context risk factors can be divided into internal and external risks, where external risk factors are not dependent on the child or the child's behaviour or choice (these are 'risk situations', among which are parental divorce, death of a relative, poor parenting, and other factors) and internal risk factors depend on the child's personality, behaviour, reactions to environmental impulses or events, and relations with educators at school or pre-school education institutions (internal risk factors, or 'behavioural risks', have to be considered already as consequences that emerge from unresolved risk situations, and among the behavioural risks that may be expressed in a child's behaviour are active anti-social behaviour, including aggression against others or the child him- or herself, as well as various types of passive behaviour that are harmful – for instance, taking of a victim's role, tearfulness, or reservedness);^{*24}
- b) plan and perform timely **social interventions** in order to strengthen **protective factors** in the child's life, thereby decreasing risk factors, where the concept of child-protective factors is defined in opposition to that of behavioural risks, as positive social roots lying in a good relationship with family members or teachers, which might be expressed in a hobby such as sports, music, or travelling (protective factors need to be strengthened through social interventions: targeted, timely, and definitely positive interference in the child's life carried out to, for instance, strengthen parenting skills, create positive affect and activate protective factors, enhance the child's self-esteem and belief in his or her skills, and increase the child's understanding of the processes under way in the community);

²² I. Kronberga et al. *Bērnu sociāla iekļaušana kā antisociālās uzvedības novēršanas metode* ['Children's Social Inclusion as a Method of Preventing Anti-social Behaviour']. Riga: Providus 2014 (in Latvian), on pp. 29–34.

²³ Recommendation R (2000) 20 of the Committee of Ministers to Member States, on the role of early psychosocial intervention in the prevention of criminality. Available via [http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202013/Rec\(2000\)20_E.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202013/Rec(2000)20_E.pdf) (most recently accessed on 12.6.2016).

²⁴ I. Kronberga, S. Sīle. *Meklējot labāko Eiropas praksi jauniešu noziedzības novēršanai. Kopsavilkums* ['Keeping Youth Away from Crime: Searching for Best European Practices, a Summary']. Riga: Providus 2015 (in Latvian), on pp. 56–62. Available at http://providus.lv/article_files/2890/original/keeping_lv.pdf?1427962796 (most recently accessed on 13.6.2016).

- c) strengthen **parental skills** so that the child's parents or persons who act in a corresponding role better understand the child's behaviour and reasons for risk appearing and have the skills necessary for reacting in a timely manner to the risks recognised in the child's behaviour or surroundings, or for preventing such risks from being actualised at all; and
- d) develop methods for use in implementing **early psychosocial interventions** before the child can become a crime victim, witness criminal acts, or commit acts contrary to the law, where early psychosocial interventions are any actions that strengthen protective factors, healthy affection, and parenting skills (these are activities that improve the child's communication and mutual understanding with the family, parents/guardians, and other people who play essential roles in the child's life in a particular period of time, and such activities are performed in accordance with the best interests of the child, in a child-friendly manner and with the active involvement of the child^{*25} in the process).

The study conducted in 2012^{*26} included in-depth analysis of the situation in Latvia with regard to prevention of child-committed crime. Among the conclusions drawn is that prevention activities, as stipulated in Article 58 of the *Protection of the Rights of the Child Law*, for children who face risk situations or display behavioural risks are implemented only in some particular municipalities. In cases of a child having committed an administrative offence, administrative penalties in the form of fines, usually paid by the parents, are implemented instead of compulsory measures as stipulated in the law On Compulsory Measures of a Correctional Nature^{*27}. Hence, two problems exist – poor performance of the prevention system and ineffective reactions to administrative offences committed by children.^{*28} In 2015, the situation in the implementation of law in practice had not changed significantly^{*29}, and the legal framework in the field of prevention of the violation of children's rights is fragmentary (for instance, inter-institution co-operation procedure and other mechanisms are not specified) and scattered, as the various stages of prevention are regulated by several individual legal acts and do not involve mutually connected procedures (for instance, the implementation of compulsory measures of a correctional nature is not connected to the legal order stipulated in Article 58 of the *Protection of the Rights of the Child Law*). Taking that into consideration, one finds no grounds for assuming that Latvia has done everything possible to ensure fulfilment of the right of the child to avoid criminality and its harmful consequences.

5. Criminal-law relations in the domain of juvenile justice

In the event that a child has come into contact with the formal justice system, has violated the law, has been victimised through other individuals' illegal actions, or has become a witness of such actions, the mechanisms applied to regulate relations under criminal law should be oriented primarily towards the best interests of the child (young person) – i.e., toward his or her rights to emotional and physical health and development. The principles of juvenile justice that are covered by the recommendations of the European Council^{*30} are in line with the scope of principles for protection of the rights of the child as stipulated in

²⁵ For further information about child participation, see T. Liefwaard et al. *Can Anyone Hear Me? Participation of Children in Juvenile Justice: A Manual on How to Make European Juvenile Justice Systems Child-Friendly*. Brussels: IJJO 2016.

²⁶ I. Kronberga, Ž. Zarmatēns. *Bērniem draudzīga tiesiskā vide Latvijā: fokusā likumpārkāpumu prevencija* [‘Child-Friendly Justice in Latvia: Focusing on Crime Prevention’]. Riga: Providus 2012 (in Latvian), on pp. 19–36. Available at http://providus.lv/upload_file/Projekti/Kriminalitesibas/Berniem_draudziga_tiesiska_vide_LV_1.pdf (most recently accessed on 14.6.2016).

²⁷ *Par audzinoša rakstura piespiedu līdzekļu piemērošanu bērniem: LR likums* [‘The Law “On Compulsory Measures of a Correctional Nature”’: Law of the Republic of Latvia’]. Latvijas Vēstnesis (official state publisher) 2002 (publication of 12 December, No. 168 (2743)) (in Latvian).

²⁸ *Latvijas Republikas Tiesībsarga 2011. gada ziņojums bērnu tiesību jomā* [‘Ombudsman’s Report on Juvenile Justice in Latvia, 2011’] (in Latvian), on pp. 42–58. Available at http://www.tiesibsargs.lv/files/content/Tiesibsarga%20Bernu%20tiesibu%20jomas%20gada%20zinojums_2011.pdf (most recently accessed on 12.6.2016).

²⁹ *Tiesībsarga pētījums par vardarbības izplatību pret bērniem Latvijā* [‘Ombudsman’s Study of Cases Brought against Children for Violence in Latvia’]. Riga: TNS 2015 (in Latvian). Available at http://www.tiesibsargs.lv/files/content/Petijumi/4239_TNS_Vardarbibas_pret_berniem_izplatiba_Latvija_2015.pdf (most recently accessed on 14.6.2016).

³⁰ Child-friendly justice (see Note 12).

the Constitution of the Republic of Latvia and the Civil Law. However, further legal mechanisms do not always retain the objective that is part of these principles. For instance, the recommendation of the Committee of Ministers of the European Council on social reactions to juvenile delinquency^{*31} stipulates that any reactions or punishments that concern minors should be focused on the integration and education of this target group and that the moment of the implementation of criminal punishment should be delayed as much as possible, in particular if it is related to isolation from society, and in the context of this legal enactment, it was recommended already in 1987 that Member States review national legal provisions and the practice of their implementation, with emphasis on (and development of) diverse preventive measures, among them various types of mediation^{*32} and forms of social intervention. At the same time, the European Council has recommended conducting studies regularly to clarify whether the criminal-punishment policy and the practical implementation of legal provisions comply with the principles for juvenile justice. It can be concluded from this that there is a statement that children and young people should be involved in relations through criminal law only in cases of all other possible prevention measures having failed, whilst poorly developed preventive mechanisms or the lack of them cannot serve as an excuse for involving children and youth in relations under criminal law. In order to create uniform practice of rights implementation, several states are in the process of developing special legal provisions particularly for children and young people^{*33}. One of the latest legal enactments in the field is the Juvenile Justice (Care and Protection of Children) Act, which came into force recently (on 15 January 2016) in India.^{*34} The situation with juvenile justice in Latvia, however, has not changed significantly since the mid-1990s. Although several pieces of national legislation have been adopted in this time that have been aimed at improving the situation, significant systemic changes have not been planned and made^{*35}. Although there is a possibility of implementing a compulsory measure of correctional nature under the law On Compulsory Measures of a Correctional Nature instead of a punishment under the Criminal Law, only 3% of minors, on average, have been given a sentence with compulsory measures of a correctional nature by the court each year since the latter measures were first provided for. This allows us to conclude that in most cases the traditional system of criminal justice has been implemented for juveniles. That runs counter to the interests of the minor and either fails to promote or even eliminates the opportunity of the juvenile's resocialisation.

Therefore, on 30 August 2016, the Cabinet of Ministers of the Republic of Latvia accepted an informational report^{*36} on the reform of the criminal-liability system for juveniles'. This report is a result of long-term studies and successful co-operation between the Ministry of Justice of Latvia and both local municipalities and NGOs in Latvia and abroad. The report includes a plan for further action and envisages conceptual governmental support for continued work on reforms to the juvenile criminal-liability system in Latvia with the aim of reducing the number of juveniles involved in the traditional system of criminal liability. At the same time, the necessary activities are addressed in the informational report on implementing Directive (EU) 2016/800 of the European Parliament and of the Council of Europe of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal

³¹ Recommendation R (87) 20 of the Committee of Ministers to Member States, on social reactions to juvenile delinquency (adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies). Available via http://www.coe.int/t/dghl/standardsetting/family/Resolutions_recommendations_cm_en.asp (most recently accessed on 11.6.2016).

³² *Ibid.*, articles 2–3.

³³ For more details, please see I. Kronberga. Meklējot labāko Eiropas praksi jauniešu noziedzības novēršanai ['Searching for the best practice to prevent juvenile delinquency'] (in Latvian). Available at http://providus.lv/upload_file/Projekti/Kriminalitesibas/v2_Mekl%C4%93jot%20lab%C4%81ko%20Eiropas%20praksi.pdf (most recently accessed on 10.6.2016).

³⁴ The official report on the law coming into force is available at <http://egazette.nic.in/WriteReadData/2016/167578.pdf>, whereas the text of the new Juvenile Justice Act of India is available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20justice%20Bill,%20%202014.pdf> (both most recently accessed on 10.6.2016).

³⁵ As the Law On Compulsory Measures of a Correctional Nature came into force on 1 January 2005, it had to serve also as the tool for juvenile justice. However, actions were not taken to implement the provisions of the new law systematically. Therefore, several of the activities provided for by the act were not implemented at all. For instance, among these actions were apologising to the victim, being prohibited from being present in specific places, and being subjected to behavioural limits set for the child in question.

³⁶ This highly informative report, titled 'Par nepilngadīgo kriminālatbildības sistēmas reformu' Latvijas Republikas Ministru kabinetam' (meaning 'On the reform of the juvenile criminal-liability system'), was prepared for the Cabinet of Ministers of the Republic of Latvia). The report is available, in Latvian, at http://tap.mk.gov.lv/doc/2016_08/TMZino_240816_juvenile.1817.docx (most recently accessed on 1.9.2016).

proceedings^{*37} in Latvia. It is emphasised in this report to the government of Latvia that the reform of the juvenile criminal-justice system should be based on the principles of restorative justice, whereas the aim for traditional criminal justice is to punish the guilty person – which goes against the interests of the child or young person even if a crime has been committed, in that an immature person should be guaranteed the protection of his or her interests and rights to develop, to grow, and to become a valuable member of society. The child's rights to development (which includes education, an environment favourable to development, and physical and mental health) are human rights of the child on the basis of his or her age and maturity level.

To ensure honouring these specific human rights of the child, the Law on Prevention of Antisocial Behaviour in Children is in the process of development. This law is to stipulate all preventive measures to ensure that anti-social behaviour does not develop in children and to cover supportive measures for children and their parents in cases of the child having violated legal provisions. The law is to regulate primary, secondary, and tertiary prevention activities, with particular emphasis on the role of children's parents and family. It is planned that the law will enter force on 1 January 2019.

6. Conclusions

Issues related to the rights of the child in Latvia have very often been seen only through the prism of welfare. However, within the last decade the European Parliament and the European Council have adopted a list of conceptual acts and recommendations to Member States that allow concluding that the field to do with the rights of the child is a separate branch of human rights with a horizontal nature. Children's rights cut across all fields of rights – civil, administrative, and other rights. Issues that involve children's rights should be addressed with particular care in the development of provisions for implementation of criminal law and punishment mechanisms, as these limit human rights. It should be stressed that human rights of the child are specific and differ from the human rights of an adult in their content and quantity because the child has specific needs in accordance with his or her age and level of maturity. Contact with the formal system of justice and, in particular, the weak mechanisms of crime prevention create increased likelihood of a child becoming an offender or suffering the impact of illegal acts committed by other individuals. Thereby, the child directly encounters harmful manifestations and consequences of criminality as a social phenomenon. The results of said contact delay and otherwise impair the development of the child; increase his or her exclusion from the community; and leave long-lasting psychological, emotional, and social footprints in the child's life. In consequence, the core specific rights of the immature child and young person to holistic, full development are violated. In order to prevent children from contact with criminality and protect children's human rights, systems for prevention of anti-social behaviour in children and for children's protection from criminality should be developed and improved.

³⁷ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2016_132_R_0001 (most recently accessed on 1.9.2016).



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How Young/Old Does One Look? Sales Personnel's and Laypersons' Estimation of Young People's Age

1. Introduction

Underage drinking is a serious societal problem in Europe. Several studies have found that the use of alcohol among minors both in Europe generally^{*1} and in Estonia^{*2} is relatively high. Although laws of various sorts have been passed as legislative attempts to restrict minors from buying alcohol, they still are able to do so. Therefore, one possible contributor to adolescents' use of alcohol can be seen in the ease of access.^{*3}

By Estonian law^{*4}, alcohol retailers have a responsibility of not selling alcoholic beverages to minors; however, in reality they frequently fail to fulfil that duty.^{*5} One factor influencing the issue is that salespersons' age estimations are often incorrect, contributing to sale of alcohol to people to whom these beverages should not be sold. It has been found that sales staff, especially older adults^{*6}, tend to systematically overestimate the age of young people who try to buy age-restricted goods such as alcohol and tobacco.^{*7} For

¹ J. Inchley et al. *Growing Up Unequal: Gender and Socioeconomic Differences in Young People's Health and Well-being*. Copenhagen: World Health Organization 2016 (an international report on the 2013–2014 survey from the *Health Behaviour in School-aged Children study*); ESPAD group. *The 2015 ESPAD report: Results from the European school survey project on alcohol and other drugs*. Lisbon: European Monitoring Centre for Drugs and Drug Addiction 2016.

² A. Markina, B. Žarkovski. *Laste hälbiv käitumine Eestis* ['Deviant Behaviour of Children in Estonia']. Tallinn: Justiitsministeerium 2014 (in Estonian).

³ A.C. Wagenaar et al. (1993). Where and how adolescents obtain alcoholic beverages. – *Public Health Reports* 108 (1993) / 4, pp. 459–464; A.C. Wagenaar et al. Sources of alcohol for underage drinkers. – *Journal of Studies on Alcohol* 57 (1996) / 3, pp. 325–333. – DOI: <https://doi.org/10.15288/jsa.1996.57.325>.

⁴ Alcohol Act (Alkoholiseadus). – RT I, 1.9.2015, 1 (in Estonian).

⁵ M. Tael, L. Aaben. *Alkoholsete jookide üle-eestilise testostlemine. Uuringu kokkuvõte*. ['Mystery Shopping for Alcoholic Beverages in Estonia: A Summary of the Research']. Tallinn: National Institute of Health Development 2014 (in Estonian).

⁶ P.A. George, G.J. Hole. Factors influencing the accuracy of age estimates of unfamiliar faces. – *Perception* 24 (1995) / 9, pp. 1059–1073. – DOI: <https://doi.org/10.1068/p241059>.

⁷ L.A. Jason et al. Selling tobacco to minors: Can merchants accurately determine a customer's age? – *Journal of Human Behavior in the Social Environment* 8 (2003) / 4, pp. 67–73. – DOI: https://doi.org/10.1300/j137v08n04_04; R.M. Merrill et al. The relationship of perceived age and sales of tobacco and alcohol to underage customers. – *Journal of Community Health* 25 (2000) / 5, pp. 401–410; P. Willner et al. Alcohol sales to underage adolescents: An observational study and evaluation of a police intervention. – *Addiction* 95 (2000) / 9, pp. 1373–1388. – DOI: <https://doi.org/10.1046/j.1360->

example, in comparison of sales personnel and laypersons, the former overestimated the age of the target persons, though to a lesser extent than the control group (i.e., laypersons).^{*8} Although it has been found that human perception of adults' age is relatively accurate^{*9}, the reason for the inaccuracy by overestimation may be caused by a tendency to 'assimilate' – biasing age estimates toward one's own age in what is known as the 'own-anchor effect'.^{*10} It has been found also that age estimation can show regression towards the mean – for example, in eyewitnesses' attribution of a particular age to an offender, being biased toward an 'average' offender.^{*11} As for gender effects, there is some evidence that women tend to be more accurate in their estimates of age on the basis of images of faces when compared to men.^{*12}

Salespersons are instructed to ask for an identity document (ID) from young persons who are attempting to buy alcoholic beverages.^{*13} By asking for a valid document, the sales staff can receive constant feedback on their estimations, and, therefore, they should learn to make more accurate decisions about a person's age. In other words, they are in constant training with feedback on their age-estimation decisions, a process that should make them experts in estimating people's age. The literature shows that it is indeed possible to train people in honing their skills in making perceptual judgements^{*14}. For example, Sörqvist and Eriksson^{*15} have demonstrated that short training sessions had encouraging effects on age estimations. Interestingly, they found that the effects of training were more prominent for estimates of older people's age, a finding not in line specifically with the motivation to train people to estimate the age of younger persons accurately. The authors emphasised that it is important to give feedback on age estimations, as training that included this element was more effective than training without feedback.

Some contextualisation may be useful. In Estonia, there is a time-based restriction on retail sales of alcohol; namely, alcohol may be sold only from 10am to 10pm daily^{*16}. Another feature of the landscape is that there is no state monopoly in place as in some of the Nordic countries (Finland, Sweden, Norway, and Iceland).^{*17} The density of shops where alcohol can be bought is high in Estonia – the mean number of alcohol sales points per 1,000 inhabitants in 2015 was 5.6. With regard to the distance from one's place of residence to the nearest point at which alcohol is sold, for 85% of people in Estonia in 2015, it could be found either in the same building or in a neighbouring building within 10 minutes of reach, and 12% of people could reach it in 30 minutes at most.^{*18}

The age of young people in Estonia who have tried an alcoholic beverage at some point in life or within the last month has remained high in time. The results from the latest European School Survey Project on Alcohol and Other Drugs (ESPAD) survey, carried out in 2015, show a lifetime figure of 86% and 'within the last month' prevalence of 38% among 15- and 16-year-olds.^{*19} The ESPAD averages were 80% and 48%, respectively. According to the Health Behaviour in School-aged Children survey^{*20} in 2013–2014 in Estonia,

0443.2000.95913738.x; P. Willner, G. Rowe. Alcohol servers' estimates of young people's ages. – *Drugs: Education, Prevention and Policy* 8 (2001) / 4, pp. 375–383. – DOI: <https://doi.org/10.1080/09687630010019299>.

⁸ J. Vestlund et al. Experts on age estimation. – *Scandinavian Journal of Psychology* 50 (2009) / 4, pp. 301–307. – DOI: <https://doi.org/10.1111/j.1467-9450.2009.00726.x>.

⁹ R. Henss. Perceiving age and attractiveness in facial photographs. – *Journal of Applied Social Psychology* 21 (1991) / 11, pp. 933–946. – DOI: <https://doi.org/10.1111/j.1559-1816.1991.tb00451.x>.

¹⁰ J. Vestlund et al. (see Note 8).

¹¹ I.A. Fahsing et al. The man behind the mask: Accuracy and predictors of eyewitness offender descriptions. – *Journal of Applied Psychology* 89 (2004) / 4, pp. 722–729. – DOI: <https://doi.org/10.1037/0021-9010.89.4.722>; R.H. Flin, J.W. Shepherd. Tall stories: Eyewitnesses' ability to estimate height and weight characteristics. – *Human Learning: Journal of Practical Research and Applications* 5 (1986) / 1, pp. 29–38.

¹² A. Nkengne et al. Influence of facial skin attributes on the perceived age of Caucasian women. – *Journal of the European Academy of Dermatology and Venereology* 22 (2008) / 8, pp. 982–991. – DOI: <https://doi.org/10.1111/j.1468-3083.2008.02698.x>.

¹³ Estonian Alcohol Act (see Note 4).

¹⁴ R.L. Goldstone. Perceptual learning. – *Annual Review of Psychology* 49 (1998) / 1, pp. 585–612. – DOI: <https://doi.org/10.1146/annurev.psych.49.1.585>.

¹⁵ P. Sörqvist, M. Eriksson. Effects of training on age estimation. – *Applied Cognitive Psychology* 21 (2007) / 1, pp. 131–135. – DOI: <https://doi.org/10.1002/acp.1271>.

¹⁶ Alcohol Act (see Note 4).

¹⁷ E. Orro et al. *Alkoholi turg, tarbimine ja kahjud Eestis: Aastaraamat 2016* [The Alcohol Market, Consumption, and Harms in Estonia: 2016 Yearbook]. Tallinn: Estonian Institute of Economic Research 2016 (in Estonian).

¹⁸ *Ibid.*

¹⁹ ESPAD group (see Note 1).

²⁰ J. Inchley et al. (see Note 1).

3% of 11-year-old boys and 1% of girls of the same age reported drinking alcohol at least once a week, and these percentages rise to 12% and 7%, respectively, for 15-year-olds. The results of a third international survey with wide reach, the International Self-Report Study of Delinquency (ISRD), demonstrated a similar pattern.^{*21} In the ESPAD survey, children were asked about their perception of alcohol's availability, with 73% of 15- and 16-year-old reporting in 2015 that it is 'fairly easy' or 'very easy' to obtain alcoholic beverages.^{*22} The ESPAD average was 78%, with a range of 52% in Moldova to 96% in Denmark.

One method of examining how freely adolescents are able to purchase alcohol is by using 'mystery shopping', which has been employed in several countries^{*23}. The highest compliance rates in off-premises sales have been reported in Sweden, by the state monopoly Systembolaget (20–24-year-old mystery shoppers): 94% in 2011, 95% in 2012, and 96% in 2013.^{*24} High rates have been reported also by Norwegian temperance association Juvente (12–17-year-old mystery shoppers; 76% in 2013, 70% in 2014, 77% in 2015 and 73%^{*25} in 2016) and by research organisation FERARIHS in Switzerland (14–17-year-old mystery shoppers; 70% in 2011, 71% in 2012, and 74% in 2013).^{*26} Compliance rates in off-premises sales in the Netherlands (14–15-year-old mystery shoppers) showed an increase, from 37% in 2011 to 57% in 2013.^{*27} At the far extreme of non-compliance is Romania (17-year-old mystery shoppers), where the compliance rate was 0% both in 2008 and in 2010.^{*28}

In 1998, Willner et al. conducted a comprehensive study in the United Kingdom to investigate the availability of alcohol to minors^{*29}. They found that 88% of 16-year-old girls were successful when trying to purchase alcohol, as compared to 77% of 16-year-old boys attempting the same task.^{*30} For prospective buyers of age 13, the corresponding numbers were 42% for girls and 4% for boys. In that study, alcohol-sellers were also asked to make judgements of the person's age on the basis of photographs, and indeed the participating sales staff tended to overestimate ages by more for girls (2.5 years) than for boys (6 months).^{*31}

The National Institute for Health Development in Estonia piloted mystery-shopping method in 2011 and since then has conducted three nation-wide surveys, in 2012, 2014, and 2016. The results of mystery shopping in Estonia have shown that the overall rate of compliance with the law has been rather low, at 30% in 2011^{*32}, 24% in 2012^{*33}, and 26% in 2014^{*34}, though results from 2016 indicate that compliance has increased somewhat, to 45%.^{*35} Latest results from 2016 show that the compliance rate was highest in supermarkets (65%) and lowest in small shops and gas stations, respectively 41% and 46%. In addition,

²¹ See M. Steketee et al. *Alcohol Use among Adolescents in Europe: Environmental Research and Preventive Actions*. Utrecht, Netherlands: Verwey-Jonker Instituut 2013; A. Markina, B. Žarkovski (see Note 2).

