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Women and Children as Victims and Offenders: Background, Prevention, Reintegration

Suggestions for Succeeding Generations
(Volume 2)

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Foreword

This volume on “Women and Children as Victims and Offenders: Background, Prevention, Reintegration. Suggestions for Succeeding Generations” takes an interdisciplinary approach to the situation of women and children involved with the criminal justice system, placing a special emphasis on them as offenders and victims of crime.

Over past decades, the international community has adopted important standards to safeguard the rights of women and children who come into contact with the criminal justice system, including as victims and offenders. These include the right to access justice, to legal aid and assistance, to protection from unlawful or arbitrary detention, to social reintegration as well as to freedom from violence.

Unfortunately, the gap between these critical commitments and reality remains wide, compromising the rights of countless children and women around the world. Children and women involved with the criminal justice system remain surrounded by stigma, and their situation is seldom a priority on the national agenda. Awaiting trial for months or even years, denied access to legal aid, placed in overcrowded and unsuitable facilities and deprived of health services, education and vocational training, children and women are also often exposed to humiliating treatment by staff and at risk of harassment, torture, rape and abuse.

As a result of disturbing reports on serious violations of their rights, including human trafficking, sexual violence and homicide, the plight of women and children has gained increasing visibility on the domestic and international justice and security agenda. The urgency of safeguarding their fundamental rights and the need to identify and address the root causes leading to their exposure to violence have helped to generate increasing attention and action across regions. Yet, implementation on the ground remains a serious challenge.

This publication is designed to overcome this challenge and thus promote the effective realisation of the rights of children and women. Risk diagnoses, trust, fairness, justice and restorative justice approaches, the roles of the family, the education system and the media as well as the impact of urban planning in the life of girls are some of the important questions discussed in depth. Another

important dimension considered is the implementation of the right to education from preschool to university level, and the attacks against schools that seriously compromise the opportunity to promote children's education and personal development and have been condemned in significant resolutions by the United Nations Security Council.

Taking into consideration intergenerational, intercultural and socio-economic perspectives, this multidisciplinary volume also discusses a wide range of other topics such as bioethics, the promotion of interfaith dialogue, the reintegration and rehabilitation of young offenders, the abolition of the death penalty, the need to counter online abuse of children and women as well as tackling corruption, in which women and children may have an as-yet unexplored preventive role.

As the Special Representative of the UN Secretary General on Violence against Children, I have urged Member States to spare no efforts in mobilising governmental departments, national institutions, civil society partners, faith-based organisations, communities and families at large to build nations free from violence. Violence against children is never justified and all violence against children can be effectively prevented. Strong political will, strategic alliances, sound knowledge and unshakable action can bring violence to an end. This volume makes a significant contribution to this goal and is a useful reminder of the values of the United Nations and its unwavering resolve to build peaceful societies and strong institutions, guided by human rights, committed to justice and fairness, and respectful of the dignity and worth of every person.

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Marta Santos Pais

Women and Children as Victims and Offenders: An Introduction

In criminological and public discussions, women and children are often seen as victims rather than as offenders—a view that has not much changed over time. In times of war and armed conflict, they still are the group that has to bear the most suffering: they are displaced, misused, raped and even killed.

It was the founding purpose of UNICEF in 1946, after the horrors of World War II, to protect children from the effects of war. This task is today as necessary as it was then.

The UNICEF Report 2015 (“Children between the Lines”) documents this vividly: “We are currently experiencing one of the worst phases of conflicts since the end of World War II. UNICEF estimates that in 2014 about 230 million children grew up worldwide in war and crisis zones. Their everyday life is marked by violence and hatred – often for years . . . Wars and armed conflicts have forced nearly 60 million people to leave their homes. More than half of these refugees and the internally displaced are women and children. They are particularly affected by the consequences of war, characterized by poor supply and lack of educational opportunities. Moreover, cases of serious violence have increased dramatically against boys and girls in the war” (p. 1). According to UNICEF one in ten children grows up in a country or region affected by crises and violent conflicts (UNICEF 2015).