²² ESPAD group (see Note 1).

²³ J. Mulder, J. de Greeff. *Eyes on Ages: A Research [sic] on Alcohol Age Limit Policies in European Member States – Legislation, Enforcement and Research*. Utrecht, Netherlands: Dutch Institute of Alcohol Policy 2013.

²⁴ Systembolaget. *2013 Responsibility Report – Part 2: Financial Reports and In-depth Sustainability Report*. Stockholm: Systembolaget 2013.

²⁵ Skjenkekontrollen. *Kontrollrapport 2016* ['Control Report 2016']. Oslo: Juvente 2016 (in Norwegian).

²⁶ Eidgenössische Alkoholverwaltung. *Alkohol in Zahlen 2014* ['Alcohol in Numbers 2014']. Bern, Switzerland: FERARIHS 2014 (in German).

²⁷ J.J. Van Hoof et al. Alcohol sales to underage buyers in the Netherlands in 2011 and 2013. – *Journal of Adolescent Health* 56 (2015) / 4, pp. 468–470. – DOI: <https://doi.org/10.1016/j.jadohealth.2014.11.025>.

²⁸ J.J. Van Hoof et al. *Selling alcohol to underage adolescents in Romania: Compliance with age restrictions in Pitesti*. – *Revista de Cercetare si Interventie Sociala* 27 (2009), pp. 82–91.

²⁹ P. Willner. Alcohol sales to underage adolescents. Available at http://alcoholresearchuk.org/downloads/finalReports/AERC_FinalReport_0001.pdf (most recently accessed on 29.9.2016).

³⁰ P. Willner et al. (see Note 7).

³¹ *Ibid.*

³² M. Tael. *Alkoholise testostlemise pilootuuring* ['A Pilot Study of Mystery Shopping for Alcoholic Beverages']. Tallinn: Tervise Arengu Instituut 2011 (in Estonian).

³³ E. Kaal, M. Tael. *Alkoholiseadusega alaealisele ja joobes isiku alkoholitarbimise tõkestamiseks seatud piirangute järgimine ning seda takistavad tegurid. Alkoholitele- ja internetireklaami ning noored* ['Following the Limitations According to the Alcohol Act for Preventing Minors and Already Intoxicated Persons from Further Using Alcohol and the Factors Hindering It: The Youth and Alcohol Advertisements on Television and on the Internet']. Tallinn: TNS Emor and Tervise Arengu Instituut 2012 (in Estonian).

³⁴ M. Tael, L. Aaben (see Note 5).

³⁵ Tervise Arengu Instituut. *Alkoholi ostmisel on dokumenti küsimise tase paranenud* ['The level of asking for ID when someone is buying alcohol is getting better'] (in Estonian). Available at <http://www.tai.ee/et/instituut/pressile/uudised/3964-alkoholi-ostmisel-on-dokumendi-kusimise-tase-paranenud> (most recently accessed on 29.9.2016).

while mystery shoppers had to show the ID in 44% of light alcoholic beverage purchases, the rate was significantly higher for strong alcoholic beverages (64%).^{*36}

It can be concluded that a substantial proportion of alcohol sales to minors may well be made in good faith, following misjudgement of the customer's age, and this error is more prevalent with older service personnel.^{*37} It is understandable that those selling alcohol may be reluctant to challenge customers' age assertion, implicit or otherwise. This factor can be ameliorated somewhat by participation in training programmes instilling confidence to refuse sale or ask for an ID.^{*38}

Although minors are used as mystery shoppers in several countries, there are countries, Estonia among them^{*39}, where this is not permitted (even if limited to the purpose of mystery shopping alone).^{*40} Therefore, it is important to note that research in these countries often employs pseudo-underage buyers (people who have just turned 18) to perform the mystery-shopping task^{*41}, as some studies have recommended.^{*42}

After the pilot study in 2011, discussion was raised as to how old salespersons perceive young people to be and how accurate the salespersons' estimates of their age are. This information can serve as valuable input to selection of mystery shoppers. Studies have differed in their methods of examining age estimations. For instance, some have used children too as raters. As for the set-up, sometimes the rater has to categorise people in pictures into certain groups (such as young, middle-aged, or old^{*43}); the rater might have to place pictures in order from the one showing the apparently youngest to the seemingly oldest, or vice versa^{*44}; or the rater may be presented with two pictures at a time and have to decide which of the people shown is older^{*45} or younger.^{*46} It has been found that the expression of the persons is important when pictures are used. For example, if a picture shows someone with a happy face, then that person is judged to be younger than those with a neutral expression^{*47}. Therefore, pictures with both neutral and happy facial expressions were used in the study reported upon here.

2. The study conducted

Several studies have been carried out in relation to the prevalence of alcohol consumption among Estonian minors^{*48} and also the family factors^{*49} influencing it. In contrast, we have less knowledge of issues asso-

³⁶ *Ibid.*

³⁷ P. Willner, G. Rowe (see Note 7).

³⁸ A.C. Wagenaar et al. Communities mobilising for change on alcohol: Outcomes from a randomized community trial. – *Journal of Studies on Alcohol* 61 (2000) / 1, pp. 85–94. – DOI: <https://doi.org/10.15288/jsa.2000.61.85>.

³⁹ According to the new Alcohol Act that will go fully into effect on 01.01.2018, minors can be used for control purchases.

⁴⁰ Alcohol Act (see Note 4).

⁴¹ M. Tael, L. Aaben (see Note 5).

⁴² M. Wolfson et al. Alcohol outlet policies and practices concerning sales to underage people. – *Addiction* 91 (1996) / 4, pp. 598–602. – DOI: <https://doi.org/10.1046/j.1360-0443.1996.91458913.x>; H. Britt et al. Propensity for and correlates of alcohol sales to underage youth. – *Journal of Alcohol Drug Education* 50 (2006) / 2, pp. 25–42.

⁴³ J.S. Anastasi, M.G. Rhodes. An own-age bias in face recognition for children and older adults. – *Psychonomic Bulletin & Review* 12 (2005) / 6, pp. 1043–1047. – DOI: <https://doi.org/10.3758/bf03206441>; J.S. Anastasi, M.G. Rhodes. Evidence for an own-age bias in face recognition. – *North American Journal of Psychology* 8 (2006) / 2, pp. 237–253.

⁴⁴ F.V. Markey. Variations in judgement. – *Journal of Applied Psychology* 18 (1934) / 2, pp. 297–303. – DOI: <https://doi.org/10.1037/h0070716>; J.B. Pittenger, R.E. Shaw. Perception of relative and absolute age in facial photographs. – *Perception and Psychophysiology* 18 (1975) / 2, pp. 137–143. – DOI: <https://doi.org/10.3758/bf03204101>.

⁴⁵ P.A. George et al. Factors influencing young children's ability to discriminate unfamiliar faces by age. – *International Journal of Behavioral Development* 24 (2000) / 4, pp. 480–491. – DOI: <https://doi.org/10.1080/016502500750038035>; W.R. Looft. Children's judgments of age. – *Child Development* 42 (1971) / 4, pp. 1282–1284. – DOI: <https://doi.org/10.2307/1127812>.

⁴⁶ T.F. Gross. Children's perceptions of and beliefs about facial maturity. – *Journal of Genetic Psychology* 165 (2004) / 1, pp. 81–97. – DOI: <https://doi.org/10.3200/gntp.165.1.81-98>.

⁴⁷ M.C. Voelkle et al. Let me guess how old you are: Effects of age, gender, and facial expression on perceptions of age. – *Psychology and Aging* 27 (2012) / 2, pp. 265–277. – DOI: <https://doi.org/10.1037/a0025065>.

⁴⁸ J. Inchley (see Note 1); ESPAD group (see Note 1); A. Markina, B. Žarkovski (see Note 2).

⁴⁹ K. Kask, A. Markina. With whom did you drink last time? An analysis of adolescents' alcohol use. – *Annual Review & Research in Biology* 4 (2014) / 1, pp. 174–187. – DOI: <https://doi.org/10.9734/arrb/2014/5556>; K. Kask et al. The effect of family factors on intense alcohol use among European adolescents: A multilevel analysis. – *Psychiatry Journal* (2013), 12 pages. – DOI: <https://doi.org/10.1155/2013/250215>; A. Markina, K. Kask. The effects of family factors on alcohol consumption in three East-European countries. – *Journal of Contemporary Criminal Justice* 29 (2013) / 1, pp. 53–69. – DOI: <https://doi.org/10.1177/1043986212470886>.

ciated with age estimations in this field. Hence, a study was undertaken to examine how accurate salespersons in Estonia are in estimating the age of young people and, in addition, to assess whether the sales personnel are better at making accurate age judgements than are laypersons (i.e., people not working in shops that sell food and alcohol).^{*50}

2.1. The method

2.1.1. Participants

Forty people participated in the experiment on age estimation. Half of the participants were salespersons (18 females, 2 males, with the mean age $M = 32.2$; $SD = 12.5$; range 19 to 64), and the other half were Open University laypersons (11 females, 9 males, with the mean age $M = 31.7$; $SD = 6.6$; range 19 to 40) who had no experience of work involving alcohol sales. At the time of the study, all of the salespersons had a valid work contract as shop clerks or waiters/waitresses in bars or cafés, with 14 of them being 35 or younger and 6 above age 35. The salesperson group covered a wide range of ages for purposes of measuring whether the age of a salesperson could be expected to affect his or her estimation of the age of people in pictures, since it has been found that age estimations are more accurate when there is a small difference in age between the rater and the person whose age is being estimated.^{*51}

2.1.2. Procedure

The salespersons were to judge pictures presented one at a time on a laptop screen in their places of work, either during a lunch break or after the end of their shift. The aim of the experiment as presented to them was to estimate how accurate they would be in assessing the age of the people shown on the basis of looks; however, they were not told the purpose of the study. The laypersons, in contrast, were shown the pictures while gathered as a group, and the images were displayed on the wall as MS PowerPoint slides with a data projector. They wrote down their estimates with pencil and paper (as did the salespersons group). The rating procedure took 15 to 25 minutes.

The salespersons and the laypersons were shown pictures of faces one after another, and each participant had to decide for each of the pictures how old the person shown was. There were 64 pictures, in total, of 16 males and 16 females, with each person being shown in two pictures: once with a neutral expression and once with a 'happy face'.

2.1.3. The people in the pictures

The 32 people in the images (as mentioned above, balanced between males and females) were between the ages of 17 and 29. For the study, they were divided into two groups, of equal size, by age: 1) the younger group, composed of 17–19-year-olds, and 2) the older group, of 19–29-year-olds. The former group was further divided into three smaller groups: 1) 17-year-olds (3 persons), 2) 18-year-olds (7 persons), and 3) 19-year-olds (6 persons).^{*52}

2.2. Results

In the first stage of analysis, correctness in estimation of the ages that matched the faces (for the full set of 64 images) was examined via two-way analysis of variance (ANOVA).^{*53} The salespersons were more correct in their estimates of the ages of the people pictured, overall. The following figures emerged for correctly

⁵⁰ The research reported upon here was supported in part by the Government Office of the Republic of Estonia and the country's Ministry of Social Affairs via European Union Social Fund support to the National Institute for Health Development (L1223).

⁵¹ M.C. Voelke et al. (see Note 47).

⁵² Because this study was part of a mystery-shopping research project, an additional aim was to select the youngest-looking people in the group of eight 17–19-year-olds. The second group (the 19–29-year-olds) was added to the photograph sample to increase the variation in the material presented, and this group included one 19-year-old person whose picture was included because he was not interested in participating in the mystery shopping.

⁵³ The analysis of variance is a statistical method to analyse differences between groups.

evaluated faces: among salespersons, $M = 7.05$, $SD = 2.72$; among laypersons, $M = 4.50$, $SD = 2.37$, where $F(1,39) = 9.97$, $p = .003$, and $\eta^2 = .21$). When the neutral and happy faces were considered separately, the salespersons were found to be better at estimating age from the neutral faces than the laypersons were ($M = 3.30$, $SD = 1.53$ and $M = 2.10$, $SD = 1.59$, respectively, with $F(1,39) = 5.95$, $p = .02$, and $\eta^2 = .135$). Similar effects were seen for the happy faces; the salespersons' age estimates were more correct than the laypersons' ($M = 3.75$, $SD = 2.22$ and $M = 2.40$, $SD = 1.27$, respectively, with $F(1,39) = 5.56$, $p = .024$, and $\eta^2 = .128$).

Next, comparison was conducted to determine whether the estimates for the happy faces were more correct than those for the neutral faces. For the salespersons, there were no statistically significant effects present (neutral expressions: $M = 3.30$, $SD = 1.53$; happy ones: $M = 3.75$, $SD = 2.22$), and the same was true for the group of laypersons – no statistically significant effects were found (neutral faces: $M = 2.10$, $SD = 1.59$; happy faces: $M = 2.40$, $SD = 1.27$).

For further analysis, the faces were divided into the two equal-sized groups mentioned above, faces of younger people (ages 17 to 19, $n = 16$) and those of older people (ages 19 to 29, $n = 16$). When age estimations were compared between the salespersons and the laypersons, the latter's age estimates were found to be higher than the salespersons' for the younger people's faces (laypersons: $M = 23.16$, $SD = 2.11$; salespersons: $M = 21.46$, $SD = 2.78$, with $F(1,79) = 9.44$, $p = .003$, and $\eta^2 = .21$) and also for the older people's faces (laypersons: $M = 26.96$, $SD = 1.62$; salespersons: $M = 24.89$, $SD = 2.53$, with $F(1,79) = 18.85$, $p = .001$, and $\eta^2 = .20$).

Significant differences were present for the neutral-expression faces of younger people (salespersons: $M = 20.17$, $SD = 2.22$; laypersons: $M = 21.75$, $SD = 1.51$), with $F(1,39) = 6.95$, $p = .012$, and $\eta^2 = .155$; for the younger people's happy faces (salespersons: $M = 22.94$, $SD = 2.82$; laypersons: $M = 24.78$, $SD = 1.67$), with $F(1,39) = 6.28$, $p = .017$, and $\eta^2 = .142$; for the neutral-looking faces of older people (salespersons: $M = 24.33$, $SD = 2.32$; laypersons: $M = 26.38$, $SD = 1.69$), with $F(1,39) = 10.24$, $p = .003$, and $\eta^2 = .212$; and for the older people's happy faces (salespersons: $M = 24.84$, $SD = 2.69$; laypersons: $M = 26.85$, $SD = 1.49$), with $F(1,39) = 8.54$, $p = .006$, and $\eta^2 = .184$.

When the faces of younger people (aged 17 to 19) were examined more closely (see Table 1), the age of 17-year-olds with neutral expressions was overestimated more by the laypersons than by the salespersons: $F(1,39) = 9.15$, $p = .004$, $\eta^2 = .194$. However, no significant differences were evident for the pictures of happy faces of 17-year-olds. The age associated with 18-year-olds' neutral faces was overestimated more by the laypersons than by the salespersons: $F(1,39) = 6.58$, $p = .014$, $\eta^2 = .148$. This effect was seen also for happy faces of 18-year-olds, with $F(1,39) = 5.29$, $p = .027$, and $\eta^2 = .122$. Finally, the age of 19-year-olds shown with neutral expressions in the images was not overestimated more by the laypersons than by the salespersons, while the age of happy-looking 19-year-olds, by facial judgement, was overestimated more by laypersons than by salespersons: $F(1,39) = 5.44$, $p = .025$, $\eta^2 = .125$.

Table 1: The estimation differences between neutral and happy faces of 17-to-19-year-olds

Age	MSc	Salespersons	Laypersons
		<i>M (SD)</i>	<i>M (SD)</i>
17	neutral	3.38 (2.85)	6.13 (2.90)
	happy	3.83 (3.75)	5.68 (2.67)
18	neutral	2.84 (2.42)	4.47 (1.49)
	happy	3.42 (2.80)	5.12 (1.76)
19	neutral	0.49 (1.98)	1.37 (1.54)
	happy	0.87 (2.75)	2.76 (2.22)

Note: '*M*' denotes the mean and '*SD*' the standard deviation.

Next, the differences for pictures of only younger people's faces between salespersons and laypersons were examined with *t*-tests for paired samples⁵⁴ (see Table 1). For the salesperson group, the following results emerged. The age connected with images of 17-year-olds with a neutral expression was overestimated more than that for 19-year-olds with neutral expressions: $t(19) = 8.24$, $p = .001$. Similar effects were present for

⁵⁴ The *t*-test for paired samples is a statistical method for comparing the means of two related groups so as to examine whether the means differ statistically significantly.

happy faces: $t(19) = 6.25, p = .001$. The age of 18-year-olds with a neutral expression too was overestimated more than that of 19-year-olds with a neutral expression: $t(19) = 6.72, p = .001$. There were similar effects for happy faces: $t(19) = 8.33, p = .001$. However, the age estimates for 17-year-olds' faces did not show a difference from the estimates for 18-year-olds' (either neutral or happy).

For the laypersons, the following results emerged. Age was overestimated more for faces of 17-year-olds with neutral expressions than for those of 19-year-olds with neutral expressions: $t(19) = 7.86, p = .001$. Similar effects were present for happy faces: $t(19) = 4.43, p = .001$. The age for 18-year-olds with neutral expressions too was overestimated more than that of 19-year-olds with neutral expressions – $t(19) = 11.38, p = .001$ – and also happy ones: $t(19) = 6.11, p = .001$. However, in comparison of age judgements between faces of 17-year-olds and faces of 18-year-olds, significant differences then emerged for images with neutral expressions ($t(19) = 2.83, p = .01$) but not for happy faces.

The difference between the age estimates given by participants and the real ages (i.e., estimate minus real age) for the faces shown was examined with paired-sample t -testing (see Table 2). The neutral faces were estimated to be older by the laypersons ($M = 1.39, SD = 3.14$) to a greater extent than by the salespersons ($M = .83, SD = 3.11$), at $t(31) = -6.54, p = .001$. Similar results emerged for the happy faces (laypersons: $M = 3.29, SD = 3.47$; salespersons: $M = 2.66, SD = 3.59$), with $t(31) = -6.14$ and $p = .001$. When within-group age-estimation differences among salespersons were examined, the age for the happy faces was overestimated by more than that for those faces with neutral expressions: $t(31) = -2.13, p = .041$. Similar effects were seen for the laypersons: $t(31) = -2.10, p = .044$.

Table 2: The estimation differences for younger and older people's neutral and happy faces

Group	Expression	Younger	Older
		<i>M (SD)</i>	<i>M (SD)</i>
Salespersons	neutral	2.00 (2.63)	-0.34 (3.19)
Laypersons	neutral	3.59 (3.93)	1.73 (3.05)
Salespersons	happy	2.61 (2.56)	0.18 (3.26)
Laypersons	happy	4.38 (3.84)	2.21 (2.77)

Note: '*M*' denotes the mean and '*SD*' the standard deviation.

The faces of younger people (i.e., those ages 17 to 19) with neutral expressions were subject to greater age overestimation by salespersons than the faces of older people (ages 19 to 29), with $F(1,31) = 5.17, p = .03$, and $\eta^2 = .147$ (see Table 2). Similar effects were visible for the happy faces, with $F(1,31) = 5.50, p = .026$, and $\eta^2 = .155$. Among the laypersons, there were no effects with regard to the faces of younger vs. older people, for either neutral or happy expressions.

When the gender associated with the face (male or female; see Table 3) was examined, significant effects emerged only for the laypersons with regard to happy faces: $F(1,31) = 5.08, p = .032, \eta^2 = .145$. Namely, the age was estimated to be higher for the females' faces ($M = 26.32, SD = 3.67$) than for the males' ($M = 23.13, SD = 4.32$).

Table 3: Details of the age estimations for younger and older people's faces, by gender

Group and expression	Rater's gender	Younger people's faces	Older people's faces	Total
		<i>M (SD)</i>	<i>M (SD)</i>	<i>M (SD)</i>
Salespersons, neutral	male	18.87 (1.47)	24.71 (3.99)	21.79 (4.19)
	female	21.53 (2.38)	23.98 (3.45)	22.75 (3.13)
Laypersons, neutral	male	19.46 (2.50)	26.04 (4.45)	22.75 (4.86)
	female	24.10 (3.09)	26.79 (4.07)	25.44 (3.75)
Salespersons, happy	male	19.55 (1.50)	24.99 (4.43)	22.27 (4.25)
	female	22.04 (2.37)	24.74 (2.55)	23.39 (2.76)
Laypersons, happy	male	20.33 (2.08)	25.94 (4.20)	23.13 (4.31)
	female	24.80 (3.63)	27.85 (3.23)	26.32 (3.67)

Note: '*M*' denotes the mean and '*SD*' the standard deviation.

When the younger and older people's faces were considered separately, several differences emerged. For the faces of younger people (aged 17 to 19), the females were estimated to be older than the males by the salespersons. This was true for the neutral expressions, with $F(1,15) = 7.23$, $p = .018$, and $\eta^2 = .341$, and also for the happy ones, with $F(1,15) = 6.28$, $p = .025$, and $\eta^2 = .310$. Similarly, laypersons estimated the females whose faces were presented to be older than the males for both the faces with neutral expressions, with $F(1,15) = 10.89$, $p = .005$, and $\eta^2 = .438$, and the happy faces, with $F(1,15) = 9.16$, $p = .009$, and $\eta^2 = .395$. In contrast, there were no differences present for the faces of older people (aged 19 to 29).

3. Discussion

The aim for the study was to examine the accuracy of age estimations from faces of young people, especially with regard to differences between sales staff and laypersons. We can now discuss the results in light of previous research.

The results demonstrate that, in general, the salespersons were more accurate in estimating the age from pictures of faces of 32 people aged 17–29 than were laypersons. For both younger and older people's faces, the laypersons estimated the person shown to be older than the salespersons did, which is consistent with the results of some previous research.^{*55} When the faces were divided into two groups – those of younger and somewhat older people – the laypersons, when compared to salespersons, tended to overestimate the age irrespective of the facial expression. There were larger differences in both groups' age estimates between images of 17- and 19- or 18- and 19-year-olds but not between 17- and 18-year-olds. This indicates that it is difficult to perform accurate age estimation for younger people by using facial cues alone.

Previous research has pointed out that when a person in a picture has a happy look, the person is judged to be younger in comparison to those with a neutral expression.^{*56} When the faces in the research reported upon here were divided into two categories by facial expression – neutral and happy – the salespersons were more accurate in estimating the ages than the laypersons were. However, the estimates for happy faces in general were not more accurate than those for neutral faces. The ages of younger people (i.e., people aged 17 to 19) were overestimated more by the salespersons than those of the older people pictured (who were 19 to 29), for neutral and happy expressions both, but the same was not true among the laypersons.

Overall, there were no great differences by gender for the images of young people, although salespersons and laypersons both estimated the 17–19-year-old females (with neutral and happy expressions alike) to be older than males of the same age, a finding that supports some previous results.^{*57} A similar effect was not found for faces of the older individuals (of ages 19–29). Salespersons perceiving girls as older can lead to increased availability of alcohol to them, which can, in turn, encourage alcohol consumption among girls.

4. Limitations and avenues for further study

Several limitations of the study can be pointed out. Firstly, the categories of the faces were not evenly balanced – for example, in that only three persons were 17-year-olds. This may have had an effect on the results, and in future research of this nature, the groups of faces should contain similar numbers of images across age categories. As only pictures of a person's head were shown to the participants, then in real life other factors have an influence on the recognition of a person's age (e.g., voice, height, and posture). Another factor that may have had an effect on the results is that the salespersons were shown the photos of the faces in a one-on-one setting, with the images displayed on a laptop screen, while the laypersons were tested together, in a group, with the faces presented on the wall via MS PowerPoint. Although the participants were seated

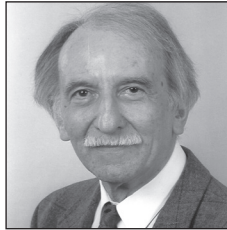
⁵⁵ J. Vestlund et al. (see Note 8).

⁵⁶ M.C. Voelkle et al. (see Note 47).

⁵⁷ P. Willner et al. (see Note 7).

separately and instructed not to comment or otherwise communicate to each other, there may still have been an influence on the results. Thus, it is important to point out that the salesperson and layperson samples were not balanced in terms of gender, so in future the testing situation should take this into account. Finally, it is important to note that another confounding factor could be whether the girls wore a make-up when their pictures were taken as wearing make-up could have an effect on the age estimations.

It can be concluded that salespersons make more accurate estimates of the ages of young persons from images of faces than laypersons do. However, both groups tended to overestimate the ages for the faces, which is especially relevant when the difference between minors of age 17 and young adults of age 18 or 19 is the subject of attention. Accordingly, in the future, more focus should be put on emphasising that it is difficult to estimate the age of a 17–18-year-old accurately. Thus, asking a person younger than certain age for a document of identification can be recommended. Although many shops have pursued this approach on a voluntary basis in Estonia, there are no legal implications behind it.



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Harsh Punishment or Alternatives: Which is the Better Crime-prevention?

1. Introduction

Empirical studies over the past few decades have repeatedly shown that traditional solutions to crime problems – i.e., strict punishments – do not substantially reduce the conflicts caused by crime. Against this background, historical practices such as mediation and restorative justice have re-emerged^{*1}. R. London has characterised the shift thus: ‘Restorative justice as both a philosophy and an implementation strategy developed from the convergence of several trends in criminal justice: the loss of confidence in rehabilitation and deterrence theory, the rediscovery of the victim as a necessary party, and the rise of interest in community-based justice.’^{*2} Concentrating on harsh punishment of offenders while ignoring the background for the criminal behaviour and the needs of victims of crimes, using them only as witnesses during court proceedings, is less effective in crime prevention than ‘alternatives’ are.^{*3} Advocates of mediation and restitution in the aftermath of crime often refer to historical examples.^{*4} Intensive, sweeping regulation of restitution in most cultural regions seems to be a generally identifiable phenomenon. As S. Sharpe points out, ‘[r]eparation has been a vehicle for justice throughout human history’.^{*5}

Just a few years ago, John Braithwaite, one of the fathers of contemporary restorative justice, wrote: ‘Of all the great institutions passed down to western civilization by the Enlightenment, none has been a greater

¹ See, for example, K.J. Hopt, F. Steffek (eds). *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen, Germany: Mohr Siebeck 2008; G. Johnstone, D.W. Van Ness. *Handbook of Restorative Justice*. Cullompton: Willan 2007; E. Weitekamp, H.-J. Kerner. *Restorative Justice: Theoretical Foundations*. Cullompton; Portland, Oregon: Willan 2002; DOI: <https://doi.org/10.4324/9781843924838>; F. Dünkel et al. (eds). *Restorative Justice and Mediation in Penal Matters: A Stock-taking of Legal Issues, Implementation Strategies and Outcomes in 36 European Countries* (2 volumes). Mönchengladbach, Germany: Forum-Verlag Godesberg 2015; H. Kury, A. Kuhlmann. *Mediation in Germany and Other Western Countries*. Forthcoming (2017).

² R. London. *Crime, Punishment, and Restorative Justice: From the Margins to the Mainstream*. London; Boulder, Colorado: First Forum Press 2011, p. 13.

³ H. Kury. Zur (Nicht-)Wirkung von Sanktionen – Ergebnisse internationaler empirischer Untersuchungen. – *Soziale Probleme* 24 (2013), pp. 1–41; H. Kury, A. Scherr (eds). *Zur (Nicht-)Wirkung von Sanktionen. Immer härtere Strafen – immer weniger Kriminalität?* Centaurus Verlag 2013.

⁴ L. Frühauf. *Wiedergutmachung zwischen Täter und Opfer. Eine neue Alternative in der strafrechtlichen Sanktionspraxis*. Gelsenkirchen, Germany: Verlag Dr. Mannhold 1988, p. 8.

⁵ S. Sharpe. The idea of reparation. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 24–40 (see p. 26 in particular).

failure than the criminal justice system.^{*6} He compared it to, as one example, medicine, concluding, as F. McElrea has, that the criminal justice system 'has been less adaptive than other institutions, less responsive to transformations to the environment in which it operates'.^{*7} Braithwaite points to the (re-)emergence of restorative justice as one such reform capable of being evidence-based and more responsive. According to L. Walgrave, the difference between restorative justice and criminal justice can be seen especially in the following distinguishing characteristics:

Crime in restorative justice is defined not as a transgression of an abstract legal disposition, but as social harm caused by the offence. In criminal justice, the principal collective agent is the state, while collectivity in restorative justice is mainly seen through community. The response to crime is not ruled by a top-down imposed set of procedures but by a deliberative bottom-up input from those with a direct stake in the aftermath.^{*8}

In many instances, this approach has shown itself to be successful through lower recidivism rates, redressing of the victims' grievances through addressing their material and financial needs, healing for the communities involved, and fostering of a greater sense of overall satisfaction with the process among the participants.^{*9}

International empirical research shows clearly that most victims, with the possible exception of some of those victimised via very serious crimes, are more interested in restitution for the harm caused than they are in severe punishment of the offender.^{*10} Yet the predominant government reaction to crime is organised in a way that disregards these needs of the majority of victims and of broad segments of the population who are more concerned with restoration of peace in society and with reduction in the conflicts caused by crime. In this context, mediation and restorative justice can help to bridge the gaps between opposing interests. D.M. Gromet states:

Restorative justice presents a different approach to achieving justice than the traditional court system. Whereas court systems depend on punitive measures and do not attend to victim concerns, restorative justice focuses on repairing the harm caused by an offense, bringing the offender back into society, and giving all actors affected by the crime (the offender, the victim and the community) a direct voice in the justice process.^{*11}

Central for the acceptance of mediation and restorative justice in a society is that its structure, process, and opportunities be understood well by the population and by the penal institutions, especially the judges and the courts.^{*12} G. Johnstone and D.W. Van Ness point out in this context: 'Yet, despite its growing familiarity in professional and academic circles, the meaning of the term "restorative justice" is still only hazily understood by many people.'^{*13}

⁶ J. Braithwaite. Foreword. – D. Cornwell et al. (eds). *Civilizing Criminal Justice: An International Restorative Agenda for Penal Reform*. Hook: Waterside Press 2013, pp. 11–14 (on p. 12).

⁷ F. McElrea (2013). Restorative justice as procedural revolution: Some lessons from the adversary system. – D. Cornwell et al. (eds). *Civilizing Criminal Justice: An International Restorative Agenda for Penal Reform*. Hook: Waterside Press 2013, pp. 81–115 (p. 12).

⁸ L. Walgrave. Integrating criminal justice and restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 559–579 (on p. 559).

⁹ H. Kury. Mediation, restorative justice and social reintegration of offenders: The effects of alternative sanctions on punishment. – H. Kury et al. (eds). *Women and Children As Victims and Offenders: Background, Prevention, Reintegration. Suggestions for Succeeding Generations*, Vol. 2. Springer International Publishing Switzerland 2016, pp. 249–282. DOI: <https://doi.org/10.1007/978-3-319-28424-8>.

¹⁰ K. Sessar. *Wiedergutmachen oder Strafen. Einstellungen in der Bevölkerung und der Justiz*. Pfaffenweiler, Germany: Centaurus-Verlagsgesellschaft 1992; K. Sessar. Restitution or punishment: An empirical study on attitudes of the public and the justice system in Hamburg. – *Eurocriminology* 8 (1995), pp. 199–214.

¹¹ D.M. Gromet. Psychological perspectives on the place of restorative justice in criminal justice systems. – M.E. Oswald et al (eds). *Social Psychology of Punishment of Crime*. Chichester: Wiley-Blackwell 2009, pp. 39–54 (on p. 40).

¹² H. Kury, A. Kuhlmann (see Note 1).

¹³ G. Johnstone, D.W. Van Ness. The meaning of restorative justice. – G. Johnston, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 5–23 (p. 6).

2. Developments in Germany

In the middle of the previous century, after having long been consigned to oblivion^{*14}, mediation, along with its positive effects, became a subject of international discussion again, mainly thanks to the interest created by the newly established discipline of victimology research.^{*15} In the 1980s, German professionals began increasing discussion of mediation, against the background of reports from the United States about the successful, time-saving, cost-effective, and also peace-finding application of this approach.^{*16} In the decade that followed, mediation was discussed as if it were an omnipotent method, capable of resolving conflicts related to all kinds of quarrels and problems. Today this method is solidly established, and in the more seasoned modern view it is regarded as an important measure for resolving conflicts. However, the potential of the method is still far from being fully utilised, as has been pointed out by experts.^{*17}

The German Criminal Code (Strafgesetzbuch, StGB) mentions the subject of restitution (*Wiedergutmachung*) twice, once with regard to duties in the context of probation (in §56b of Part 2) and the second time in the context of a definition of punishment (in §46 of Part 2). On 15 December 1999, the German government implemented the *Gesetz zur Förderung der außergerichtlichen Streitbeilegung*, a law to enhance conflict resolution outside the courts. With this law, victim–offender restitution (termed ‘TOA’) became an official part of the penal procedure.^{*18} Germany’s Juvenile Court Act (*Jugendgerichtsgesetz*, abbreviated ‘JGG’) places education squarely at its centre. Already in 1923, the JGG had provided an opportunity for the court to require separate restitution from the offender. From this perspective, restitution or mediation plays a central role because these approaches allow the offender to understand the negative impact of his or her crime clearly by listening directly to the experiences of the victim(s). Thus the juvenile-court system introduced the idea of restitution and victim–offender mediation early on.^{*19}

Today, the procedure for victim–offender restitution remains uniform across the various states of Germany. The following criteria are employed for the application of TOA: it does not encompass petit crimes, there is to be no net widening of social control, the presence of an individual victim is required, the circumstances of the crime must be clearly defined, the offender must have expressed remorse and accepted responsibility for the crime, and both parties (the victim and the offender) must have accepted the prescribed procedure and demonstrated willingness to co-operate.^{*20} Victim–offender mediation is seen, correctly, as an excellent pedagogic opportunity for the offender and also shows successful incidence of reducing the harm incurred by the victim, yet in practice it was used relatively rarely in Germany until quite recently. More often, courts impose punishments that require the offender to pay fines.

3. Developments in other European countries

In collaboration with the German Ministry of Justice, K.J. Hopt and F. Steffek published a reader on mediation, which provides an overview of the current issues related to mediation in Europe and beyond.^{*21} The volume presents regulations and research from 19 countries, not limited to European states.^{*22} The authors argue that mediation needs to be promoted further as a form of conflict reduction. One important

¹⁴ L. Frühauf (see Note 4), p. 63.

¹⁵ H.J. Schneider. *Viktimologie – Wissenschaft vom Verbrechensoffer*. Tübingen, Germany: Mohr 1975.

¹⁶ D. Frehsee. *Schadenswiedergutmachung als Instrument strafrechtlicher Sozialkontrolle*. Berlin 1987; D. Rössner. Die Universalität des Wiedergutmachungsgedankens im Strafrecht. – H.-D. Schwind et al. (eds). *Festschrift für Hans Joachim Schneider zum 70. Geburtstag am 14. November 1998. Kriminologie an der Schwelle zum 21. Jahrhundert*. Berlin 1998, pp. 877–896. DOI: <https://doi.org/10.1515/9783110901542.877>; G. Kaiser. *Kriminologie. Ein Lehrbuch*. Heidelberg, Germany: C.F. Müller 1996, p. 216 ff.

¹⁷ K.J. Hopt, F. Steffek. Mediation – Rechtsvergleich, Regelungsmodelle, Grundsatzprobleme. – K.J. Hopt, F. Steffek (eds). *Mediation. Rechtstatsachen, Rechtsvergleich, Regelungen*. Tübingen, Germany: Mohr Siebeck 2008, pp. 3–102 (p. 7).

¹⁸ G. DeLattre. Der Täter-Opfer-Ausgleich – die Praxis eines anderen Umgangs mit Straftaten. – P. Senghaus (ed.). *Mediation und Polizei*. Rothenburg & Oberlausitz, Germany: Sächsische Polizei 2010, pp. 81–102 (p. 90).

¹⁹ W. Heinz. Opfer und Strafverfahren. – G. Kaiser et al. (eds). *Kleines Kriminologisches Wörterbuch*. Heidelberg, Germany: C.F. Müller 1993, pp. 372–377 (p. 376).

²⁰ G. DeLattre (see Note 18), p. 93.

²¹ K.J. Hopt et al. (see Note 1). See also D. Rössner (see Note 16), p. 881 ff.

²² R. Lummer et al. (eds). *Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schriftenreihe Soziale Strafrechtspflege*, Vol. 1. 2011, pp. 235–242.

aspect of this is provision of easier access to the law-related process for citizens. Mediation offers several other advantages in addition, among them an opportunity for more effective conflict resolution, increased support for the parties involved, constructive approaches to reduction of crime, decreasing of the burden faced by courts (i.e., case overloads), and a reduction in costs for all parties – including the state.^{*23}

Hopt and Steffek emphasise the clear differences in the procedure for mediation from one country to the next. These are not surprising when one considers the considerable variation in definitions of the concept and the differences in legal culture.^{*24} The theory clearly lays out that co-operation on a voluntary basis is a key element of mediation, but some states nevertheless discuss the question of whether the parties may be forced to co-operate under certain circumstances. In addition, the role of the mediator is defined differently – for example, with regard to whether he or she is allowed to offer suggestions and possible solutions. Alongside their use in a penal connection, mediation and victim-to-offender restitution are used more and more for extralegal problems, such as family matters (for example, during resolution of conflicts related to divorce), problems in school, and workplace disputes.

While they display differences in several respects, the definitions of mediation in various countries concentrate on four elements: the presence of conflict, the voluntary nature of the action, systematic support of communication between the parties, and a solution that has been identified by the parties with the support of a mediator who has no decision-making power. The positive impact of mediation can be seen in all societies where the procedure is focused on the social conflict and in which the legal regulation is limited to serving a supportive function. All legal systems accept that mediation is intended not for spontaneous or arbitrary support but for the facilitation of communication between the individual parties by experts. Confidentiality of the procedure and neutrality of the mediator play a central role in the success of this process.^{*25} International studies have found that the training of mediators differs greatly between countries.^{*26} Only a few countries have clearly specified training programmes. Similarly, there is great variety internationally in the professional groups active as mediators.

S. Tränkle compares the German *Täter-Opfer-Ausgleichs-Verfahren* (victim–offender mediation procedure) with the French model of *Médiation Pénale* with regard to adult criminal law and the probability of implementation under the conditions of the respective penal procedure. She critically discusses the real-world probability of implementing mediation with the current conditions under the traditional penal procedure. She points out that mediators have to accomplish a difficult task – namely, transformation of the traditional criminal-court procedure into one that can offer a chance for effective mediation. Mediation, according to her study, is hindered when the parties act with a focus on the penal procedure. The orientation of the parties toward their role in the traditional penal procedure is not an opportune starting point for open conversation. The potential for open conversation has to be clarified before the actual mediation can begin. Proceeding from this background, Tränkle comes to the conclusion that a structural ‘docking to the penal procedure’ hinders the development of mediation. The influence of the traditional penal procedure on the shaping of mediation cannot be excluded, because the practice itself is dominated by attention to the law. Hence, Tränkle argues that mediation can lead only partly, if at all, to transcending the realm of the traditional criminal-court procedure.^{*27}

In consideration of their experiences of co-operating with Eastern European countries, J. Willemsens and Walgrave point to problems and oppositions such as ‘a highly punitive attitude among the public and policy makers, an uncritical reliance on incarceration, strong resistance within law enforcement, prosecutors and judges who fear competition from alternatives, a passive civil society and weakened public legitimacy of the state and its institutions, limited trust in NGOs and in their professional capacities, lack of information about restorative justice and restorative justice pilots, low economic conditions making it difficult to set up projects, lack of a tradition of co-operation and dialogue in several sectors and professions, a general loss of trust in a better future and a mood of despondency and cynicism, forms of nepotism and

²³ K.J. Hopt et al. (see Note 1), p. VII f.

²⁴ K.J. Hopt, F. Steffek (see Note 17), p. 12 ff.

²⁵ *Ibid.*, p. 13.

²⁶ *Ibid.*, p. 70 ff.

²⁷ S. Tränkle. *Im Schatten des Strafrechts. Eine Untersuchung der Mediation in Strafsachen am Beispiel des deutschen Täter-Opfer-Ausgleichs und der französischen médiation pénale auf der Grundlage von Interaktions- und Kontextanalysen.* Berlin: Duncker & Humblot 2007, pp. 335–340.

even corruption in parts of the criminal justice system, heavy administrative and financial constraints on the agencies preventing investment in qualitative work'.^{*28}

Meanwhile, mediation has become an international phenomenon and is used in Germany and other Western countries not only in criminal- or civil-law cases but also to address other conflicts, such as controversies within families^{*29}, in schools^{*30}, in the workplace, within communities^{*31}, between commercial companies^{*32}, in the police force^{*33}, and within prisons^{*34}. But overall it can be said that 'it is within criminal justice that [mediation] is fast becoming most influential'.^{*35}

The Ministry of Justice for England and Wales reports in a press release from 14 March 2013 that mediation will be used to aid in couples' separation procedures. The UK government strongly supports mediation, which represents a quicker, simpler, and more effective way for couples who are separating to agree on how to divide their assets or arrange contact with children, one that avoids the traumatic and divisive effects of courtroom battles. The Ministry of Justice included in its annual budget 25,000,000 pounds sterling to support mediation programmes in this field and develop new binding legislation stipulating that couples 'must consider mediation to sort out the details of their divorce' before going to court. The main advantages are seen in reduction of costs and time: According to the Ministry of Justice, '[t]he average cost of resolving property and financial disputes caused by separation is approximately £500 through mediation for a publicly funded client, compared to £4,000 for issues settled through the courts. The average time for a mediated case is 110 days compared to 435 days for non-mediated cases'.^{*36}

B. Morrison discusses mediation programmes in schools, concluding: 'As the field of restorative justice began to define itself in the 1990s, the role of schools in promoting restorative justice was seen as central to developing a more restorative society as a whole'.^{*37} Today, there are many programmes, internationally, that focus on developing social and emotional intelligence in schools, in the sense conceived of by, for example, L.W. Sherman, who sees restorative justice as 'emotionally intelligent justice'.^{*38} Evaluations have shown positive results, 'that the use of restorative measures, across a range of levels, is an effective alternative to the use of suspensions and expulsions'.^{*39}

Van Ness writes about mediation programmes in United States prisons in, for example, the context of 'victim awareness and empathy programmes' but also for the resolution of conflicts between inmates and prison staff.^{*40} In some programmes, victims or stand-ins for them are included, while in others the immediate victims do not participate.^{*41} The use of restorative justice and victim-offender mediation in

^{*28} J. Willemsens, L. Walgrave. Europe. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 488–499 (p. 491).

^{*29} B. Bannenberg et al. *Mediation bei Gewaltstraftaten in Paarbeziehungen*. Baden-Baden, Germany, 1999.

^{*30} B. Morrison. Schools and restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 325–351.

^{*31} K. McEvoy, H. Mika. Restorative justice and the critique of informalism in Northern Ireland. – *British Journal of Criminology* 42 (2002), pp. 534–562. DOI: <https://doi.org/10.1093/bjc/42.3.534>.

^{*32} R. Young. Testing the limits of restorative justice: The case of corporate victims. – C. Hoyle, R. Young (eds). *New Visions of Crime Victims*. Oxford; Portland, Oregon: Hart Publishing 2002, pp. 133–172. DOI: <https://doi.org/10.5040/9781472559258.ch-006>.

^{*33} P. Senghaus (ed.). *Mediation und Polizei*. Rothenburg & Oberlausitz, Germany: Sächsische Polizei 2010.

^{*34} A.-K. Sasse. *Einbindung der Mediation in die Gerichtsbarkeit. Gerichtliche Mediation in Strafvollzugssachen – ein Projekt*. Hamburg: Dr. Kovac 2010.

^{*35} S. Green. The victims' movement and restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 171–191 (p. 183).

^{*36} UK Ministry of Justice. More mediation encouraged as divorce hotspots are revealed. Press release of 20.2.2013, London. Available at <https://www.gov.uk/government/news/more-mediation-encouraged-as-divorce-hotspots-are-revealed> (most recently accessed on 19.7.2017); UK Ministry of Justice. Moving family mediation forward. Press release of 14.3.2013, London. Available at <https://www.gov.uk/government/news/moving-family-mediation-forward> (most recently accessed on 19.7.2017).

^{*37} B. Morrison (see Note 30), p. 325.

^{*38} L.W. Sherman. Reason for emotion: Reinventing justice with theories, innovation, and research. – *Criminology* 41 (2003), pp. 1–38. DOI: <https://doi.org/10.1111/j.1745-9125.2003.tb00980.x>.

^{*39} B. Morrison (see Note 30), p. 340.

^{*40} D.W. Van Ness. Prisons and restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 312–324 (p. 314).

^{*41} See, with reference to Germany, discussion of a similar programme in Hamburg: O. Hagemann. Restorative justice in prison? – L. Walgrave (ed.). *Repositioning Restorative Justice*. Cullompton: Willan 2003, pp. 218–231 (p. 225).