Many children do not have adequate supplies of essentials, including food, water and medical assistance. Most are only able to attend school infrequently, if at all. “In the civil wars raging in Syria, Iraq, South Sudan and the Central African Republic children are also targets of the worst form of abuse” (ibid., p. 2). Groups such as ISIS in Syria and Iraq and Boko Haram in Nigeria blatantly disregard the principles of international humanitarian law. The UN Security Council lists for 2014 a total of 23 conflict situations in which children were exposed to serious human rights violations (UNICEF 2015). They were kidnapped, abused as sex slaves or child soldiers or sent to death as suicide bombers. In the first 7 months of 2015, UN officials reported 27 suicide bombings by Boko Haram. In at least three-quarters of the blast, the bombers were women or children (UNICEF 2015).

Why are young people attracted to terror organisations such as IS, even to the extent to give their lives? UNICEF gives the following answer: “The cynical use and display of children as victims makes them an object of political propaganda . . . Ideologies like those propagated by IS promise adventure, social inclusion and the feeling to be able to get past the limitations imposed on young people in their everyday life. They make the youngsters feel important, make them believe that they can influence world events and impose their ideas on the whole world” (UNICEF Report 2015, p. 4).

Phenomena such as IS make it clear “that general humanitarian principles are not automatically part of human traditions. They will never be because in times of war they are contrary to many primary instincts. The only way to entrench humanitarian values in the mind of each person – as a civilian, potential fighter, actual combatant or policy maker – is education” (ibid., p. 5).

According to UNICEF, in 2015 more than 62 million children in conflict areas will urgently need food, clean water, medical aid, the possibility to continue their education and protection from exploitation and violence. The realisation of the post-2015 UN sustainable development goals will depend to a large extent on whether we succeed in caring for and protecting children in such situations.

In its “Core Commitments for Children in Humanitarian Action”, UNICEF spelled out its main obligations to children in war situations: providing life-saving measures for pregnant women, newborns and children; facilitating school attendance even in emergency situations; help in searching for dispersed family members; and care for victims (UNICEF Report 2015, p. 6). As far as the creation of a durable peace is concerned, UNICEF gives children and adolescents a major role as “natural agents of change”, and mediators between the generations. There shall be no more “lost generations”, but instead all children shall have access to education and a better economic future. These are ambitious aims. Their realisation will need a greater commitment of wealthier nations and much work at persuasion. This work wants to make a small contribution.

As far as the situation of women is concerned, their equality in society has improved in many countries, but not to an extent that would allow us to speak of true gender equality (Kury and Obergfell-Fuchs 2005). It is not that long ago that the old legal tradition giving the husband dominion over his wife has been abolished in western countries, and it is still alive in many Muslim countries and other countries with a strong tribal tradition.

Recent research on women as victims presents the following picture (Lundgren et al. 2002; McGee et al. 2002; Medina and Barberet 2003; Müller and Schröttle 2004; Rodriguez Menés and Safranoff 2013): “The key findings include confirmation that violence against women is a universal phenomenon and occurs in every age and economic group although at different rates; there is indication that between 35 and 60 % of women in the surveyed countries have experienced violence by a man during their lifetime and that less than one third of women reported their experience of violence to the police (and where they do report, women are more likely to report stranger violence than intimate partner violence)” (Gelsthorpe and

Larrauri 2014, p. 193). A study covering nine countries of the European Union concluded that in roughly 25 % of all sexual aggressions, the offenders were either partners or ex-partners of the victim and that in these cases the level of violence was higher (Burman et al. 2009; see also Gelsthorpe and Larrauri 2014, p. 194; Müller and Schröttle 2004).

Hester (2013, p. 634) demonstrated in her study that women are not only more frequently victims of domestic and partner violence, but that the victimisation is more serious and that if they retaliate, the courts treat them worse than the male offenders: "While cases were very varied, there were significant differences between male and female perpetrators of domestic violence in many respects. Men were the perpetrators in a much greater number of incidents; the violence used by men against female partners was much more severe than that used by women against men; violence by men was most likely to involve fear by and control of female victims; women were more likely to use weapons, often in order to protect themselves; and female perpetrators were more likely to be alcoholic, or mentally ill, although alcohol misuse by men had a greater impact on severity on outcomes. Despite these patterns, however, women were three times as likely to be arrested per incident, indicating gendered injustice in the approach. There was little evidence that cases involving dual perpetration might generally be categorised as 'mutual' and men were in the main the primary aggressors".