European prisons is on the increase in some countries, Belgium and Germany among them. For Belgium, we can look to the research by K. Buntinx.^{*42}

With some programmes, the main aim is reconciliation of the inmate with his or her family members or preparation of the community for the re-entry of the prisoner after release. In 'prison-community programmes', the interest is in reducing the separation between inmate and community, a very important element for successful reintegration after release. Of special importance too is the reduction of 'prisonisation'. Van Ness explains: 'Prison subcultures are typically deviant, making rejection of deviance more difficult for prisoners. Inviting them to participate in a process of restoration and transformation requires tremendous strength on their part to move against the prevailing culture [...]. Prisons use or threaten physical and moral violence, making adoption of peaceful conflict resolution difficult.'^{*43} Very often, offenders were themselves victims of violent crimes, as children or juveniles. According to several authors, more attention should be paid to victims in modern prison systems.^{*44}

4. Results from empirical evaluation of mediation

Until a few years ago, findings from empirical research and evaluation of mediation, including restorative justice, on the international level have been quite scarce. In recent years, this body of literature has expanded greatly, and research shows overwhelming evidence of 'the positive impact of restorative practices at multiple levels, with case types ranging from first-time offenders and misdemeanants to more serious chronic and violent offenders'.^{*45} Authors argue that, in contrast to empirical research into treatment programmes for offenders, whose outcomes are not uniformly successful, studies documenting the positive results of restorative justice programmes are more consistent in their findings: 'Most studies of restorative programmes, including recent meta-analyses indicate some positive impact [...], and some suggest that restorative programmes may have equal or stronger impacts than many treatment programmes.'^{*46}

Comparative studies analysing recidivism after participation in victim-offender restitution programmes relative to that seen with traditional penal procedure have been carried out primarily in the USA, Great Britain, and Australia.^{*47} Restorative justice is a broad concept, with procedures varying widely between programmes, and these programmes, in turn, may be used in different parts of the penal procedure. The development of experimental studies is often impossible, a factor that might reduce the results' validity. In addition, the criteria for judging recidivism are often not clearly defined; this reduces comparability significantly.^{*48} Against this background, H. Hayes presents the following summary of the outcomes: 'Despite results that show restorative justice effects no change [...] or in some cases is associated with increase in offending [...], the weight of the research evidence on restorative justice and reoffending seems tipped in the positive direction to show that restorative justice has crime reduction potential.' He does not make a 'definitive claim about restorative justice's ability to prevent crime because, at this stage, we simply do not know enough about how and why restorative justice is related to offenders' future behaviour'. However,

^{*42} K. Buntinx. Victim-offender mediation in homicide cases: Opportunities and risks. Unpublished presentation for the European Society of Criminology in Tübingen, Germany, in 2012.

^{*43} D.W. Van Ness (see Note 40), p. 319; see also C. Gelber. Viktimologische Ansätze im Strafvollzug. – *Monatsschrift für Kriminologie und Strafrechtsreform* 95 (2012), pp. 441–450.

^{*44} C. Gelber (see Note 43), p. 447.

^{*45} G. Bazemore, L. Ellis (2007). Evaluation of restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 397–425 (p. 397); see also H. Hayes. Reoffending and restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 426–444.

^{*46} J. Bonta et al. Quasi-experimental evaluation of an intensive rehabilitation supervision program. – *Criminal Justice and Behavior* 27 (2000), pp. 312–329; DOI: <https://doi.org/10.1177/0093854800027003003>; W. Nugent et al. Participation in victim-offender mediation and the prevalence of subsequent delinquent behavior: A meta-analysis. – *Utah Law Review* 2003, pp. 137–166.

^{*47} H. Hayes (see Note 45), p. 433.

^{*48} H. Kury. *Die Behandlung Straffälliger. Teilband I: Inhaltliche und methodische Probleme der Behandlungsforschung*. Berlin: Duncker & Humblot 1986; C. Menkel-Meadow. Restorative Justice: What is it and does it work? – *Annual Review of Law and Social Science* 2007, 3, pp. 161–187. DOI: <https://doi.org/10.1146/annurev.lawsocsci.2.081805.110005>.

he continues, he does wish to suggest that, ‘on balance, restorative justice “works”’.^{*49} This approach can contribute to reductions in recidivism, but, he notes, ‘post-intervention experiences are important’, as J. Latimer et al. have written when describing their meta-analyses: ‘Although restorative programs were found to be significantly more effective, these positive findings are tempered by an important self-selection bias inherent in restorative justice research.’^{*50}

Latimer and S. Kleinknecht point out the following:

In general, empirical research into restorative justice is arguably still in its infancy. Numerous questions remain unanswered. There are several issues, however, that do appear to be resolved. Victims who experience a restorative justice program express high levels of satisfaction with the process and the outcomes. Victims also believe that the process is fair. There are strong indications that victims are much less satisfied within the traditional court system [...]. Offenders also express high levels of satisfaction with restorative justice programming and perceive the process to be fair. In addition, research suggests that offenders processed by the traditional system are less satisfied. There is evidence, though, that the severity of the restitution agreement is closely related to an offenders’ [sic] satisfaction level. The harsher the restitution, the more likely an offender will express dissatisfaction with the program. Most restorative justice program participants have a high level of success in negotiating restitution agreements. There is also an indication that a high proportion of offenders referred to restorative justice programs follow through on their agreements and are more likely to comply than are offenders with court-ordered restitution.^{*51}

The most frequent criticism of restorative justice focuses on the possible problem of a reduction in, or detrimental effect on, the deterrent impact of (harsh) punishment. However, proponents of restorative justice point out in this regard that deterrence has not been proved to have substantive effects.^{*52} ‘It is of course true that the deterrent effects of punishment tend to be greatly overestimated and its tendency to re-enforce criminality underestimated. However, the average citizen will probably find this response unconvincing, because the idea that without penal sanctions for law-breaking, many people will succumb to temptations to break the law seems self-evident to most people,’ states Johnstone.^{*53} This emphasises the necessity of educating the public about mediation and its greater success, in many circumstances, in resolving conflicts in various branches of society and addressing the impacts of crime.

5. Final discussion

An overview of international publications on mediation and restorative justice in European countries shows that the body of literature has grown vastly, especially with regard to Western industrial societies. Since the end of WWII and in a process accelerating in the 1960s and 1970s, legitimate discussion about more comprehensive ways to include the interests of victims in criminal prosecution has promoted the rediscovery and rapid growth in importance of victimology. In traditional, state-regulated penal procedures, the victims’ role is limited to that of witness – compensation for the harm they have suffered is seen as their personal problem. Traditional criminal law is not concerned with the victims’ needs and instead focuses solely on the sanctioning of offenders. In light of this, it is not surprising that many victims are unsatisfied with the results of the penal procedure. They have only the ‘satisfaction’ that the offender is punished, more or less severely. This result, in turn, promotes a desire for harsh punishment.^{*54}

⁴⁹ H. Hayes (see Note 45), p. 440.

⁵⁰ J. Latimer et al. The effectiveness of restorative justice practices: A meta-analysis. – *The Prison Journal* 85 (2005), pp. 127–144 (p. 127).

⁵¹ J. Latimer, S. Kleinknecht. *The Effects of Restorative Justice Programming: A Review of the Empirical*. Department of Justice, Canada: Research and Statistics Division 2000, p. 16.

⁵² H. Kury, E. Shea (eds). *Punitivity: International Developments* (3 volumes). Bochum, Germany: Universitätsverlag Dr. Brockmeyer 2011.

⁵³ G. Johnstone. Critical perspectives on restorative justice. – G. Johnstone, D.W. Van Ness (eds). *Handbook of Restorative Justice*. Cullompton: Willan 2007, pp. 598–614 (p. 601).

⁵⁴ H. Kury et al. (see Note 1); H. Kury, J. Obergfell-Fuchs. Punitiveness – impacts and measurements. – H. Kury, E. Shea (eds). *Punitivity: International Developments*, Vol. 2: Insecurity and Punitiveness. Bochum, Germany: Universitätsverlag Dr. Brockmeyer 2011, pp. 165–209.

Modern penal policy is predominantly focused on the restoration of ‘penal peace’ (the German concept is *Rechtsfrieden*), which does not automatically re-create social peace.^{*55} With penal peace, the primary concentration is on control and the prestige of penal law, which means that social peace has to be promoted separately. This includes an effort to avoid shifting the problem to the criminal act alone and look instead at its origins to find a more all-encompassing, holistic solution. Interpersonally oriented regulations have positive effects on socialisation and peace in a society, and once the people understand this, the role of pure criminal justice *per se* can be reduced.

R. Young points out that, according to the British Crime Survey (BCS), even in 1984, 51% of the victims interviewed said that they would be willing to meet the offender outside the courtroom, accompanied by an official ‘helper’, to speak about restitution. Answering a question formulated slightly differently in the BCS of 1998, 41% of the respondents accepted a meeting with the offender, in the presence of a third party, to ask questions about the background of the crime and to have an opportunity to tell the offender about the effects of the victimisation.^{*56} As A. Sanders emphasises, research has shown that if offenders understand the penal procedure and perceive it as legitimate, they also accept the result more readily, even in cases wherein they perceive the outcome to be unjust. The same is true for the victims.^{*57} Hopt and Steffek underscore that, if we are to advance as a society, the culture of reducing conflicts in a given society has to be promoted via clear information being supplied to judges, prosecutors, and especially the public.^{*58}

London summarises the positive results and the challenges associated with restorative justice thus:

Restorative justice is a bold and thought-provoking innovation that has engaged the energies and excited the hopes of criminal justice reformers throughout the world over the last several decades. And yet, while it has achieved outstanding results in thousands of programs, it has remained a marginal development because it has failed to articulate a theory and set of practice applicable to serious crimes and adult offenders.^{*59}

He points out that all parties profit from successful mediation:

For the victim, the restoration of trust approach offers the prospect of genuine repair for the material and emotional harm [...]. For the community, the restoration of trust offers the prospect of involvement in problem solving toward the goal of achieving safety and resolving ongoing conflicts. For the offender, the restoration of trust approach enhances the likelihood of regaining acceptance into the moral community of law-abiding people by the demonstration of accountability both for the material losses and the moral transgression involved in the crime.^{*60}

All modern systems of penal law are confronted with the question of how, if at all, to integrate victim–offender restitution into the systems. International comparison by D. Rössner indicates that restitution should be included in all systems of criminal justice.^{*61} As the victims themselves report positive effects in most cases, mediation cannot be accused of – in line with a criticism commonly directed at them – exploiting victims to bring healing to offenders. Rather, it is a measure with positive effects on both parts: for offenders and victims alike.

Initially, mediation was established to help victims, to improve their condition in the wake of the victimisation and to give them better chances of receiving restitution for the damages. The plethora of research results now available shows clearly that this aim can be reached if the measure is taken in a professional manner. Most victims find that their situation has improved after participation in mediation and that they have gained greater chances of overcoming the harm caused by the crime than with classical penal procedures.

⁵⁵ K. Sessar. *Wiedergutmachen oder Strafen. Einstellungen in der Bevölkerung und der Justiz* (see Note 10), p. 21.

⁵⁶ R. Young (see Note 32), p. 137.

⁵⁷ A. Sanders. Victim participation in an exclusionary criminal justice system. – C. Hoyle, R. Young (eds). *New Visions of Crime Victims*. Oxford; Portland, Oregon: Hart Publishing 2002, pp. 197–222 (p. 222). DOI: <https://doi.org/10.5040/9781472559258.ch-008>.

⁵⁸ K.J. Hopt et al. (see Note 1), p. 79.

⁵⁹ R. London (see Note 2), p. 315.

⁶⁰ *Ibid.*, p. 320.

⁶¹ D. Rössner (see Note 16), p. 894.

With respect to the effects on the offenders, especially in terms of their re-socialisation, the results are not as unanimous. This is not surprising. Mediation is usually a brief process, lasting a few hours; therefore, it would be hoping for too much to expect to see long-lasting effects on offenders, especially incarcerated offenders – who often have marked deficits in social skills. Nonetheless, as one part of a comprehensive rehabilitation programme, mediation plays a very important role, and its use should be extended in light of this. The classical approach to criminal justice has obvious disadvantages as far as the reintegration of offenders is concerned, and these shortcomings could be reduced, at least to some extent, via professional mediation.



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The Survival of Retributivism in our Modern Knowledge-based World

In retributivism, one strives to justify criminal punishment simply by referring to the punishment as the consequence that the criminal plainly deserves and arguing that there is no need to present any utilitarian justifications for applying punishments. At present, more and more research results are mounting up that suggest various objective circumstances as causes for predisposition of certain persons to commit crimes, and some research suggests that there are several treatments that may in some cases be more suitably employed instead of criminal punishments. With this paper, I undertake to appraise whether these novel approaches leave any room for retributivist ideas.

1. The long and venerable history of retributivist thinking

As long as societies have held that certain actions by members of society should be averted and have punished their members for these actions, societies also have tried to find means of rationalising the accordant intentional causing of psychological, physical, and material losses to members thereof. For example, the Code of Hammurabi, which dates back to the eighteenth century BC, offers a fundamentally retributivist view:

196. If a man put out the eye of another man, his eye shall be put out.
197. If he break another man's bone, his bone shall be broken.*¹

We can find many references to retributivism in the Torah and the Old Testament. For example, in the Old Testament, the third book of the Pentateuch, Leviticus, states that '[w]hoever takes a human life shall surely be put to death. Whoever takes an animal's life shall make it good, life for life. If anyone injures his neighbor, as he has done it shall be done to him, fracture for fracture, eye for eye, tooth for tooth; whatever injury he has given a person shall be given to him. Whoever kills an animal shall make it good, and whoever kills a person shall be put to death' (24: 17–21).^{*2} And the second book of the Pentateuch, Exodus, states: 'But if

¹ Yale Law School's Avalon Project. Translation of the Code of Hammurabi, available at <http://avalon.law.yale.edu/ancient/hamframe.asp> (most recently accessed on 24.1.2017).

² Leviticus 24, English Standard Version, available at <http://biblehub.com/esv/m/leviticus/24.htm> (most recently accessed on 25.1.2017).

there is harm, then you shall pay life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe' (21: 23–25).^{*3}

Retributivism is highly appreciated in Hegelian and Kantian philosophy. The Kantian approach is fairly straightforward:

Punishment by a court – this is distinct from natural punishment, in which vice punishes itself and which the legislator does not take into account – can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only because he has committed a crime. For a man can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: His innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The principle of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaemonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantages it promises [...]. But what kind and what amount of punishment is it that public justice makes its principle and measure? None other than the principle of equality (in the position of the needle on the scale of justice), to incline no more to one side than to the other. Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself.^{*4}

For Kant, a person is an autonomous moral agent and, therefore, crimes are a reflection of wilful deliberation, not merely illicit harms resulting from undeliberated drives or emotions. Nor are crimes signs of a need for therapy, a 'bad attitude', or of recalcitrance. For the Kantian retributivist, even the fact of an individual wilfully committing a particular kind of crime repeatedly is not, by itself, an indication that the crimes were acts of compulsion or that the criminal is incorrigible.^{*5}

Hegel starts his rationalisation of punishments pretty much from the same locus as Kant. For him, '[t]he threat presupposes that human beings are not free, and seeks to coerce them through the representation [*Vorstellung*] of an evil. But right and justice must have their seat in freedom and the will, and not in that lack of freedom at which the threat is directed. To justify punishment in this way is like raising one's stick at a dog; it means treating a human being like a dog instead of respecting his honour and freedom'.^{*6} But 'Hegel imports consequentialist considerations into the determination of actual punishments'.^{*7} He has stated that '[i]f society is still inwardly unstable, punishments must be made to set an example, for punishment is itself a counter-example to the example of crime'.^{*8} Hence from the Hegelian standpoint, the punishment for concrete offences may depend on such circumstances as the state of the society in which those penalties are disbursed.^{*9}

Completely contradicting these views are ideas proposed by the utilitarian or consequentialist camp. For instance, Jeremy Bentham stated that 'all punishment is mischief: all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil'.^{*10}

³ Exodus 21, English Standard Version, available at <http://biblehub.com/esv/m/exodus/21.htm> (most recently accessed on 25.1.2017).

⁴ M.J. Gregor (ed.). *Kant: The Metaphysics of Morals*. Cambridge University Press 1996, 6:332. – DOI: <https://doi.org/10.1017/cbo9780511809644>.

⁵ J.L. Anderson. Annulment retributivism: A Hegelian theory of punishment. – *Legal Theory* 5 (1999), on p. 366. – DOI: <https://doi.org/10.1017/s1352325299054014>.

⁶ G.W.F. Hegel. *Elements of the Philosophy of Right* (Allen W. Wood, editor). Cambridge: Cambridge University Press 1991, on pp. 125–126. Book available at http://www.inp.uw.edu.pl/mdsie/Political_Thought/Hegel%20Phil%20of%20Right.pdf (most recently accessed on 29.1.2017).

⁷ J. Johnson. Hegel on punishment: A more sophisticated retributivism. – Mark D. White (ed.). *Retributivism: Essays on Theory and Policy*. Oxford: Oxford University Press 2011, pp. 146–168, on p. 157. – DOI: <https://doi.org/10.1093/acprof:oso/9780199752232.003.0009>.

⁸ G.W.F. Hegel (see Note 6), p. 251.

⁹ J. Johnson (see Note 7), p. 158.

¹⁰ J. Bentham, *An Introduction to the Principles of Morals and Legislation*. Kitchener, Ontario: Batoche Books [1781] 2000, p. 134.

In contemporary discussion, retributivism and consequentialism are still in fierce rivalry in the quest for being the main rationalisation for punishment and have left alternative rationalisations (e.g., communication^{*11} or restorative justice^{*12}) peripheral.

The Estonian Penal Code takes a unifying approach, and its Section 56 states that '[p]unishment shall be based on the guilt of the person. In imposition of a punishment, a court or a body conducting extra-judicial proceedings shall take into consideration the mitigating and aggravating circumstances, the possibility to influence the offender not to commit offences in the future, and the interests of the protection of public order'.^{*13} That is, '[t]he system is built on a certain punishment theoretical conception under which the extent of guilt determines the maximum punishment while other criteria rule the determination of the lowest punishment – the danger posed by the act to society and the prevention'.^{*14}

According to the Ken Levy classification scheme, the Estonian Penal Code follows weak retributivism. Levy posits that '[t]here are two kinds of retributivism: weak and strong. Weak retributivism says that just deserts is a necessary condition of criminal punishment, that criminal punishment cannot be just unless the person punished committed criminal wrongdoing and is being punished for that wrongdoing. Strong retributivism says that just deserts (criminal wrongdoing) is a sufficient condition of criminal punishment, that criminal punishment should always be inflicted for criminal wrongdoing'.^{*15}

Today we have to acknowledge that there have emerged two new strong lines of argument against retributivism:

- A. we are finding more and more situations wherein we can ascertain objective foundations for human actions, leaving less room for free will and just deserts, and
- B. we are finding more and more situations in which we are able to use alternative rehabilitative measures instead of traditional criminal punishments.

2. Whether our will is free enough to substantiate retribution

Let us look at some cases that have brought that question up for wide discussion.

In August 1966, 'Charles Whitman took an elevator to the top floor of the University of Texas Tower in Austin. The 25-year-old climbed the stairs to the observation deck, lugging with him a footlocker full of guns and ammunition [...]. By the time the police shot him dead, Whitman had killed 13 people and wounded 32 more'.^{*16} If Whitman had not been shot down with fatal effect, he would most likely have been convicted for multiple murder and the retributivists would have been convinced that the punishment constituted just deserts and was justified even if no utilitarian aim had been achieved.

Police officers found a suicide note that Whitman had written the night before the massacre, requesting his autopsy.^{*17} An autopsy was indeed performed after this, and it revealed a brain tumour pressing against his amygdala, a part of the brain associated with fear and aggression.^{*18}

¹¹ A.Y.K Lee. Defending a communicative theory of punishment: The relationship between hard treatment and amends. – *Oxford Journal of Legal Studies* 37 (2017) / 1. – DOI: <https://doi.org/10.1093/ojls/gqw003>.

¹² T. Brooks. *Punishment*. New York: Routledge 2012, pp. 67, 212.

¹³ The Estonian Penal Code as amended by RT I, 31.12.2016, 2; RT I 2001, 61, §364 and §692, available at <https://www.riigiteataja.ee/akt/131122016014?leiaKehtiv> (most recently accessed on 20.2.2017). In the English language at <https://www.riigiteataja.ee/en/eli/519012017002/consolide> (most recently accessed on 20.2.2017).

¹⁴ J. Sootak. Theories of punishment and reform of criminal law (reform as a change of mentality). – *Juridica International* 2000, p 73, available at http://www.juridicainternational.eu/public/pdf/ji_2000_1_68.pdf (most recently accessed on 5.2.2017).

¹⁵ K. Levy. Why retributivism needs consequentialism: The rightful place of revenge in the criminal justice system. – *Rutgers Law Review* 66 (2014) / 3, pp 645–646, available at <http://docplayer.net/37238789-Why-retributivism-needs-consequentialism-the-rightful-place-of-revenge-in-the-criminal-justice-system.html> (most recently accessed on 27.2.2017).

¹⁶ D. Eagleman. The brain on trial. – *Atlantic Monthly* 2011/ June–July, available at <http://www.theatlantic.com/magazine/archive/2011/07/the-brain-on-trial/308520/> (most recently accessed on 1.8.2017).

¹⁷ Charles Whitman suicide note, from 31 July 1966, available from Alt.CIMedia.com at <http://alt.cimedia.com/statesman/specialreports/whitman/letter.pdf> (most recently accessed on 2.2.2017).

¹⁸ D. Eagleman (see Note 16).

In contemplating Whitman's case, we cannot be sure that if we had managed to discover and remove his tumour earlier, the University of Texas tragedy of 1966 would not have happened. In any case, however, the results of the autopsy suggest that there could have been a substantial objective foundation that contributed to the otherwise unexplainable fatal decision.

But there have been other, much clearer cases. Shortly after turning 40, Michael developed a strong interest in child pornography. This was followed by a conviction for child molestation after Michael was found to have inappropriately fondled his 12-year-old stepdaughter. At the time of sentencing, the judge gave Michael the option of avoiding jail by entering a treatment programme. Anxious to avoid jail, Michael took up the offer. While in the programme, Michael acted inappropriately toward female members of staff. He complained of headaches the night before he was supposed to be sentenced, having failed the treatment programme and been ejected from it. An MRI scan was ordered because he showed frank neurological as well as behavioural signs in the neurological consulting room. The MRI revealed a large orbitofrontal tumour. Once the tumour was removed, Michael's bad behaviour ceased, his sexual urges toward children disappeared, and he successfully completed his programme. Several months after he returned home, Michael's urges resurfaced. Medical examination revealed that the tumour too had returned. After the tumour was again removed, the urges ceased and Michael remained a free man.^{*19}

In this case, it is pretty clear that without the double surgery Michael would have ended up in prison serving his sentence and that this would have been considered without hesitations a just desert.

It is possible that some true retributivist could defend retributivism from the setback posed by such cases, suggesting that these are cases of insanity. In neither of the cases was the insanity defence tested. Therefore, it is not possible to show how such a defence would have been assessed by a court, but, although in both cases there was a clear medical condition that contributed to commission of the crime, there was no sign that the medical condition deprived the accused of the ability to distinguish right from wrong or made him incapable of controlling his behaviour at the time of the offence. Hence, an insanity defence would most likely have been denied.

Of course, only a very small percentage of criminals have had a brain tumour that contributed towards their commission of the crime. But there are other studies, which show that the likelihood of future crimes can be substantially influenced by much more widespread objective distinctive features of the person's genetics or brain activity.

In 2014, one study revealed why Whitman's behaviour may have been linked to the tumour beside his amygdala: that research indicated that lower amygdala volume in men is associated with childhood aggression, early psychopathic traits, and violence.^{*20} It had already been revealed that there is a connection between early-childhood impaired fear conditioning (suggesting retarded maturation of the amygdala) and adult crime.^{*21}

There have been various genetic studies as well. For example, a (MAO-A) gene in combination with childhood maltreatment has been reported to be associated with a significantly increased risk of antisocial behaviour.^{*22}

By using functional magnetic resonance imaging (fMRI), it is possible to locate regions of the brain that are active during emotional and intellectual activity. One study focused on inmates who were about to be released from jail. In the study, they were instructed to press a button as quickly as possible whenever an 'X' appeared on the screen (84% occurrence probability) but not when a 'K' was displayed (16% occurrence probability). By using fMRI, the researchers tracked activity in the anterior-cingulate cortex (ACC) – a part of the limbic lobe associated with impulse control – during the exercise. They found that offenders who showed low ACC activity during the exercise were arrested twice as often within four years of release as offenders with high ACC activity. Furthermore, ACC activity was a better recidivism predictor than other

¹⁹ J.M. Burns, R.H. Swerdlow. Right orbitofrontal tumor with pedophilia symptom and constructional apraxia sign. – *Archives of Neurology* 60 (2003) / 3, pp. 437–440. – DOI: <https://doi.org/10.1001/archneur.60.3.437>.

²⁰ D.A. Pardini. Lower amygdala volume in men is associated with childhood aggression, early psychopathic traits, and future violence. – *Biological Psychiatry* 75 (2014), pp. 73–80. – DOI: <https://doi.org/10.1016/j.biopsych.2013.04.003>.

²¹ Y. Gao et al. Association of poor childhood fear conditioning and adult crime. – *The American Journal of Psychiatry* 167 (2010), pp. 56–60. – DOI: <https://doi.org/10.1176/appi.ajp.2009.09040499>.

²² A. Caspi et al. Role of genotype in the cycle of violence in maltreated children. – *Science* 297 (2002) / 5582, pp. 851–854. – DOI: <https://doi.org/10.1126/science.1072290>; D.L. Foley et al. Childhood adversity, monoamine oxidase A genotype, and risk for conduct disorder. – *Archives of General Psychiatry* 61 (2004), pp. 738–744. – DOI: <https://doi.org/10.1001/archpsyc.61.7.738>.

factors, among them age at release, substance abuse, task-error rate, and psychopathy score. Hence, the authors suggested ACC haemodynamic activity as a potential neurocognitive biomarker of persistent anti-social behaviour, at least at the group level.^{*23}

Studies have pointed to inadequacies in the frontal cortex of the offender's brain.^{*24} A meta-analysis including all prefrontal and prefrontal sub-regional findings indicated that antisocial individuals showed reduced structure or function in the prefrontal cortex.^{*25}

Clearly, brain scans may be used in sentencing proceedings to identify and support claims of lesser culpability due to circumstances beyond the control of the offender that could have a mitigating effect on the sentence.^{*26} Today a multifaceted criminal defence using MAO-A genotyping and neuroimaging has already been introduced in criminal cases and occasionally even accepted in court judgements as a mitigating circumstance.^{*27} Also, 'it is likely that neuroscience will discover evidence of brain disorders that will expand the definition of excuse or add to the list of accepted excuses [...]. It may be that in the future, we treat conditions such as psychopathy and pedophilia more as psychiatric disorders than as criminal conduct'.^{*28}

The possible influence of research results from neuroscience on the domain of law has led to an enormous increase in the number of research publications on this topic. There were not many publications in this field before 2000. In the early years of this millennium, there were still fewer than 100 publications a year on the topic, but since 2012 the number has been consistently over 1,000 annually, and it is still growing.^{*29} An equivalent tendency has been seen in introducing expert testimony on neuroscience and behavioural genetics in criminal trials in the United States; since 2010, hundreds of judicial opinions discussing neurobiological issues introduced by/for criminal defendants have accumulated each year.^{*30}

The more evidence is gathered on objective foundations for commission of offences, the more difficulties there will be in persuasion that punishment can be rationalised as a just desert that has to be employed without consideration as to whether there is any utilitarian effect present.

3. How far we should substitute treatment for punishment

There are many circumstances wherein societies have found there to be more sense in applying treatment instead of (quite often even more costly) criminal punishment. And if it makes sense to substitute treatment for criminal punishment, no room remains for theorising that punishment is a just desert.

The idea of coercing drug users into treatment is not new. In the United States the idea can be traced back to the 'narcotic farms' of the 1920s and 1930s. These farms treated not only genuine volunteers with no prior engagement in criminal activity, but also offenders who were offered treatment in lieu of punishment [...]. In Australia, coerced treatment of drug offenders has constituted

²³ E. Aharoni et al. Neuroprediction of future rearrest. – *Proceedings of the National Academy of Sciences of the United States of America* 110 (2013), pp. 6223–6228. – DOI: <https://doi.org/10.1073/pnas.1219302110>.

²⁴ A. Raine et al. Reduced prefrontal gray matter volume and reduced autonomic activity in antisocial personality disorder. – *Archives of General Psychiatry* 57 (2000), pp. 119–127. – DOI: <https://doi.org/10.1001/archpsyc.57.2.119>.

²⁵ Y. Yang, A. Raine. Prefrontal structural and functional brain imaging findings in antisocial, violent, and psychopathic individuals: A meta-analysis. – *Psychiatry Research: Neuroimaging* 174 (2009), pp. 81–88. – DOI: <https://doi.org/10.1016/j.psychres.2009.03.012>.

²⁶ E. Bennett. Neuroscience and criminal law: Have we been getting it wrong for centuries and where do we go from here? – *Fordham Law Review* 85 (2016), p. 449, available at http://fordhamlawreview.org/wp-content/uploads/2016/11/Bennett_November-1.pdf (most recently accessed on 5.2.2017).

²⁷ E. Feresin. Lighter sentence for murderer with 'bad genes'. – *Nature*, 30 October 2009. – DOI: <https://doi.org/10.1038/news.2009.1050>; William Bernet et al. Bad nature, bad nurture, and testimony regarding MAOA and SLC6A4 genotyping at murder trials. – *Journal of Forensic Science* 52 (2007) / 6, pp. 1362–1371. – DOI: <https://doi.org/10.1111/j.1556-4029.2007.00562.x>.

²⁸ E. Bennett (see Note 26).

²⁹ M.A. Fozdar. The relevance of modern neuroscience to forensic psychiatry practice. – *Journal of the American Academy of Psychiatry and the Law Online* 44 (2016) / 2, p. 146, available at <http://jaapl.org/content/44/2/145.full.pdf> (most recently accessed on 6.2.2017).

³⁰ N.A. Farahany. Neuroscience and behavioral genetics in US criminal law: An empirical analysis. – *Journal of Law and the Biosciences*, Advance Access Publication of 14 January 2016, pp. 485–509. – DOI: <https://doi.org/10.1093/jlb/lsv059>.

a popular alternative to incarceration for about 40 years. And a number of other countries have more recently adopted similar initiatives [...]. Another group of offenders, particularly relevant in relation to the discussion of rehabilitative treatment as an alternative to imprisonment, is that of sex offenders. Several types of treatment exist which aim at either curing paraphilic disorders or at controlling their manifestations [...]. The final group of offenders that should be mentioned is that of violent criminals. Several types of rehabilitative treatment – including, first and foremost, different forms of cognitive behavioural therapy – have for some time been offered to offenders suffering from explosive violent temperaments.^{*31}

More recently, attention has been drawn to new types of treatment. Some research indicates that it is possible to reduce the risk of offending by employing various nutritional supplements – e.g., simple omega-3 – in the diets of risk-prone persons.^{*32} In addition, there have already been some more complex attempts to address predispositions to offence and find alternatives to penal punishment. The Cognitive Centre of Canada, at the University of Ottawa^{*33}, has worked for decades in this direction and offered some prospective methods for the prevention and treatment of antisocial behaviour.^{*34}

In the Estonian Penal Code (the EPC), there is enshrined an option that allows substitution of treatment for imprisonment in certain cases. This is possible if imprisonment of six months up to two years is imposed on a person for an act committed because of a treatable or controllable mental disorder, with that person's written consent. Still, only two courses of treatment are allowed to be employed:

- 1) treatment of drug addicts for addiction, used for a person who has committed a criminal offence for reason of drug addiction
- 2) complex treatment of adult sex offenders, for a person who has committed a criminal offence because of sexual-orientation disorder^{*35}

With these constraints taken into account, the EPC would not allow applying substitution for imprisonment by way of treatment in the above-mentioned case of Michael, in which the necessary treatment was brain surgery.

Nonetheless, the EPC would not be completely powerless to offer some relief in a case such as Michael's. The EPC allows a court to order suspension of the sentence on probation, and one of the obligations that the court may impose on the offender for the duration of supervision of conduct is to undergo the prescribed treatment if the offender has previously consented to said treatment.^{*36}

Nevertheless, it is feasible that, sooner or later, the list of applicable courses of treatment should be amended. There is, for example, a growing list of treatment programmes applicable to reduce aggressive behaviour^{*37}, and it would be unwise to assume that science is incapable of finding additional human predispositions to criminal activities that can be treated.

It is unrealistic to offer a concrete prediction as to how far substitution of treatment for punishment will advance, but there are research-based estimates that a large percentage of criminals have psychiatric issues. One study concluded that almost two thirds of US jail inmates have a mental health problem.^{*38}

³¹ J. Ryberg. Is coercive treatment of offenders morally acceptable? On the deficiency of the debate. – *Criminal Law and Philosophy* 9 (2015) / 4 (December), pp. 621–624. – DOI: <https://doi.org/10.1007/s11572-013-9288-8>.

³² A. Zaalberg et al. Effects of nutritional supplements on aggression, rule-breaking, and psychopathology among young adult prisoners. – *Aggressive Behavior* 36 (2010), pp. 117–126. – DOI: <https://doi.org/10.1002/ab.20335>.

³³ See <http://www.cognitivecentre.ca/> (most recently accessed on 14.2.2017).

³⁴ S.J. Young, R.R. Ross. *R&R2 for ADHD Youths and Adults: A Prosocial Competence Training Program – Program Handbook*. Ottawa: Cognitive Centre of Canada 2007, p. 162, available via https://www.academia.edu/9330842/R_and_R2_for_Youths_and_Adults_with_ADHD (most recently accessed on 16.2.2017); R.R. Ross, D.H. Antonowicz. *Antisocial Drivers: Prosocial Driver Training for Prevention and Rehabilitation*. Springfield, Illinois: Charles C Thomas 2004.

³⁵ Estonian Penal Code, § 69².

³⁶ EPC, §§ 74 and 75.

³⁷ L. Brännström et al. Aggression replacement training (ART) for reducing antisocial behavior in adolescents and adults: A systematic review. – *Aggression and Violent Behavior* 27 (2016) / March–April, pp. 30–41. – DOI: <https://doi.org/10.1016/j.avb.2016.02.006>; C. Balia et al. The pharmacological treatment of aggression in children and adolescents with conduct disorder. Do callous-unemotional traits modulate the efficacy of medication? – *Neuroscience & Biobehavioral Reviews*, available online from 27 January 2017. – DOI: <https://doi.org/10.1016/j.neubiorev.2017.01.024>.

³⁸ K.D. Kim et al. The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System: A Scan of Practice and Background Analysis. Urban Institute, March 2015, p. 8, available at <http://www.urban.org/sites/default/files/publication/48981/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf> (most recently accessed on 21.2.2017).

Hence, neuroscience may be able to offer many new trustworthy treatments for persons having a criminal predisposition.

For example, there is a large amount of research into possible social effects of the neuropeptide oxytocin. Oxytocin became very attractive as a research topic after it was revealed that simple intranasal administration of it increases generosity by 80%.^{*39} The first attempts to employ the neuropeptide in therapy for diverse social phobias, mood disorders, and other personality disorders have already emerged.^{*40}

4. Conclusions

The mounting research results attesting to objective foundations for criminal actions and opportunities to respond to a criminal act not by applying a criminal punishment but by rendering treatment leave less and less room for retributivist and just-deserts arguments. The more that science is able to understand why certain people commit criminal offences and is able to find opportunities to treat these conditions, the less need there will be to think of punishments as just deserts that simply have to be applied without a search for any utilitarian justification.

It is already evident that the strong retributivism claim that ‘criminal punishment should always be inflicted for criminal wrongdoing’^{*41} is incompatible with the practice of replacing punishment with treatment, a practice that is spreading today.

There is still room for the weak retributivism assertion that ‘criminal punishment cannot be just unless the person punished committed criminal wrongdoing and is being punished for that wrongdoing’.^{*42} But the more capable science becomes of reliably detecting predispositions to commit criminal offences and of designing dependable measures to reverse these predispositions, the less space there will be even for weak retributivism. Modern societies are unanimously convinced that in certain circumstances strong measures may be applied with regard to persons who are a substantial threat to other persons without looking for any deserts – serious contagious diseases and mental health problems are routinely handled in a manner employing measures that restrict human rights no less than imprisonment does and much more than do other criminal punishments, such as pecuniary sanctions.

³⁹ P.J. Zak et al. Oxytocin increases generosity in humans. An Open Access article published on 7 November 2007. – DOI: <https://doi.org/10.1371/journal.pone.0001128>. The research measured the generosity-implicating ultimatum game (UG), which is routinely employed for this task in economics experiments. In the UG, person A is endowed with \$10 and asked to make an offer on how to split this money between persons A and B, where person B has no endowment. If B accepts the split, the money is paid out as A has decided. If B does not accept the split, no-one receives any money. See, for example, A.G. Sanfey et al. The neural basis of economic decision-making in the ultimatum game. – *Science* 300 (2003) / 5626, pp. 1755–1758. – DOI: <https://doi.org/10.1126/science.1082976>.

⁴⁰ N. Striepen. Prosocial effects of oxytocin and clinical evidence for its therapeutic potential. – *Frontiers in Neuroendocrinology* 32 (2011), pp. 426–450. – DOI: <https://doi.org/10.1016/j.yfrne.2011.07.001>.

⁴¹ K. Levy (see Note 15)..

⁴² *Ibid.*



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A Legal Cultural Model as a Theoretical Basis of Reintegration Strategies for ISIS Ex-militants

1. Introduction

The rising threat of violent extremism in recent years has become widely discussed by mass media. Topics associated with how to combat violent extremism or how to counter radicalisation appear in the media so frequently that they are becoming part of public discourse.

When we talk about violent extremism, we firstly have to talk about Daesh^{*1}, also known as ISIS^{*2} or ISIL^{*3}. This organisation is known for being a brutal, deadly, and extremely vitality-rich terrorist movement that has more territorial, material, and human resources than any other the world has ever seen.^{*4} It has also been called the greatest threat to world peace, not to mention that its fanaticism and disciplined organisation are now being compared to those of the Nazi regime.^{*5} Making matters worse is that more than 80 countries have had to face the fact of their citizens having joined ISIS^{*6} and now being considered ISIS militants^{*7}.

It is also known that approximately 60 per cent of the people who have joined ISIS to act as militants are going to be killed during the battles or via suicide; 20 per cent of the people who have joined ISIS will flee to places other than their home country, such as Yemen or the Philippines, never to return home; and about 20 per cent of the militants will return home of their own volition or be administratively sent back to their home countries^{*8}. Once they are back in their home countries, there is good reason to believe that the

¹ An Arabic acronym used as a pejorative for ISIS.

² Islamic State of Iraq and Syria.

³ Islamic State of Iraq and the Levant.

⁴ A. Lekas. #ISIS: The largest threat to world peace trending now. – *Emory International Law Review* 30 (2015) / 2, pp. 314–315.

⁵ *Ibid.*, p. 314.

⁶ In September 2014, CIA reports estimated that ISIS had recruited 31,500 people to fight in Iraq and Syria, from 81 distinct countries. Information is available at <http://edition.cnn.com/2014/09/11/world/meast/isis-syria-iraq/> (most recently accessed on 15.12.2016).

⁷ Also known as ISIS fighters, combatants, or warriors.

⁸ Information from a confidential source provided by employer the Ministry of the Interior of the Republic of Estonia.

intelligence agencies will find them and that in some cases they will be prosecuted and convicted on charges of terrorism. Accordingly, the former terrorists will have to stay in prison for years. However, they may not stay in prison for life.^{*9}

Scholarly discussion is more than adequate about questions that concern releasing imprisoned terrorists back into the society. Can prison help them to turn away from terrorism? Do they have a place to go, and, furthermore, who will monitor them? And then there is the most important question – will they re-offend?^{*10} The main goal for this article is to analyse whether the prison system in Estonia, after incarcerating former ISIS terrorists, would be able to fulfil the objectives set for the execution of the imprisonment. In the context of the article, the latter refers to helping the inmate lead a law-abiding life and defend public order^{*11}, with the (legal) cultural aspects of the different societies taken into account. The article will also briefly discuss the issues related to releasing imprisoned terrorists into the surrounding society.

The main concern addressed by the article is that there might not be potential to re-socialise an individual who does not feel part of the society in which he is incarcerated (and may not even want to be a member of it unless the integration process takes into account not only the aspects of (legal) culture that are familiar and well-known in the society where the person is incarcerated but also the ones that the prisoner considers to be essential.

2. From radicalisation to de-radicalisation

When we talk about an average prisoner in Estonia, it can be stated that the applicable characterisation of an inmate largely depends on the offence committed. There is no universal, all-embracing characterisation. White-collar crimes tend to be committed by wealthy people, usually with a good education^{*12}; there are ‘smaller’ offences, in the case of which a lack of education is common (e.g., offences against property); and there are very serious ones in connection with which we can sometimes talk about a specific medical condition (e.g., paedophilia-linked crimes).^{*13} All those individual prisoners need a specific approach, with dissimilar ‘tools’ – some of them need an education, some therapy-based treatment, while others might need to acquire a profession while being in prison if they are to live a law-abiding life outside prison.

The state has an obligation toward people who have committed crimes and are now being incarcerated and also one towards the society as a whole to help those people. This means that the state has to defend public order and help prisoners in such a way that these people could in the future live a law-abiding life. But when we talk about a law-abiding life, we are actually speaking of reintegration: helping the prisoner to understand the social obligations and rules surrounding him so that it is feasible to rule out the possibility of him spending his entire life in prison. That is the reason that, when a person is in prison, his criminality risks and needs are surveyed, for understanding what would help him such that in the future he will not commit criminal acts.^{*14}

One topic of heated debate is the reintegration of former terrorists, who are also described as returned or former violent extremists and as people who are radicalised.^{*15} In the context of this article, a radical individual is defined as a ‘person harboring a deep-felt desire for fundamental sociopolitical changes’ and radicalisation is understood as ‘a growing readiness to pursue and support far-reaching changes in society that conflict with, or pose a direct threat to, the existing order’.^{*16}

⁹ For example, the Estonian Penal Code provides that even if a person has been sentenced to life imprisonment, the court may release that person on parole if the offender has actually served at least 30 years of the term of punishment imposed. Penal Code (karistusseadustik). – RT I 2001, 61, 364 (in Estonian).

¹⁰ J. Horgan, K. Braddock. Rehabilitating the terrorists? Challenges in assessing the effectiveness of de-radicalization programs. – *Terrorism and Political Violence* 22 (2010), p. 268. – DOI: <https://doi.org/10.1080/09546551003594748>

¹¹ Imprisonment Act (vangistusseadus). – RT I 2000, 58, 376 (in Estonian).

¹² E.S. Podgor. The challenge of white collar sentencing. – *Journal of Criminal Law & Criminology* 97 (2007) / 3, p. 740.

¹³ S. Feelgood, J. Hoyer. Child molester or paedophile? Sociolegal versus psychopathological classification of sexual offenders against children. – *Journal of Sexual Aggression* 14 (2008) / 1, p. 34. – DOI: <https://doi.org/10.1080/13552600802133860>.

¹⁴ Kriminaalhoolduse standardid [‘Standards of probation’], 2014, pp. 21, 30. Available at <http://www.vangla.ee/en> (most recently accessed on 1.1.2017) (in Estonian).

¹⁵ M. Chin et al. A national strategic framework for countering violent extremism in Jordan. – *Journal of International Affairs* 69 (2016) / 2, p. 125.

¹⁶ A. Dalgaard-Nielsen. Violent radicalization in Europe: What we know and what we do not know. – *Studies in Conflict & Terrorism* 33 (2010) / 9, p. 798. – DOI: <https://doi.org/10.1080/1057610x.2010.501423>.

Reintegration of a former terrorist demands numerous kinds of interventions that must occur after the individual has already been radicalised. Such interventions usually consist of three steps: disengagement, de-radicalisation, and finally the reintegration.^{*17} The primary concern is how to prevent a person from returning to violent extremism.

Through disengagement, it is possible to achieve change in the person's behaviour (i.e., refraining from violence and withdrawing from a radical organisation) but not necessarily a change in beliefs. De-radicalisation as a central element in the process is understood as a change at the cognitive level – a social and psychological shift whereby the person's commitment to, and involvement in, violent radicalisation is reduced to the extent of no longer being at risk of re-engaging in terrorist activity.^{*18} This theory is based on the premise that, just as there are processes through which an individual becomes an extremist, there are also processes through which an extremist can come to relinquish violence or even in some cases discard a radical ideology.^{*19} Scholarly discussions about de-radicalisation imply a possibility of lasting change in orientation.^{*20} After conclusion of the first two steps, it is possible to actually reintegrate the former terrorist, as has been done with 'regular' prisoners.

Potential reintegration problems with the ex-militant

In many parts of the world, specific programmes are in place that use a combination of psychiatry, education, and religion to deal with former terrorists. But these programmes are successful only if they are grounded in a clear understanding of what motivates people to join terrorist movements and what motivates them to leave.^{*21} Therefore, it is crucial both to understand the ideology that urges terrorists to commit terrorist acts and to meet the sociological needs these persons might have (e.g., that of belonging or for a collective identity).^{*22}

In Estonia, there have not yet been any former violent extremists who need to be reintegrated, although there are people who have left the country to join ISIS to fight in the jihad. Were those militants to be prosecuted and convicted on terrorism charges here in Estonia, they would have to stay in prison for years.

With every prisoner whose confinement lasts more than one year, the reintegration process starts as soon as possible.^{*23} In the event of the Estonian prison system being required to reintegrate a former violent extremist, those involved must know the answers to many, quite different questions that may arise while they are carrying out the work: What is the (legal) cultural background to which the person belongs nowadays? What are the values this person carries with him? And what are his views about the society into which he is going to be integrated?

One of the most complex questions is this: what if he does not want to be part of the culture within which he is serving his sentence? Into which society are we integrating this person then? For understanding what helps to reintegrate former terrorists and withdraw them from violent extremism, there is a need to grasp what (legal) cultural factors might have influenced their radical ideology. To explore this, below, the author will use the specific legal cultural model provided by Professor Jørn Øyrehagen Sunde for ascertaining those bearings.

¹⁷ M. Chin et al. (see Note 15), p. 116.

¹⁸ *Ibid.*, p. 124.

¹⁹ E.M. Markisen. Juvenile law and jihad: Exploring anti-terror legislation and calling for mandatory juvenile treatment of radicalized teens joining ISIS in Syria. – *Wisconsin International Law Journal* 34 (2016) / 1, p. 205.

²⁰ J. Horgan, K. Braddock (see Note 10), p. 280.

²¹ E.M. Markisen (see Note 19), p. 205.

²² *Ibid.*, pp. 205–206.

²³ The Imprisonment Act (§16) specifies that a prisoner whose actual term of imprisonment exceeds one year shall receive an individualised treatment plan, which prescribes, for example, the prisoner's ability to work and professional skills, while also specifying any need to provide general education, vocational education, or in-service training for the purpose of professional development to the prisoner; the privileges to be granted to the prisoner; etc.

3. The legal cultural model

Prof. Sunde has described legal culture as a social phenomenon that changes with the society and its needs. Also, that legal culture is something that is inherent to a certain social community, and internalisation of it is what has given the law its legal cultural dimension.^{*24}

Integrating a prisoner who subscribes to a radical ideology rooted in the major world religion Islam^{*25} into Estonian society entails an integration interface between two, quite different cultures. On one hand, the individual is in a secular country and is required to obey the rules established there, but at the same time his inner convictions stem from the Islamic tradition. So there is a need to get to know both (legal) cultures.