Not only women, but also children, become victims of domestic violence. As Levi and Maguire (2002, p. 818) point out, there are many reasons that may lead to child abuse, not the least the incessant crying of a baby. "Situational opportunity variables are also salient to baby battering; modern nuclear families are far more isolated than the extended families found in many Third World Countries, where parents are seldom alone in the house". But more than situational opportunities, it is societal factors such as unemployment, poverty or isolation that lead to problems in a family and may expose children to violent reactions from frustrated parent. The fault in such cases is usually attributed only to the offender and society feels no blame. If anything, it is up to "the politicians" to do something about it. Moser (1972, p. 289) says it clearly: "It is astonishing to what extent society gives these children time to develop into full-fledged delinquents. It hardly cares about them, as long as they are the victims. Only when society itself is victimized or at least can present itself as victim, does it decide to act. And then [they act] like neglected and immature parents that hit blindly when the crying and the pranks of their neglected children exasperated them, when the angry need to have peace becomes the main motive of their intervention".

The social cost of domestic violence is very high. In Finland, for instance, it has been estimated that the annual financial cost amounts to approximately 91 million euro (Heiskanen and Piispa 2002, p. 36; see also Walby 2004; Haller and Dawid 2006; Brzank 2009). Such cost are however difficult to estimate and we should not forget that the financial aspect is only one part of "social costs". Numerous studies have shown that "Children who are physically abused or neglected tend to become offenders later in life" (Farrington 2002, p. 674; see also the chapter by Farrington in volume 1; Widom 1989; Widom and Ames 1994). Already in 1951, Bowlby

developed the theory that there is a strong connection between broken homes and delinquency (see also Farrington 2002, p. 675; McCord 1983).

Much of domestic violence remains hidden, as many women are reluctant to denounce their partners. In order to get some more precise figures of actual victimisations, victim studies include now specific questions on domestic violence (see, for instance, the British Crime Survey). Many countries have also introduced special legislation to protect women and children from domestic violence. According to Gelsthorpe and Larrauri (2014, p. 194): “European responses to IPV (Intimate Partner Violence) and domestic violence have revolved around civil or criminal protection orders in each country (http://ec.europa.eu/justice/fundamental-rights/document/index_en.htm as well as the Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order); additionally all European countries have created new specific public offences or increased penalties, and domestic violence courts; and all have some form of victim support and protection mechanisms”.

There is no doubt that there has been considerable progress, especially in the West, concerning equal rights for women and the protection of children, but much still needs to be done. As Gelsthorpe and Larrauri (2014, p. 198) put it: “There is still a need for wider recognition of violence against women (including attention to sub-cultural gender violence such as ‘forced marriages’, and to women in different structural positions, immigrant women, women with multiple social needs or disability, drugs or alcohol problems, for example). Additionally we need consistent monitoring and evaluation of changing policies in relation to domestic violence and sexual assault across countries, and attention to the high rates of attrition in regard to the prosecution of violence against women, for instance”.

The growing increase of refugees fleeing from wars and persecutions creates new problems concerning their integration. Most come from different cultural backgrounds and bring with them traditions and attitudes that may be at odds with those of their host countries, especially their attitudes towards women and children as well as their perception of what constitutes legitimate violence. Stamatel, in her study of female homicide victimisation rates across Europe from 1985 to 2010, calculated time series over four time periods for 33 countries and came to the following conclusion (2014, p. 596): “Better economic conditions reduce female homicide victimization, as they do for violence more generally. Gender dynamics play a contradictory role: less traditional gender roles increase the risk of victimization, whereas improving the collective status of women in society reduces that risk. Most importantly, controlling for these known predictors of female homicide victimization, the historical legacies and socio-historical contexts of nations matter greatly for explaining variation across Europe”.

When women turn to offending, they do so considerable less often than men. In his international comparison of crime rates, Heidensohn (2002, p. 496) underlines that “such differences [in crime rates] seem to be common across a variety of nations and cultures. In surveying material on Europe, I found that crime is still an activity overwhelmingly dominated by men in all European countries” (see also Heidensohn and Farrell 1991). The same is true for countries such as Brasil or India

(Lemgruber 2001; Patkar 2001). The author continues (Heidensohn 2002, p. 496): “This apparently consistent pattern has led some commentators to suggest that women offenders are ‘only 10 % of the trouble’. Considering different types of offences and changes over time, a more complex and qualified picture emerges. Women contribute to all types of offending, but their share varies considerably”. Austin gives a similar assessment of the situation in the United States (2003, p. 560): “I have calculated that if the males behaved like females, violent crime rates would drop by 2/3 and the 2 million people in the prison and jail population would not exceed 200,000. The associated costs of a 112 billion dollar criminal justice system would shrink to less than 20 billion dollars”.