The model considered here is divided into two parts, which are in symbiosis with each other. The first part, denoted as 'institutional structure', refers to institutions that establish rules and settle disputes. The other part of the model is named 'intellectual structure', and it represents the ideas and expectations that shape the law.^{*26}

The model contains six elements that must be examined if it is going to yield understanding of a specific legal culture. When one finds meaning for these elements, it then is possible to understand what the legal culture looks like or even how it functions. Those six elements are conflict resolution (a society's most basic demand of its legal system); norm production (from case law to codification of law); the concept of justice (with justice being a fundamental demand made of the law); legal method (for resolving a specific case in accordance with the concept of justice); professionalisation of law (meaning that there are special criteria to fulfil before one can be trusted with the position of handling law) and the influence of internationalisation (addressing the idea that as society changes, the law must change such that it remains able to fulfil its obligations in conflict resolution amid that change).^{*27}

In the case considered here, three of the elements described above must be considered via comparison of parameters from different legal cultures, for understanding of why reintegration of a former ISIS militant might not be successful. These are conflict resolution, the idea of justice, and the influence of internationalisation.

Before we explore these elements, it has to be remarked that this model can truly help us to characterise different legal cultures but not deviations. It would be irresponsible to attempt to analyse the legal cultural background of ISIS (activity). Therefore, the purpose for using this model here is to characterise only the similarities and differences between specific (legal) cultures and then explain how this knowledge can be employed for a favourable effect in integration of a former terrorist.

3.1. Law and its values – the idea of justice

Harold J. Berman believes that there are some characteristics of law that tend to give it a 'sacred' quality for people, meaning that these support basic emotions in relation to the law that also have a religious component – feelings of responsibility and obligation, a sense of satisfaction and gratitude when justice is done.^{*28} He believes that law everywhere communicates its values:

- (a) through ritual, that is, formal procedures of legislation, adjudication, and administrative regulation that symbolize its objectivity,
- (b) through tradition, that is, distinctive legal language and practices handed down over generations and centuries that symbolize its continuity with the past and its ongoingness into the future,
- (c) through authority, that is, reliance upon written or spoken sources that effectively symbolize its binding power, and

²⁴ J.Ø. Sunde. Champagne at the funeral – an introduction to legal culture. – J.Ø. Sunde, K.E. Skodvin (eds), *Rendezvous of European Legal Cultures*, pp. 11–28. Bergen 2010, p. 15.

²⁵ E.M. Markisen (see Note 19), p. 206.

²⁶ J.Ø. Sunde (see Note 24), pp. 22–23.

²⁷ *Ibid.*, p. 28.

²⁸ H.J. Berman. Comparative law and religion. – Mathias Reimann, Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law*. 2012, p. 746.

- (d) through universality, that is, justification of itself in axiomatic terms as the embodiment of universally valid principles and concepts – that contracts should be kept, that wrongful injuries should be compensated, that crimes should be punished, that property rights should be protected, that one accused of an offence is entitled to a hearing, and the like.^{*29}

In relation to the notion that the state (through the law) is the one that must deliver justice and verify it among society through ritual, tradition, universality, and authority, it can be said that in Estonia, a country belonging to the West, people usually see justice as a moral concept mixed with political means, with justice as the ‘most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable political society’.^{*30} In Estonia and generally in the West, there is a respect for human dignity and cultural diversity.

Countries belonging to the Islamic (legal) culture (often loosely referred to as the Middle East), despite distinguishing between secular law and God’s law, see the state as a high ideal for suppressing all injustice and exploitation and for encouraging a society guided by purity, goodness, and virtue for people’s prosperity.^{*31} So it can be said that the Islamic system thereby has its roots in the idea of welfare of mankind, in any age and at any time under any political order.^{*32}

Hence, irrespective of whether God’s law or man’s is at issue, the main value and main purpose of the law is to provide for the well-being of mankind both in the West and in the Middle East.

What is the idea of justice held by ISIS militants? There is no scientific literature about their specific idea of justice. However, it can be stated that ISIS militants believe that Muslims should return to the simplicity and unity of early Islam – this is something that God wants from people.^{*33} They believe they can achieve that through establishing a community of believers who practise Islam in its purest form, even though that means waging war against the infidels. Justification of their acts is found in the goal of restoring a caliphate in line with the earlier Muslim golden age in accordance with God’s wishes.^{*34}

So ISIS militants commit violence in the name of Islam but not violence permitted by Islam – ‘acts of violence, whether against Muslims or non-Muslims, such as: indiscriminate killings, beheadings, rapes, slavery, destruction of public and private property, pillage, and theft, violate the sharia and Islamic law’.^{*35} The foregoing means that they do not underpin their actions with caring about the welfare of mankind or try to advance social justice and dignity for all as Islamic tradition expects and as also is the primary aim for God’s law in Islamic tradition.

3.2. Conflict resolution

In the West, conflict resolution is understood as a process based on valid law provided by the legislator that involves legal disputes and settling of those disputes in a manner that helps to achieve peaceful ending of the conflict, with acknowledgement of the legitimacy of differences in beliefs and interests between the disagreeing parties. The main process of conflict resolution in the West consists of conciliation facilitation, mediation, negotiation, arbitration, and problem-solving.^{*36} The most important element is that the settlement of the conflict is secular.

The Middle East is home to diversity of societies, including several languages, histories, races, and cultures, with each having certain fundamental conflict-resolution principles and practices.^{*37} Conflict

²⁹ *Ibid.*, p. 746.

³⁰ Western theories of justice. Available at <http://www.iep.utm.edu/justwest/> (most recently accessed on 22.12.2016).

³¹ A. Ilyas. Relevance of [the] Islamic system of governance in the age of globalization. – *Dialogue* (1819–6462) 11 (2016) / 2, pp. 189–201, on p. 189.

³² *Ibid.*, p. 189.

³³ R. Barrett. *The Islamic State*. New York: The Soufan Group 2014, p. 9.

³⁴ P. Layton. Bringing the transnational into ‘new wars’: The case of Islamic State. – *International Review of Social Research* 5 (2015) / 3, p. 193.

³⁵ M.C. Bassiouni. Misunderstanding Islam on the use of violence. – *Houston Journal of International Law* 37 (2015) / 3, p. 651.

³⁶ L. Nussbaum. Mediation as regulation: Expanding state governance over private disputes. – *Utah Law Review* 361 (2016) / 2, p. 367.

³⁷ M. Abu-Nimer. Conflict resolution in an Islamic context. – *Peace & Change* 21 (1996) / 1, p. 32. – DOI: <https://doi.org/10.1111/j.1468-0130.1996.tb00253.x>.

resolution in the Middle East, in Islamic context, knows at least two domains: the historical-religious domain and the domain that actually embraces the Islamic society itself. For the first of these, we talk about the Quran, which is the most comprehensive holy-religious source of guidance *sharia*, or Islamic law^{*38}; the Sunnah, as the Prophet's proclamations (also known as Hadith); and the accounts of caliphates. In the second, there are conflict-resolution processes on interpersonal and community levels (mediation, arbitration, etc.) that involve various individuals and groups (husbands, clans, etc.) and also the processes that involve policymaking and political groups' interactions.^{*39}

Hence, there are obviously major differences in conflict resolution between the West and the Middle East. In the West, a conflict is considered positive and normal, as able to bring with it growth and creativity. In the Middle East, a conflict is deemed negative and dangerous, so it should be avoided; it brings destruction and disorder. Social norms and values rather than legal forms are the main rules of commitment.^{*40}

Whatever the differences from one society to the next, a just resolution to a conflict is the one where an individual truly apprehends what he did wrong and what the circumstances of his acts might be. We could add that if people do not share a common faith in the law as a process of just resolution of conflicts, they might feel undermined and harmed by the outcome of the conflict resolution. Clearly, that might be the case where a former terrorist is concerned.

As was noted above, a terrorist by committing his unlawful acts expresses a belief that he is performing a religious obligation towards God.^{*41} So in terrorists' eyes, by fulfilling the ultimate obligation they might end up incarcerated for life. Furthermore, the person considered need not be a former terrorist for the cultural dimension of differences in apprehending what is a just resolution of conflict to be evident.

For example, when a person gets killed in an Islamic country, the state will not start an investigation unless the relatives of the dead person demand it. That is because killing is an act against the citizen, not the state. At the same time, acts against God in Islamic countries are so serious that there will always be an investigation – one example being acts of homosexuality, which in the West are not crimes but a normal part of society. In contrast, killing a person is considered to be a very serious crime in the West.^{*42} Therefore, people from an Islamic tradition might find the conflict resolution in the West inequitable because it does not differentiate God's laws from secular ones. In addition, the conflict resolution itself is not based on the laws of God, which from their perspective would be clearly prioritised in comparison to laws that are written by men rather than provided by God in conflict resolution.

The prevailing belief, at least in the Western tradition, is that the punishment has to be effective and at the same time proportionate to the crime.^{*43} Can a punishment that does not feel or seem fair to its subject be effective? Or is only a bigger confrontation going to result? Maybe there are some techniques and concepts in Western conflict-resolution models that can never be applied in Islamic societies, or at least there is no basis for implementing or applying Western strategies in Islamic context without adjusting and redefining said processes in accordance with local experience.^{*44}

There are authors who go even further, saying that in Islamic societies there has been and continues to be from one generation to another, especially among fundamentalist groups, a feeling of humiliation and antagonism toward the West and that such an atmosphere constitutes a major obstacle to the application or even consideration of Western conflict-resolution principles.^{*45}

³⁸ Some authors claim that *sharica* and Islamic law are distinct from one another, with the latter being complementary to the *sharica*, which is the primary source. One such author is M.C. Bassiouni (see Note 35).

³⁹ M. Abu-Nimer (see Note 37), pp. 35–36.

⁴⁰ *Ibid.*, p. 31.

⁴¹ E.M. Markisen (see Note 19), p. 206.

⁴² J. Saar. Kuritegevus muutumas maailmas. Kultuurilis-tsisivilisatsiooniline lähenemine ['Crime in a changing world: A cultural-civilisation approach']. – *Akadeemia* 2011/9, pp. 16, 23.

⁴³ R. Paternoster. How much do we really know about criminal deterrence? – *Journal of Criminal Law & Criminology* 100 (2010) / 3, p. 769.

⁴⁴ M. Abu-Nimer (see Note 37), p. 27.

⁴⁵ *Ibid.*, p. 33.

3.3. Internationalisation

In Islam, the law is controlled by theology^{*46}, based on the Quran and its interpretation in the form of *sharia*^{*47}. The purpose of Islamic law as a practically framed legal system has been ‘the creation of a unity on moral and spiritual grounds’ among people of different cultures and ethnicities.^{*48} In the West, the law is created and controlled by men, not by God. However, differences in tradition in law are not the only reason for the internationalisation process between these two (legal) cultures being complicated.

Samuel Huntington has said that there exists a fundamental conflict between democracy as rules in the West and the ideology of Islamism.^{*49} There are authors who state that this claim is overstated and that we should see the relationship between Islam and democracy as, rather, a complex one.^{*50} There is a competing view to the latter according to which we can already talk about ‘civilizational despair’, about an inevitable clash of civilisations. Its adherents espouse the idea that confrontation between Islam and the West is escalating because of people who are using Islam as a justification to their ideologically motivated violence^{*51}, labelling the others as ‘infidels’ or Muslim secularists who are misled and need to be corrected while considering themselves the owners of the ultimate truth.^{*52 *53}

So in light of globalisation, especially when we talk about cross-border crimes, crime control needs to take into account that there are not only countries but also civilisations that in some places are slowly starting to rule over the countries^{*54} or run their criminal-justice systems.

Professor Sunde has stated that internationalisation is closely connected to conflict resolution, meaning that law must change as society changes. Only then can it fulfil its obligation in conflict resolution.^{*55} The problem is that our societies are indeed changing but doing so more rapidly than the law can or than people want it to change. That is because each cultural space holds its own values – Western countries are especially afraid of potential loss of legitimacy of the rule of law, which is a huge part of Western countries’ identity and which loss is irreparable. At the same time, the law has to be efficient in all respects, for all people living within the jurisdiction of the country in question, which means that there is a need to take into account the civilisational-cultural factors that indirectly affect lawmaking.

The main reprimand against the West is that, because Islam has not been part of its cultural tradition, the West ‘fails to take into account Muslim societies’ cultural diversity and their respective human, social, and economic conditions’.^{*56} Furthermore, it has been said that, in a phenomenon that is under-reported, Muslims are actually the ones who have suffered great losses, because of wrongful and violent practices or the misleading religious beliefs held by some other Muslims who are taught by unqualified self-appointed imams. What is in the foreground and what has been emphasised is the victimisation of Westerners.^{*57}

There is an urgent need to fight against terrorism, but the main lesson to be learnt in connection with internationalisation in Islamic versus the Western context may be that we need to recognise that declaring a war on jihad is not the solution. This rather contributes to fighting against consequences. For successfully

⁴⁶ M.C. Bassiouni (see Note 35), p. 665.

⁴⁷ A. Ilyas (see Note 31), p. 195.

⁴⁸ *Ibid.*, p. 195.

⁴⁹ S.P. Huntington. *The Clash of Civilizations and the Remaking of World Order*. New York 1997, pp. 183–254.

⁵⁰ G. Crowder et al. Islam, Islamism, and Post-Islamism: Rediscovering politics after the War on Terror. – *Australian Journal of Politics & History* 60 (2014) / 1, p. 111. – DOI: <https://doi.org/10.1111/ajph.12048>.

⁵¹ M.C. Bassiouni (see Note 35), p. 675.

⁵² M. Abu-Nimer (see Note 37), p. 33.

⁵³ ‘Many fundamentalist groups believe that there is one correct understanding of the straight path of Islam; ipso facto, all others are deviations and will not receive divine reward,’ according to one account. Q. Wiktorowicz, K. Kaltenthaler. The rationality of radical Islam. – *Political Science Quarterly* (Wiley-Blackwell) 131 (2016) / 2, p. 440. – DOI: <https://doi.org/10.1002/polq.12480>.

⁵⁴ Some sources claim that the police in Sweden continue to lose control of more and more suburbs in major Swedish cities, for they have now admitted that there are more than 55 ‘no-go areas’ where they have major problems enforcing the law. Hungary’s government has claimed that there are 900 ‘no-go zones’ in London, Paris, Stockholm, and Berlin. The problem is that migrants want to live under their own rules outside the society of Sweden, London, Paris, etc. Citations are available, for example, at <http://www.bbc.com/news/magazin-e37578919> and <https://www.theguardian.com/world/2016/mar/31/hungary-anti-migrant-site-900-no-go-areas-eu> (most recently accessed on 1.1.2017).

⁵⁵ J. Ø. Sunde (see Note 24), p. 24.

⁵⁶ M.C. Bassiouni (see Note 35), p. 645.

⁵⁷ *Ibid.*, p. 646.

facing the internationalisation security challenge entailed by the interface between different cultures, we must deal with the young Muslims who might not see any way 'out of the cycle of violence, corruption, and poverty. Coupled with the condition[s] of unemployment and marginalisation, contempt and sarcasm, exploitation and scorn that many suffer'.^{*58}

At the same time, there is, of course, an additional view on the internationalisation problem. That involves the idea that today, in all parts of the world, in all their variety, Christian–Muslim interaction is a reality. Although several people have been on record as praising the commonality of these traditions, influential and significant differences remain.^{*59}

3.4. Conclusions based on the model

The author chose the lens of the legal cultural model for purposes of characterising the similarities and differences between the two major (legal) cultures at issue. The question was this: how can it contribute to knowledge and a positive outcome when one is integrating a former terrorist?

The model, firstly, aids in revealing some of the main differences and similarities between the two (legal) cultures – the Western and the Islamic – such that one can then describe what aspects both (legal) cultures signify and what the core of their values/beliefs is. The most important thing to comprehend is that former terrorists, even when apparently integrated into secular Western society, retain an affiliation that lies mostly with the Islamic tradition.

The fundamental condition for integration of an ex-militant is to understand that terrorists' idea of justice and their justifications for their acts are based on their misinterpretation of the Quran and God's will. That is something that can be clearly seen from the model's interpretation. In many cases, terrorists are not properly educated in the religion they think themselves to represent^{*60}. That is also why de-radicalisation programmes used by several of the world's prisons have been built in line with a conviction that most terrorists do not have a proper understanding of the ancient Islamic religion and that this has made them highly vulnerable to extremist propaganda and 'teachings' of self-appointed imams. That is the substantial reason they can be re-educated and reformed.^{*61}

Although there has been a large amount of debate surrounding how to evaluate the de-radicalisation programmes and their outcomes, some experts have expressed a belief that reintegration of former terrorists has been successful.^{*62} So if there is a question of whether it is possible **at all** to release a terrorist back into society without the risk of him committing new crimes, we can answer that yes, it should be possible.^{*63}

Also, this should not be a problem in Estonia, at least in theory, since this is a country that respects human rights and guarantees prisoners their freedom of religion as the Constitution of Estonia demands^{*64} while at the same time providing knowledge, with the assistance of a chaplain and experts, about the true nature of Islam. The former terrorists will also be given skills and knowledge of how to live a law-abiding life. For example, reintegration in prison includes working with a detainee's personal, economic, and legal issues to help the prisoner maintain and create important and positive social contacts outside prison and to increase his ability to act in accordance with the law.^{*65} But there is still a potential stumbling block.

The programmes themselves are very expensive, and the success of these costly programmes depends largely on the 'after-care' measures the state can use. Those follow-up measures can involve monitoring

⁵⁸ S. Benhabib. Piety or rage? On the Charlie Hebdo massacres, p. 2. Formerly available at <http://www.hannaharendtcenter.org/wp-content/uploads/2015/01/Piety-or-Rage.pdf> (10.12.2016). --or-- Available at <http://69.89.27.220/~hannaha2/wp-content/uploads/2015/01/Piety-or-Rage.pdf> (most recently accessed on 21.9.2017).

⁵⁹ See P.L. Heck's comment on his book *Common Ground: Islam, Christianity, and Religious Pluralism*. Available at <http://press.georgetown.edu/book/georgetown/common-ground> (most recently accessed on 10.12.2016).

⁶⁰ M. Hasan. How Islamic is Islamic State? *New Statesman*, 10 March 2015, pp. 11–13. Available at <http://www.newstatesman.com/world-affairs/2015/03/mehdi-hasan-how-islamic-islamic-state> (most recently accessed on 16.12.2016).

⁶¹ E.M. Markisen (see Note 19), p. 205.

⁶² See M. Levitt et al.'s article 'Rehabilitation and reintegration of returning foreign terrorist fighters', published by the Washington Institute for Near East Policy on 23 February 2015, p. 4. Available at <http://www.washingtoninstitute.org/policy-analysis/view/rehabilitation-and-reintegration-of-returning-foreign-terrorist-fighters> (most recently accessed on 28.12.2016).

⁶³ J. Horgan, K. Braddock (see Note 10), pp. 278–279.

⁶⁴ The Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus). – RT I 1992, 26, 349 (in Estonian).

⁶⁵ Available at <http://www.vangla.ee/en/serving-sentence/social-work> (most recently accessed on 10.10.2016).

the individual (done by security forces), helping him with job placement, strengthening the families, giving monetary support (to the family also), and maintaining close relations with the person's case workers and mentors.^{*66} All of these measures are, of course, highly resource-intensive.

In Estonia, the annual cost of maintaining the entire prison system and prisons in general is about 50 million euros.^{*67} At the same time, the costs related to just one of the world's various de-radicalisation programmes alone can be in the millions of dollars per year.^{*68} So even if there is a possibility of providing adequate teaching/training and the experts agree that the prisoner is highly reintegrated when leaving prison, Estonia might not have the financial resources to guarantee all the after-care measures the individual needs. And, again, the ultimate success of the reintegration programmes depends greatly on, besides the willingness of the society to take that person back into the fold, those after-care measures. This might be the greatest challenge for Estonia.

4. Conclusions

The main aim with this article was to seek answers to the question of whether the prison system in Estonia, while incarcerating former ISIS terrorists, would be able also to fulfil the objectives it has set for execution of imprisonment, while taking into account (legal) cultural aspects of the different societies involved. Another important consideration is how to ensure integration of a former ISIS terrorist and, to a lesser extent, guarantee effectiveness of the de-radicalisation programme after a former terrorist has left the prison. Therefore, the cultural and de-radicalisation aspects were taken into account and investigated with the aid of the (legal) cultural model described.

In consequence, it can be said that in integration of a prisoner who holds a radical ideology rooted in Islam into Estonian society, an integration interface between two different cultures is involved. The terrorist is in a secular country and has to obey its rules established by men rather than by God, yet the terrorist's inner convictions are rooted in the radical Islamic tradition. This is something that has to be taken into account if the purpose of successful reintegration is to be achieved.

The article showed this and also explained the view that former terrorists' understanding of the idea of justice and their justifications for their acts are based on a misinterpretation of God and the Quran. That is, the terrorists were not properly indoctrinated and they do not understand the ideology and core values of the religion they believe they are representing. That is the reason most of these people have been extremely vulnerable to the extremist propaganda and 'teachings' of self-appointed imams. Finally, the most important aspect is that this is actually the essential reason a former terrorist can be re-educated and reintegrated.

All in all, we can conclude that prisons in Estonia might be able to provide adequate training and teaching of former terrorists, because of the presence of chaplains and experts working for the prisons. Regrettably, though, even if the prisoner is highly reintegrated and understands the true nature of Islam when leaving prison, the question remains of whether Estonia has the financial resources to ensure all the after-care measures the former terrorist needs for living a law-abiding life outside prison. That might be one of the greatest challenges facing the Estonian prison system in light of globalisation, in the era of terrorism.

⁶⁶ M. Dugas, A. W. Kruglanski. The quest for significance model of radicalization: Implications for the management of terrorist detainees. – *Behavioral Sciences & the Law* 32 (2014) / 3, p. 434. – DOI: <https://doi.org/10.1002/bsl.2122>.

⁶⁷ Available at <http://www.aripaev.ee/uudised/2015/04/01/kolme-aastaga-5-mln-eurot-rohkem-pattide-huvanguks> (most recently accessed on 2.1.2017) (in Estonian).

⁶⁸ An example is provided in materials available via <https://www.ipinst.org/2010/07/a-new-approach-deradicalization-programs-and-counterterrorism> (most recently accessed on 12.1.2017).



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How to Avoid De-professionalisation of the Police

1. Introduction

Although the origin of contemporary police in Anglo-American and continental European cultures lies in various ideologies, the core mission of the police at the general level is to enhance and advance the safety of a particular country. The guiding principle of contemporary policing is that the (civil) police should be separated from the military.^{*1} However, the question of safety is not constrained to merely topics falling under public order or crime. That was so centuries ago, at the time of the birth of Continental police culture in France or of the Anglo-American police culture in England^{*2}, or when the cock crowed at the dawn of police science^{*3} early in the last century^{*4}. The concept of safety has widened from the traditional crime-centred view to a multidimensional and hard-to-define issue that embraces all aspects of society. Also, it is complicated to distinguish internal safety from external. The latter was most strikingly demonstrated during the latest military conflict in Ukraine, wherein ‘little green man’ without any distinguishing badges or markings but with machine guns walked the territory of the country. Another problem arises in connection with the inherent complexity level of safety problems. The police have to deal with simply defined problems such as shoplifting but also with vaguely defined ones such as corruption or terrorism. The latter is known in the social sciences as an example of ‘wicked problems’^{*5} – problems ‘that are complex, unpredictable, open ended, or intractable’^{*6}.

The literature about European police reforms from the last few decades expresses a noteworthy tendency quite clearly – the police reforms have not been driven to address safety issues or designed to do

¹ United Nations General Assembly. Code of Conduct for Law Enforcement Officials. Resolution 34/169, of December 1979; Committee of Ministers of the Council of Europe. The European Code of Police Ethics. Recommendation (2001)10, of 19 September 2001. Council of Europe Publishing

² See J.-P. Brodeur. *The Policing Web*. New York: Oxford University Press 2010. – DOI: <https://doi.org/10.1093/acprof:oso/9780199740598.001.0001>.

³ There is no single definition of police science, nor is defining the term the purpose of this article. For this article, police science can be understood as ‘the scientific study of the police as an institution and of policing as a process’ (T. Bjørge et al. *Perspectives of Police Science in Europe: Final Report*. European Police College 2007).

⁴ See A. Vollmer. The scientific policeman. – *The American Journal of Police Science* 1930, pp. 8–12; A. Vollmer. Police progress in the past twenty-five years. – *Journal of Criminal Law and Criminology* 1933, pp. 161–175.

⁵ See H.W. Rittel, M.M. Webber. Dilemmas in a general theory of planning. – *Policy Sciences* 4 (1973) / 2, pp. 155–169.

⁶ B.W. Head, J. Alford. Wicked problems: Implications for public policy and management. – *Administration & Society* 47 (2015) / 6, pp. 711–739 (on p. 712). – DOI: <https://doi.org/10.1177/0095399713481601>.

so. The economic situation was the main spark for reforming the police and thereby achieving greater efficiency and effectiveness, and centralisation was the dominant mechanism in reforming of organisation toward these ends. When perusing research papers^{*7} that describe or analyse particular reforms, one can find hardly a note about strategies of policing. The view that an organisation is a closed bureaucratic system, especially when coupled with a lack of knowledge about strategies of policing^{*8}, may detach a police force from its core mission and can even bring about a need for new reforms.

Although every organisation ought to develop and change, it is wise to anticipate significant shocks and their effects. Most reforms definitely are considerable shocks to the system. The main question for this article is composed of two parts. Firstly, how can the concept of the organisation be handled in such a way that it at least gives a chance of dealing with wicked problems, those problems that are complicated to define and cannot be solved, only mitigated? Secondly, what are the mechanisms that could develop the police's professional status in society and act as a tie within the organisation while also connecting that organisation to the existing task environment?^{*9} In this article, I argue that police strategies are the means of giving a meaning and real 'soul' to the (buffering and bridging) techniques and that these form a solid basis for the meta-language^{*10} of the police.

These questions are important not only for the police; they have more general implications for all of society. Safety is a Janus-like entity: one of the two faces tells us that safety related to traditional crimes is in decline^{*11}, and the other face refers to new global trends such as terrorism or fears related to migration^{*12}. However, the social world is not as simple as that, and it would be misleading to describe it in such a dialectical or dichotomous way. The reason for that is hidden within the nature of interconnectedness of safety issues.

With the purpose of bringing the idea for the article into focus, one must emphasise two questions that arise. The first question has some bearing on the entire history of the police – the dilemma between theory and practice. The gap between scientific knowledge and the concrete, real-world actions of the police has been a widely discussed topic that recently gained more concrete form. The work of 'pracademics'^{*13} is seen as a possible bridging mechanism that possesses potential to connect the two. Another trend related to the latter is associated with the question of police science in general. As David H. Bayley^{*14} has stated, '[p]olice science must become part of police professionalism'.^{*15}

To reveal some underdeveloped aspects of police literature regarding the topic, in aims of helping the police to advance and achieve anchoring for the position of professional player in the field of safety, I draw some ideas from contemporary organisational theories and strategic management.

⁷ E.g., N.R. Fyfe et al. *Centralizing Forces? Comparative Perspectives on Contemporary Police Reform in Northern and Western Europe*. The Hague: Eleven International Publishing 2013.

⁸ E.g., P. Suve. Police officers about the function of the police and changes implemented in Estonian police since October 2014 (an analytical report released by the Estonian Police and Border Guard Board in 2015).

⁹ B.K. Boyd, S. Gove. *Managerial Constraint: The Intersection between Organizational Task Environment and Discretion* (Vol. 3 in the series Research Methodology in Strategy and Management), pp. 57–95. Emerald Group Publishing Limited 2006.

¹⁰ Every profession has adopted specific language for precise use (examples include the argot of medicine, education, the construction industry, and other fields). The language that helps professionals be more precise and understand each other with minimal transaction costs while also avoiding mistakes can be identified as a meta-language of that particular profession. The police's meta-language is composed of terminology from the fields that are the main contributors to police science – criminology and management. The meta-language is always in a state of flux.

¹¹ E.g., A. Tseloni et al. Exploring the international decline in crime rates. – *European Journal of Criminology* 7 (2010) / 5, pp. 375–394.

¹² E.g., M. Shaw et al. Determining trends in global crime and justice: An overview of results from the United Nations surveys of crime trends and operations of criminal justice systems. – *Forum on Crime and Society* 3 (2003) / 1, pp. 35–63; F. Lemieux et al. (eds). *Economic Development, Crime, and Policing: Global Perspectives*. CRC Press 2014.

¹³ In this article, the term 'pracademic' signifies a person who holds a doctoral degree and works as an active practitioner in the field of safety (see P.L. Posner. The pracademic: An agenda for re-engaging practitioners and academics. – *Public Budgeting & Finance* 29 (2009) / 1, pp. 12–26; J.J. Willis. The romance of police pracademics. – *Policing* 10 (2016) / 3, pp. 315–321. – <https://doi.org/10.1093/policing/paw030>; A.A. Braga. The value of 'pracademics' in enhancing crime analysis in police departments. – *Policing: A Journal of Policy and Practice* 10 (2016) / 3, pp. 308–314. – DOI: <https://doi.org/10.1093/policing/paw032>; J.R. Tahliliani, J.E. McCabe. The Pracademic and Academic in Criminal Justice Education: A Qualitative Analysis. *Police Forum* 26 (2016) / 1, pp. 1–12.

¹⁴ D.H. Bayley. Police research: Trends and prospects. – R. Graner, O. Kronkvist (eds). *The Past, the Present and the Future of Police Research: Proceedings from the Fifth Nordic Police Research Seminar* (pp. 7–14). Växjö, Sweden: Linnæus University Studies in Policing 2015, on p. 11.

¹⁵ See also L. Huey, R.J. Mitchell. Unearthing hidden keys: Why pracademics are an invaluable (if underutilized) resource in policing research. – *Policing* 10 (2016) / 3, pp. 300–307. – DOI: <https://doi.org/10.1093/policing/paw029>.

The article has four main parts. The first section, an introduction to the piece, outlines the problem and takes up the research questions. Secondly, the empirical part illuminates the problem through the case of the Estonian police and considers European police reforms and the problem of mono-strategism. In the third part, theoretical principles that are familiar to a management audience but not so well-known in the field of policing are introduced. Then, the fourth part of the paper summarises the arguments and offers some concluding remarks. Since the article is not presented as a traditional empirical piece, the reason for its structure needs to be clarified. Traditionally in empirical articles, a theory precedes the application of empiricism, but the opposite is true for the present article. Although the empirical work was composed of three distinct studies, all of which had its own purposes and separate results, they will be used in this article as problem-constructors, and the theoretical part of the piece should be viewed as offering possible solutions to the problems posed.

2. Neglecting to consider police strategies

Some years ago, I started research into the Estonian police with the purpose of revealing and explaining the organisational changes that took place after the 1991 restoration of the country's independence, as the Soviet military militia was reorganised into an Estonian police institution. Studying changes in one particular organisation provides an opportunity to look in greater depth than is possible with a mere comparison between organisations or countries. Often the importance of the findings gains precise meaning in some specific context. For that reason, while studying the Estonian police, I simultaneously analysed police reforms made in eight other European countries^{*16} within the previous two decades.^{*17} Also, I reviewed three leading journals indexed in the Web of Science databases that cover the field of policing^{*18}, combing their content from the same period to find an answer to the following question: how are the police strategies portrayed and analysed? In the sections below, I will present the problems dealt with in each of the areas of study considered in those articles. Since the studies subject to discussion form an extensive body of work, what follows is a very cursory overview of them.

2.1. Police without a strategy: The case of the Estonian police^{*19}

The case of the Estonian police is interesting in many ways, but in the context of this article, two central points should be highlighted. Firstly, the Estonian police force is an interesting object of study since it has such a dramatic history and experienced rapid changes in the replacement of a Russian-speaking military Soviet militia with a democratic Estonian national police organisation in 1991. Secondly, safety in Estonia has improved enormously since the early years of independence^{*20}, even though the nation's police did not knowingly practise any strategy of policing from 1991 to 2013^{*21}.

The analysis at the Estonian level was based on documentary analysis of the following public documents: the two main laws regulating police action in 1991–2013^{*22}; four fundamental regulations setting forth the

¹⁶ England, Scotland, the French Republic, the Federal Republic of Germany, the Republic of Finland, the Kingdom of Sweden, the Netherlands, and the Kingdom of Belgium.

¹⁷ P. Suve. Politsei kui institutsiooni arengu mõtestamise kontseptuaalsed probleemid keerustavas vastastiksõltuvas keskkonnas ['Conceptual problems in understanding changes of the police in a complex and interdependent task environment']. Tallinn: Tallinn University 2016. A doctoral dissertation (in the 'Sotsiaalteaduste dissertatsioonid' series), especially pp. 31–34.

¹⁸ There are three police-specific journals that were indexed in the Thomson Reuters Web of Science databases: *Policing: An International Journal of Police Strategies & Management*, *Police Quarterly*, and *Policing and Society*.

¹⁹ The main results of the analysis are presented in the following article: P. Suve et al. Two decades of Estonian police and the (ir)relevance of police models for the development of safety policy. – *Studies of Transition States and Societies* 8 (2016) / 1, pp. 36–52.

²⁰ See J. Saar. Crime, crime control and criminology in post-communist Estonia. – *European Journal of Criminology* 2004, pp. 505–531. – DOI: <https://doi.org/10.1177/1477370804045694>; A. Markina. Estonia: Crime, criminal justice, and criminology in a changing socio-economic context. – C.J. Smith et al. (eds). *Routledge Handbook of International Criminology* (pp. 376–389). New York: Routledge 2011. – DOI: <https://doi.org/10.4324/9780203864708.ch35>; J. Saar. Crime and the population's sense of security. – M. Heidmets (ed.). *Estonian Human Development Report 2012/2013: Estonia in the World*. Tallinn: Eesti Koostöö Kogu (2013), pp 86–91.

²¹ See P. Suve et al. (see Note 19).

²² Politseiseadus (The Police Law). – RT 1990, 10, 113 (in Estonian); Politseiteenistuse seadus (Police Service Act). – RT I 1998, 50, 753 (in Estonian).

structure for the organisation, at the government and local level^{*23}; four major development plans^{*24}; and five instructions for police work, examined for an understanding of changes at the operational level^{*25}.

In the analysis of changes within the Estonian police, Gary W. Cordner's four-dimensional model of community police^{*26} (with philosophical, strategic, tactical, and organisational dimensions) was used. The model of community police was selected for reason of being probably the most well-known model to emerge in the last 50 years and since potential utility was seen in being able to analyse changes through the lens of some concept rather than perform analysis without any particular vantage point. The model can be used as a mirror to reflect the changes under discussion.

We found that the overall development of the Estonian police has taken contradictory directions within individual dimensions and between them. For example, at the philosophical level (that of development plans), the emphasis was on the importance of prevention, but at the tactical level bureaucratic activities (e.g., registering and handling reports) were placed ahead of prevention activities. A tendency toward more militaristic principles can be recognised from the organisational behaviour, with the military-like career system serving as an example of this.^{*27}

Reflecting common practice, 'model' and 'strategy' are used synonymously in this article in the police context^{*28}. It is unclear how the development of the Estonian police would have differed if some actual police strategy had been intentionally used, but we are aware that in the evident absence of any precise and understandably stated strategy, the developments were unplanned and unpredictable. We can safely state the following conclusion for purposes of this article: the Estonian police have developed without deliberately using any police model or strategy, and the changes in the police were inconsistent in many ways. The latter notwithstanding, overall safety in Estonia has improved a large amount, and a single or particular reason can hardly be stated. Neither is there a focused study addressing this.

The case of the Estonian police highlights only one side of the problem – that of the organisation's size. In criminology, it is well-known that, while the number of police personnel has a small impact on various crimes, the **way** of policing has a more significant influence on safety.^{*29} Thus far, the link between the police and safety has not been subject to discussion. Hence, light is being shed on it now as the important element examined in this article. The next subsection addresses the topic through consideration of police reforms in Europe.

2.2. A core mission that ignores organisational reforms

The primary aim here, of studying police reforms, emerged from the need to set the changes to the Estonian police in the European context. The literature on public administration recognises a few approaches to how the European territory should be analysed, but none of them are familiar to a police-specific audience.

²³ *Politsei- ja Piirivalveameti Lääne prefektuuri põhimäärus* (The Statute of the West Prefecture). Tallinn: Politsei- ja Piirivalveamet 2012 (in Estonian); *Eesti Vabariigi Riikliku Politseiameti põhimäärus* (The Statute of the Police Board). – RT 1991, 39, 488 (in Estonian); *Politseiprefektuuri põhimäärus* (The Statute of a Police Prefecture). – RT 1992, 22, 314 (in Estonian); *Politsei- ja Piirivalveameti põhimäärus* (The Statute of the Estonian Police and Border Guard Board). – RTL 2009, 77, 1132 (in Estonian).

²⁴ *Eesti politsei arengukava aastateks 1999–2001* (Development Plan of the Estonian Police for 1999–2001). Tallinn: Politseiamet 1999 (in Estonian); *Eesti turvalisupoliitika põhisuundade aastani 2015 heakskiitmine* ['Approval of the main directions for Estonian safety policy to 2015']. – RT I 2008, 25, 165 (in Estonian); *Guidelines for Development of Criminal Policy until 2018*. Tallinn: Riigikogu 2010; *Politseivaldkonna prioriteetsed arengusuunad aastani 2006* ['Development priorities for the Estonian Police to 2006']. – Tallinn: Siseministeerium 2006 (in Estonian).

²⁵ *Patrullteenistuse määrustik* (Directive of the Patrol Police Service). – *Käskkiri* No. 51. Tallinn: Politseiamet 11.3.1993 (in Estonian); *Konstaabliteenistuse juhend* (Instruction of the Constable Service). – *Käskkiri* No. 72. Tallinn: Politseiamet 19.3.1998 (in Estonian); *Piirkondliku politseitöö juhend* (Instruction of the Regional Police Service). Tallinn: Politseiamet 2001 (in Estonian); *Patrulltegevuse kord* (Rules for Patrol Police). Tallinn: Politsei- ja Piirivalveamet 2010 (in Estonian); *Piirkondliku politseitöö juhend* (Instruction of the Regional Police Service). Tallinn: Politsei- ja Piirivalveamet 2010 (in Estonian).

²⁶ See G.W. Cordner. Community policing: Elements and effects. – *Police Forum: Academy of Criminal Justice Science Police Section* 5 (1995) / 3, pp. 1–16; G.W. Cordner, K.E. Scarborough. *Police Administration (Seventh Edition)*. New York: Anderson Publishing 2013. – DOI: <https://doi.org/10.4324/9781315722184>.

²⁷ P. Suve et al. (see Note 19), pp. 47–49.

²⁸ In police literature, the terms 'police model' and 'police strategy' are often used in an ambiguous way. The ontology and epistemology of these terms need to be specified (see P. Suve as cited in Note 17, pp. 16–29).

²⁹ J.E. Eck et al. Adding more police is unlikely to reduce crime: A meta-analysis of police agency size and crime research. – *Translational Criminology* 14 (2017), pp. 14–16.

Police culture is often split into two cultural zones for discussion – Continental and Anglo-American police. The historical roots of the former stem from France and the latter from England.^{*30} From the regional point of view, the Scandinavian police culture too can be highlighted as a specific one and distinctive in many ways. For that reason, the samples for the analyses were chosen in line with cultural argumentation. The other reason for picking exactly these examples is related to the existing empirical material. Irrespective of the fact that police reforms are commonplace in many countries, there are not many studies (in English) to include in the analysis^{*31}. In consideration of the foregoing information, the following countries were selected as appropriate for my research: England and Scotland as representatives of Anglo-American police culture, France and Germany as countries representing Continental police culture, and Finland and Sweden as countries representing the above-mentioned Scandinavian police culture. Finally, the Netherlands and Belgium were chosen because they do not directly belong to any specific police culture.

The analysis revealed at least two important observations. Firstly, the main trend of the reforms was concentrated on reforming organisation, instead of policing. Centralisation and merging of police units were the predominant mechanisms in reforms to the organisation (the cases of Scotland^{*32}, Finland^{*33}, and Belgium^{*34} are illustrative here). Secondly, safety had an equivocal meaning within the context of police reforms. Most important from the standpoint of the core mission of the police is that safety had a secondary meaning. On one hand, that is good news, since it allows one to assume that there are good overall conditions of safety. On the other hand, if reforms to the police – the only professional player in the field of safety – forget that player's core mission and role in society, the way is paved for de-professionalisation and for further changes in the police context. The reasons for the latter development may be related exclusively to safety questions, since there are no longer **any** professional players in the field after such reforms. Safety is an issue that permeates the whole of society, and it is becoming more complex. Accordingly, it has a major role in our day-to-day life, and professional knowledge is called for to mitigate possible causes of deviation.

Among the cases under study, the reforms in Belgium^{*35}, the Netherlands^{*36}, and Sweden^{*37} still had some links to safety. The problems were related not to the overall safety situation but to some individual failures of the juridical system, the police included (as in the case of Marc Dutroux in Belgium^{*38}) or police organisational failures (as with the fragmentation and problems of co-operation among the police in the Netherlands^{*39} or

³⁰ See J.-P. Brodeur (see Note 2).

³¹ The study embraces the research within the body of English-language literature, but the problem of research in the multilingual domain is not new in police research (see, for example, L. Holmberg. Policing and the feeling of safety: The rise (and fall?) of community policing in the Nordic countries. – *Journal of Scandinavian Studies in Criminology and Crime Prevention* 5 (2005) / 5, pp. 205–219, on p. 206. – DOI: <https://doi.org/10.1080/14043850410010702>. Those with more in-depth interest might wish to consult G. Meško et al. (eds). *Handbook on Policing in Central and Eastern Europe*. New York: Springer 2013. – DOI: <https://doi.org/10.1007/978-1-4614-6720-5>.

³² N.R. Fyfe, K.B. Scott. In search of sustainable policing? Creating a national police force in Scotland. – N.R. Fyfe et al. (eds). *Centralizing Forces? Comparative Perspectives on Contemporary Police Reform in Northern and Western Europe* (pp. 119–136). The Hague: Eleven International Publishing 2013; J. Terpstra, N.R. Fyfe. Mind the implementation gap?: Police reform and local policing in the Netherlands and Scotland. – *Criminology and Criminal Justice* 2015, pp. 1–34. – DOI: <https://doi.org/10.1177/1748895815572162>.

³³ S. Virta. Governing urban security in Finland: Towards the 'European model'. – *European Journal of Criminology* 10 (2013) / 3, pp. 341–353. – DOI: <https://doi.org/10.1177/1477370812473536>; M. Vuorensyrjä. Organizational reform in a hierarchical frontline organization: Tracking changes in stress and turnover intention during the Finnish police reform years. – *Policing: An International Journal of Police Strategies & Management* 37 (2014) / 4, pp. 858–874. – DOI: <https://doi.org/10.1108/pijpsm-05-2014-0058>.

³⁴ J. Maesschalck. When do scandals have an impact on policy making? A case study of the police reform following the Dutroux scandal in Belgium. – *International Public Management Journal* 5 (2002) / 2, pp. 169–193; E. Devroe, P. Ponsaers. Reforming the Belgian police system between central and local. – N.R. Fyfe et al. (eds). *Centralizing Forces? Comparative Perspectives on Contemporary Police Reform in Northern and Western Europe* (pp. 77–98). The Hague: Eleven International Publishing 2013.

³⁵ E. Devroe, P. Ponsaers (see Note 34); C. Pollitt, G. Bouckaert. *Public Management Reform: A Comparative Analysis – New Public Management, Governance, and the Neo-Weberian State*, 3rd Edition. New York: Oxford University Press 2011.

³⁶ J. Terpstra, N.R. Fyfe. Policy processes and police reform: Examining similarities and differences between Scotland and the Netherlands. – *International Journal of Law, Crime and Justice* 2014, pp. 1–18. – DOI: <https://doi.org/10.1016/j.ijlcrj.2014.03.003>; J. Terpstra, N.R. Fyfe (see Note 32).

³⁷ Betänkande av Polisorganisationskommittén. – *En sammanhållen svensk polis [Report for the Period 1 July 2013 to 30 June 2014 (Summary in English)]*. Stockholm: Statens Offentliga Utredningar 2012; The Swedish Parliamentary Ombudsmen. Stockholm: JO Rikstagens Ombudsmän 2014.

³⁸ J. Maesschalck (see Note 34).

³⁹ E.g., J. Terpstra, N.R. Fyfe (as cited in Note 32 and Note 36).

dissatisfaction with the quality of the Swedish police^{*40}). From the perspective of this article, it is important to mention that one would be hard pressed to find almost any police reform that was focused on policing – that has dealt with police behaviour from the angle of police strategies (even at the corporate level).

The analysis raises the question of police professionalism: how the police can improve their reputation as safety professionals and what mechanisms could guarantee the continuous development of the police and also link the organisation to its immediate task environment.

2.3. The dubious efficiency of employing a single strategy

Upon analysis of the studies related to police strategies that were published in the top police-specific journals, the conclusion is quite simple: the police are presented mostly as a mono-strategy organisation. The latter is simply unrealistic – every police organisation applies many strategies simultaneously or employs techniques of diverse strategies, on different levels. The only question is about the consciousness of police action. It is likely that police action most of the time is based on an unconscious choice of various tactics or techniques, with these tactics and techniques not constituting any particular strategy. The problems that the police should handle are variously simple, complex, and wicked, and the organisation needs several strategies, in various combinations, if it is to succeed. Opportunities for this are extensive, and the only obstacle is probably related to knowledge of the associated odds. I would go even further: the meta-language of the police is based on knowledge about police strategies. The reason is quite simple – police strategies are those constitutive ties through the principles of criminology, management, and other disciplines that constitute police science. Hence, one may ask whether it is possible to be a (police) leader without understanding the meta-language of the police. It would be hard. One might also ask this: how will the police leaders mitigate wicked safety issues without understanding the possibilities for that? The field of the police embraces diverse strategies that all are necessary for contemporary policing.

Community policing is unquestionably the dominant topic in the field^{*41}, while subjects such as problem-oriented policing^{*42}, zero tolerance^{*43}, CompStat^{*44}, and intelligence-led policing^{*45} have received less attention. The all-pervading characteristic that should be highlighted is the works' mono-strategic focus

⁴⁰ E.g., Betänkande av Polisorganisationskommittén (Note 37).

⁴¹ See, for instance, J. Frank et al. The content of community policing: A comparison of the daily activities of community and 'beat' officers. – *Policing: An International Journal of Police Strategies & Management* 20 (1997), pp. 716–728. – DOI: <https://doi.org/10.1108/13639519710368116>; W.M. Oliver, E. Bartgis. Community policing: A conceptual framework. – *Policing: An International Journal of Police Strategies & Management* 21 (1998) / 3, pp. 490–509. – DOI: <https://doi.org/10.1108/13639519810228796>; D.E. Barlow, M.H. Barlow. A political economy of community policing. – *Policing: An International Journal of Police Strategies & Management* 22 (1999) / 4, pp. 646–674. – DOI: <https://doi.org/10.1108/13639519910299580>; A. Gowri. Community policing is an epicycle. *Policing: An International Journal of Police Strategies & Management* 26 (2003) / 4, pp. 591–611. – DOI: <https://doi.org/10.1108/13639510310503532>; P. Somerville. Understanding community policing. – *Policing: An International Journal of Police Strategies & Management* 32 (2009) / 2, pp. 261–277. – DOI: <https://doi.org/10.1108/13639510910958172>; J.A. Ferrandino. An integrated theory for the practical application of 'governance-based policing'. – *Policing: An International Journal of Police Strategies & Management* 37 (2014) / 1, pp. 52–69. – DOI: <https://doi.org/10.1108/pijpsm-06-2012-0050>.

⁴² E.g., L.G. Mazerolle, W. Terrill. Problem-oriented policing in public housing: Identifying the distribution of problem places. – *Policing: An International Journal of Police Strategies & Management* 20 (1997) / 2, pp. 235–255. – DOI: <https://doi.org/10.1108/13639519710169117>; P. Jesilow et al. Evaluating problem-oriented policing: A quasi-experiment. – *Policing: An International Journal of Police Strategies & Management* 21 (1998) / 3, pp. 449–464. – DOI: <https://doi.org/10.1108/13639519810228750>; G. Bichler et al. Curbing nuisance motels: An evaluation of police as place regulators. – *Policing: An International Journal of Police Strategies & Management* 36 (2013) / 2, pp. 437–462. – DOI: <https://doi.org/10.1108/13639511311329787>.

⁴³ E.g., R.H. Burke. The socio-political context of zero tolerance policing strategies. – *Policing: An International Journal of Police Strategies & Management* 21 (1998) / 4, pp. 666–682. – DOI: <https://doi.org/10.1108/13639519810241683>.

⁴⁴ E.g., W.F. Walsh. Compstat: An analysis of an emerging police managerial paradigm. – *Policing: An International Journal of Police Strategies & Management* 24 (2001) / 3, pp. 347–362. – DOI: <https://doi.org/10.1108/13639510110401717>; M.H. Moore, A.A. Braga. Measuring and improving police performance: The lessons of Compstat and its progeny. – *Policing: An International Journal of Police Strategies & Management* 26 (2003) / 3, pp. 439–453. – DOI: <https://doi.org/10.1108/13639510310489485>.

⁴⁵ E.g., J.H. Ratcliffe, R. Guidetti. State police investigative structure and the adoption of intelligence-led policing. – *Policing: An International Journal of Police Strategies & Management* 31 (2008) / 1, pp. 109–128. – DOI: <https://doi.org/10.1108/13639510810852602>; L.M. Schaible, J. Sheffield, J. Intelligence-led policing and change in state law enforcement agencies. – *Policing: An International Journal of Police Strategies & Management* 35 (2012) / 4, pp. 761–784. – DOI: <https://doi.org/10.1108/13639511211275643>.

or, at most, comparative approach or combining of two, seldom three, strategies. In some sense, this is understandable, because each particular strategy has been developed for a particular situation. In reality, however, the police have to resolve many situations, with many differences, at the same time. For example, a police station is tasked with handling a murder case, thefts from rural properties, arson episodes in a city, drug-pushing near schools, and so on. Some of the cases extend beyond a single station's jurisdiction; some of them need to be resolved with external assistance, some are limited to quite a specific area or span of time, some of them require a top manager's personal attention, etc. There is an uncountable number of situations related to management (leadership) and also to safety, and the police should be managed in an adequate, understandable, and efficient way in view of this. Nonetheless, one can find little analysis involving multi-strategic police. Is analysis of this type too complicated to carry out? Maybe, but without there being knowledge (meta-language) of police strategies, on what should the citizens' trust in the police rest, and why should police officers have faith in the leaders of the police? What is the 'professionalism' in policing with regard to organisation and safety? How should this specific type of organisation be managed in order for the best possible results for citizens and the police organisation to come about? These blunt questions are intimately related to each other and, in combination with the facts mentioned above, illuminate the importance of police strategies in policing.

3. An overview of the relevant theories and concepts

Police science, proceeding partially from criminology and partly from management theories^{*46}, is interdisciplinary in nature but still has a meta-language that is distinct from those of the other players in the field of safety. In the discussion below, I concentrate first on the organisation aspect, then on strategies. Both are well-developed concepts outside police science, and in combination they have strong potential to offer a solution for the problems under discussion. The purpose of this section of the chapter is to develop a mental framework for how the concept of strategy should be combined with the idea of an organisation as an open system in such a way that the possibilities in development of the police can be illuminated.

3.1. The organisational answer to wicked problems

Change in organisation design has often been the objective for reforming the police. I begin this subsection with an explanation of what a traditional view on an organisation, as mentioned above, consists of. Traditional organisations are 'designed for efficiency, which emphasizes vertical linkages such as hierarchy, rules and plans, and formal information systems, or toward a contemporary organization designed for learning and adaptation, which emphasizes horizontal communication and coordination'.^{*47} These organisations have an internal logic that is based on fixed ties between the organisations' units and functions, as we know from the work of early organisational scholars.^{*48} A history of contemporary police points back to military structures, the only example from which ideas could be readily drawn earlier in building of the police. The latter is important since we know from A.L. Stinchcombe's work^{*49} that an organisation tends to maintain its initial structure. The police are still in many ways a paramilitary organisation (e.g., in the chain of command, internal hierarchical bureaucracy, ranking system, and tasks that seem to demand military-style organisation – among them detention of criminals and handling of riots). At least some elements that characterise the military^{*50} can be seen, such as the following: 1) a centralised command structure and chain of command; 2) control exerted through the issuance of commands, directives, and orders; 3) vertical flow of communications, passing from top to bottom; 4) coercion as the method of employee motivation; 5) initiative being

⁴⁶ See J.R. Greene. *The Encyclopedia of Police Science*, 3rd Edition, Vol. I. Routledge 2007.

⁴⁷ R.L. Daft. *Organization Theory and Design*, 10th Edition. Mason, Ohio: Cengage Learning 2009, on p. 127.

⁴⁸ See F.W. Taylor. *The Principles of Scientific Management*. Harper 1947; H. Fayol. *General and Industrial Management*. New York: Pitman 1949.

⁴⁹ A.L. Stinchcombe. Social structure and organizations. – J.A. Baum, F. Dobbin (eds). *Economics Meets Sociology in Strategic Management* (pp. 229–259). Emerald Group Publishing Limited 2000, on p. 233.

⁵⁰ S.M. Cox. *Police: Practices, Perspectives, Problems*. Boston: Allyn & Bacon 1995, pp. 66–67.

neither sought nor encouraged; 6) authoritarian leadership; 7) low tolerance for nonconformists; 8) and lack of flexibility in tackling of novel situations. These principles may be valid in connection with a simplified and very narrow view of police tasks (e.g., apprehending criminals and arranging random patrols), but the organisation that is based on the principles listed above (inherent to the concept of traditional organisation) probably comes to grief in its attempts to tackle the wicked problem of safety today. Before we go further with the discussion of organisation, the matter of wicked problems needs to be clarified.

By definition, there are no 'right' or 'wrong' solutions to wicked problems, only 'good' or 'bad' ones.^{*51} Since there is no crime-free society out there, this is exactly the way in which safety should be handled. As stated by Nancy Roberts^{*52}, wicked problems can be distinguished from other types of problems in the following way. Simple problems enjoy consensus on the problem's definition and solution; the problem-solving here is straightforward, engendering little, if any, conflict among those involved. Solvers of complex problems, in turn, are agreed on what the problem is, but there is no consensus on how to solve the problem; while there is agreement in the problem-definition, there are unresolved issues associated with the solution. The increase in conflict makes the problem-solving process more complex. Finally, wicked problems generate extensive conflict among the stakeholders, even at high levels. In this case, there is no agreement on either the problem or its solution. The problem-solving process is further complicated because stakeholders in a democratic society have the power to block initiatives not of their liking through lawsuits, judicial review, and the time-honoured tradition of throwing those 'rascals' out of office. Nothing really bounds the problem-solving process – it is experienced as ambiguous, fluid, complex, politically fraught, and frustrating as hell. In this kind of situation, co-operation and communication are the catchwords for what to pursue.

Safety in modern times has been defined as a wicked problem. This means that there are no solutions – there are only mitigation measures and choices that have to be made in every single case and should always be considered in their particular context. The context of safety as described above requires an appropriate mentality for describing organisations. Instead of thinking in traditional terms, with hierarchical well-structured organisations that are designed for solving simple or complex problems and that have rigid, tightly fixed units or functions, we should turn to an organisation as a system (whether open or closed). Although the latter is a seldom-used concept in police literature, there are significant exceptions. Cordner and Kathryn E. Scarborough^{*53} are scholars who, among others, have made a great contribution to police science from the organisational perspective. Their *Police Administration*^{*54} is one of the truly remarkable books in the field of policing, offering a description of organisation as system. From this book the reader will get an overview of an organisation as a system, and the focus is placed on police organisation: 'Police departments are systems no more or less complex than other organizational systems. Police organizations consist of numerous involved, interdependent subsystems.'^{*55} The purpose of the present article, however, is not narrowly confined to the organisation perspective; I take a more sociological line. Therefore, a wider view is needed. The reason for this stems from the core mission of the police – the police should deal with questions of safety, many of which are bound to be wicked today. In this sense, the police are always as a tool in the hands of a government that has specific strategies and techniques. At the same time, the police are only one actor of many in a social system, and since the questions of safety cut through all aspects of society, the police should be treated as a part of that particular society. It is for this reason that I move outward from a narrow focus on an organisation to more sociologically oriented explanations. In this article, I trace the ecological level of analysis and compass an organisation as a collective entity operating in a larger system of relations.^{*56} At this point, the organisation is viewed as an open system. The open-system view of organisational structure places emphasis on the complexity and variability of the individual parts – both individual participants and subgroups – as well as the looseness of connections among them. Parts are

⁵¹ P. Selg, 'The fable of the Bs': Between substantialism and deep relational thinking about power. – *Journal of Political Power* 9 (2016) / 2, pp. 183–204, on p. 18. – DOI: <https://doi.org/10.1080/2158379x.2016.1191163>; H.W. Rittel, M.M. Webber (see Note 5).

⁵² N. Roberts. Wicked problems and network approaches to resolution. – *International Public Management Review* 1 (2000) / 1, pp. 1–2.

⁵³ G.W. Cordner, K.E. Scarborough (see Note 26).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 59.

⁵⁶ See J.A. Baum. Organizational ecology. – S.R. Clegg et al. (eds). *Studying Organization: Theory and Method* (pp. 71–108). 1999.

viewed as capable of semiautonomous action; many parts are viewed as, at best, loosely joined to other parts. In such an organisation, participants – groups and individuals – form and leave coalitions; there is continual flux of relations.^{*57} Thus, the organisation itself (the inherent logic) and its relations to the task environment have a deeply interdependent character. But what are the ties internal to an organisation but also between that organisation and its environment that 1) bind actors within the organisation, 2) make possible a flexible relationship between organisation and environment, 3) guarantee appropriate answers in attempts to solve or mitigate safety problems, and 4) provide an organisational context for continuous advancement as a professional organisation? In this article, I argue that these ties can take the form of police strategies.

3.2. The essential role of safety-oriented strategies in police organisation

In the field of management, strategic management is the discipline embracing both organisation and strategy. From that perspective and tying in with the topic of the article, the principles of strategic management are ‘youthful’^{*58} and have taken several agile turns, from looking for best practices to concepts such as competition or relationalism in and between organisation(s) and environments. Although we can draw many parallels between the strategic management discipline and developments in the field of police strategies, these discussions remain for the future. Since the purpose of this article is to create a mental framework that could help police leaders and educators advance the police’s ability to be a professional player in the field of safety, this section focuses on a role for strategies in police organisation and a role for safety, but not on precise strategies. Although the latter matter requires further attention^{*59}, the more extensive elaboration on it required would exceed the limits for this article.

In traditional organisations designed for efficient performance, a strategy is formulated by top managers and imposed on the organisation.^{*60} This description reveals a particular problem that is intrinsic for many organisations, including the police: organisations are often seen as mono-strategic (see Subsection 2.2, above). To some extent, they may have this nature inherently but only on the corporate level. It is hard even to imagine that any organisation could truly use only one strategy or even apply no strategy at all. If an organisation does not have any obvious and clearly expressed strategy, if its leaders do not have good knowledge of strategies related to the organisation and its task environment, tragedy could readily result for the organisation, its members, and clients alike. For avoidance of such a tragedy, the meaning and possibilities of strategies are in need of being clarified. That is the reason for this article.

To stay in line with the sociological institutionalism, particularly with Kenneth Scott’s^{*61} view on it, this section is focused on techniques that should address the questions posed at the outset.

For any organisation, it is relatively easy for one to determine core activities to which the focal work of that body is connected. Teaching in schools, health care in hospitals, and helping people and solving safety problems in the police are only a few examples of the core activities in various fields. However, every organisation has a technical core, as James Thompson’s^{*62} seminal book indicates. This means, in turn, that each organisation has some resource that is critical to its mission. These resources may be material (such as cars or computers) and/or mental (as with knowledge, software, and meta-language), and every organisation has two – in some respects inconsistent – responsibilities connected to its technical core. Firstly, these central resources need to be protected from the turbulent environment. Secondly, the efforts to protect them must not be extended too far, because they need adequate information and energy in order to survive. Scott puts it thus^{*63}: ‘Organizations must both distinguish their systems from and connect themselves to

⁵⁷ W.R. Scott. *Organizations: Rational, Natural, and Open Systems*. New Jersey: Prentice-Hall 2003, p. 101.

⁵⁸ See L.Á. Guerras-Martín et al. The evolution of strategic management research: Recent trends and current directions. – *BRQ Business Research Quarterly* 17 (2014) / 2, pp. 69–76. – DOI: <https://doi.org/10.1016/j.brq.2014.03.001>.

⁵⁹ P. Suve et al. Designing multidimensional policing strategy and organization: Towards a synthesis of professional and community police models. – *Baltic Journal of Law & Politics* 8 (2015) / 1, pp. 28–54. – DOI: <https://doi.org/10.1515/bjlp-2015-0010>.

⁶⁰ R.L. Daft (see Note 47), p. 33.

⁶¹ W.R. Scott (see Note 57).

⁶² J.D. Thompson. *Organizations in Action: Social Science Bases of Administrative Theory*. Transaction Publishers 1967.

⁶³ W.R. Scott (see Note 57), p. 124.

their environment. Boundary-defining mechanisms as well as the tactics used by organizations to buffer their technical core and to build bridges to other organizations.’ The term denoting those tactics that protect a technical core from the turbulent environment is ‘buffering’, and ‘bridging’ is the term denoting tactics for crossing the gap between the organisation and the environment.^{*64} To crystallise this idea, some widespread tactics linked to the terms mentioned above will be briefly introduced below.

I will start with the concept of buffering tactics^{*65}. Coding is probably the most well-known of these tactics. It is important for any organisation to select and control every source that will be used by the technical core. In schools, a pupil’s age and knowledge should be checked before he or she is assigned to a particular class, a car spare should be checked before pinning up, a drunken juvenile is taken home instead of to prison with a murderer, and so on. To survive and develop, an organisation needs to have several ‘stocks’. A hospital needs syringes and fresh blood; the police need weapons and personnel for the emergencies that arise in the course of their operations, in turn; all organisations need to train new leaders; etc. Also, every organisation deals with forecasting. Many examples could be cited: schools need to know the demographic situation, a company that sells cars must forecast people’s needs and tastes, the police predict possible crime hot-spots, and so on.

While buffering tactics are employed mainly for protecting the technical core, bridging tactics^{*66} are designed to protect the entire organisation. To survive, the organisation needs energy and information from its environment. Interdependence characterises an organisation from both an internal and an external perspective. That means that no organisation exists without interdependent connections between it and other organisations, and extending to and from the environment. Therefore, to survive, organisations need information from other organisations in the field (e.g., about trends and the market situation) but also energy (e.g., new staff and knowledge) from their environment. The problem is this: organisations do not control the above-mentioned resources that are so vital for them. Since bridging techniques are tightly coupled with resources that are needed if the organisation is going to survive, Jeffrey Pfeffer and Gerald R. Salancik’s^{*67} ideas about this topic are probably cited most often in this connection. One of the most commonly used tactics is bargaining (Scott calls it ‘pre-bridging tactics’^{*68}). Through a bargaining process, organisations try to avoid complete dependence on a partner but strive to cultivate the best possible conditions or sources. The crucial element here is knowledge of one’s own priorities and interests. There are many problems in the field of safety, in which the responsibility of related players is far from clear but precise roles need to be clarified. Close to bargaining tactics is contracting – engaging in negotiation on something that is going to appear in the future. Although the scope in contracting is unlimited, from the perspective of this article the opportunity for coalitions of various sorts should be highlighted. These coalitions may be preventive and/or reactive (*post factum*) in nature. Merger is the most topical tactic in the context of the police reforms described above. In the pursuit of being more effective and efficient, the trend of merging police units is well-known. However, the process of merging is not used only at the organisational level; it is applied also on strategic level. Public–private partnership^{*69} is the well-known police strategy aimed at dividing resources between the police and partners from the private sector.

⁶⁴ *Ibid.*, p. 199.

⁶⁵ See, for example, J.G. March, H.A. Simon. *Organizations*. New York: Wiley 1993; W.R. Scott (see Note 57); C. Oliver. Strategic responses to institutional processes. – *Academy of Management Review* 16 (1991) / 1, pp. 145–179. – DOI: <https://doi.org/10.5465/amr.1991.4279002>.

⁶⁶ See, among others, A.D. Meyer et al. Environmental jolts and industry revolutions: Organizational responses to discontinuous change. – *Strategic Management Journal* 11 (1990), pp. 93–110; M.F. DiPaola, M. Tschannen-Moran. Bridging or buffering? The impact of schools’ adaptive strategies on student achievement. – *Journal of Educational Administration* 43 (2005) / 1, pp. 60–71. – DOI: <https://doi.org/10.1108/09578230510577290>; W.R. Scott (see Note 57).

⁶⁷ J. Pfeffer, G.R. Salancik. *The External Control of Organizations: A Resource Dependence Perspective*. Stanford University Press 2003.

⁶⁸ W.R. Scott (see Note 57), p. 204.

⁶⁹ See, for example, D. Das et al. The changing ‘soul’ of Dutch policing: Responses to new security demands and the relationship with Dutch tradition. – *Policing: An International Journal of Police Strategies & Management* 30 (2007) / 3, pp. 518–532. – DOI: <https://doi.org/10.1108/13639510710778877>; E.S. Savas, E.S. Savas. *Privatization and Public–Private Partnerships*. New York: Chatham House 2000; P. Ponsaers. Reading about ‘community (oriented) policing’ and police models. – *Policing: An International Journal of Police Strategies & Management* 24 (2001) / 4, pp. 470–497. – DOI: <https://doi.org/10.1108/eum000000006496>; J. Terpstra, K. van der Vijver. The police, changing security arrangements and late modernity: The case of the Netherlands. – *German Policy Studies* 3 (2006) / 1, p. 80.

In summary of this section, it should be highlighted that the core of any organisation needs to be protected; to survive, an organisation needs information and energy from its environment, and there are many tactics available that should be of assistance for these purposes. However, something remains missing. This is something particular to every organisation and field. As I have stated earlier in the article, in a key part of my argument, police strategies are the means that breathes a meaning and real soul into the buffering and bridging strategies in this domain specifically. The argument is given a contextual explanation via the concluding thoughts below.

4. Conclusions

The article had two central questions to answer. Firstly, how should the concept of the organisation be handled such that it at least offers a chance of mitigating wicked problems? Secondly, what are these mechanisms that could develop the police's professional status in society and simultaneously act as a tie organisation-internally while also connecting the organisation to its existing task environment?

Contemporary organisational theories offer several tools for connecting an organisation with its task environment, but the buffering and bridging mechanisms are one of the most expedient choices for protecting an organisation's technical core and linking the organisation to its task environment. Since the purpose behind this article was to create a mental framework that could help police leaders and educators to advance the police's ability to serve as the professional player in the field of safety, I use my concluding thoughts to elaborate on and outline that framework.

It is evident already that, for addressing wicked problems, the police should be treated as an open system. The latter does not mean that the organisation is devoid of boundaries. It has boundaries, but they are blurry in comparison to the traditional conceptualisation of an organisation as a closed system. Designing a police organisation as an open system means that the organisation is a 'compendium of' various groups (individual units, police stations, etc.), alliances (e.g., informal coalitions or working groups), and/or functions (e.g., law enforcement, forensics, and criminal-police personnel). The above-mentioned entities, in turn, have their own subgroups or sub-alliances, which engage in mixed and interdependent relations with each other. Therefore, this kind of organisation needs to be protected from external turbulence too but must still be designed to be innovative in the sense of advancing the police profession and responding to emergent phenomena. Mono-strategic police are too limited to tackle contemporary safety issues. For this reason, the police profession – in its language, use of multiple strategies or techniques simultaneously, and so forth – and its particulars always must be borne in mind when reforms to the police are undertaken. Only then can hope of mitigating wicked safety problems remain alive. Before one looks at the police from the standpoint of safety, contextualisation in terms of buffering and bridging techniques is a helpful lead-in. Without going into depth, it is enough for this article to give a few examples to assist in visualising or imagining the context of the police. In protecting their technical core, the police employ buffering strategies such as coding (e.g., specialised work flows), stockpiling (e.g., recruitment, retraining, and use of special equipment), and forecasting (e.g., crime analysis and use of geographical information systems). To receive information and energy from the task environment and to protect the entire organisation from external impacts, the police organisation utilises diverse bridging techniques. The following are just some of them: bargaining (e.g., surrounding whose responsibility it is to maintain public order at nearby bars and restaurants), contracting (e.g., agreements between the police and the local municipality), and joint ventures (e.g., co-operation with schools on lectures aimed at crime-prevention or for dealing with drug use). Both buffering and bridging techniques have countless examples, but for now it suffices to specify thus: these techniques always have an occupation-specific nature. That means that there is always some meta-language or coding system that needs to be recognised. The police have a particular meta-language, which (in a parallel to police science) has been generated by at least two distinct disciplines – criminology and management. Finally, police strategies can be added to the map. Police strategies are the focal points or the coupling points between criminology and management principles – they form the essence of the meta-language. Hence, all buffering and bridging techniques should be handled through appropriate police strategy at the proper level in the organisation and in a particular, appropriate context. There is no right answer – only continuous experimentation with various combinations can lead the organisation towards success in dealing with organisational as well as safety problems.

Police strategies form an essential part of the police's meta-language, a tie within the organisation and between the police force and its task environment. Lastly but not least, those strategies hold the key to mitigating wicked problems. If we are to prevent de-professionalisation in times of reform, rooted in neglect of safety issues, police strategies should be taken as the essential elements in linking the police institution to its task environment and holding the police in line with their core mission. The meta-language could be the indicator that expresses the level of policing professionalisation within the police.

Abbreviations

RT – Riigi teataja (The State Gazette).