Some authors claim however that the situation is changing: female crime rates are rising faster than those of males, and the gap is narrowing. Adler (1975) commented already in the 1970s on this rise and explained it with a change in female behaviour: women, according to him, have become more aggressive and violent, and therefore their offending resembles increasingly that of their male counterparts. Responsible for this change, in Adler’s view, is primarily the strengthening of the women’s movement and the greater freedom women enjoy today. But the topic remains controversial. Heidensohn puts it as follows: “Arguments about whether female crime was rising at a faster rate than male, and that thus the female share was going up, have been a highly contended criminological issue since the 1970s. Indeed, this is one of the few topics to do with women and crime to excite widespread attention” (Heidensohn 2002, p. 496).

Gelsthorpe and Larrauri (2014, p. 188) refer to another important aspect: “At the beginning of the twenty-first century new crimes and concerns have emerged: terrorism, cyber-crime, human trafficking and other human rights violations for instance, all of which have produced new ways of women being involved in crime as offenders, or as victims”. The authors underline further (p. 188): “Women certainly have a much higher profile than they once did, but it can still be argued that there is a general neglect of women in relation to crime and criminal justice”. Even if we have more information about crime than ever before, there are still very few empirical studies on gender-related differences and their causes. Crime is still seen as a “male domain”.

The situation of women in prison was also for many years a neglected theme in criminology—their number was too small to be noteworthy. Whereas the number of rehabilitation programmes for male offenders was increasing, it didn’t seem “worthwhile” to elaborate such programmes for the small number of female prisoners. Only recently more attention has been paid to the collateral damage of female imprisonment, for instance, on children, and the special victimisation risks women are exposed to in prison.

The percentage of female inmates is relatively low: only 4–5 % of the total number of inmates, with little variations between countries. Most of them fit exactly into the category described by Moser (1972, p. 291) already 40 years ago: “Most misfits, in particular those who are locked up, belong to those minorities, who cannot speak for themselves, who have no public voice, can’t organise themselves, and can’t defend their interests. They depend on an enlightened public that pit their

fate, and not just their actual fate but their whole life against the ideal – so dear to society – of the right of each person to personal development; the public will then have to ponder if the kind of punishment meted out today is a just reward for their deeds or if it is not rather help that should be given greater importance”.¹ The role of proper public information in this context cannot be underestimated and is a focal concern of this work.

In the quest to improve the plight of women and children, the United Nations has played a most important role. After the horrors of two world wars in the twentieth century, it has made an invaluable contribution to pave the way for a durable peace. The goal, admittedly difficult to reach, is already clearly set out in the Preamble of its foundational Treaty of 1945²: “We the Peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”. . .and “to unite our strength to maintain international peace and security” (1 UNTS 16). Women and children (girls and boys)—now roughly half of the present world’s population—determine any “succeeding generation”.

The concept of “generations” was formulated in the beginning of the twentieth century (Nora 1997, p. 2992). Combined with the UN Charter’s Preamble term “succeeding”, it means parents, children and grandchildren succeed each other at more or less regular intervals (Suleiman 2002, p. 278).³ It is for the “succeeding generations” that the Charter calls for the promotion of “social progress and better standards of life in larger freedom”, including full employment, and conditions of economic and social progress and development (art. 55).

This two-volume book responds to this call by focusing on the intergenerational, international and intercultural transmission of values through learning. Yet the main focus of the book is on justice issues with global commonalities. The work blends academic with UN considerations, findings and recommendations on justice. A common thread is the prevention of crime/delinquency and victimisation of women and children. The most glaring form of crime and delinquency is violence. As repeatedly emphasised by the UN leadership, violence against women and children must be countered effectively. Ban Ki-moon, the present Secretary-General has appealed to “break the silence” concerning violence against women,⁴ and also the UN Special Representative of the Secretary-General on Violence against Children has underscored that “violence against children is never justified

¹ Free translation by Evelyn Shea.

² The Charter of the United Nations was signed in San Francisco, California, on 26 June 1945, by 50 of the 51 original member countries.

³ It is in this broader context in which the concept of “1.5 generation” originally emerged: of child survivors of the Holocaust “too young to have had an adult understanding of what was happening to them but old enough to have been there during the Nazi persecution of Jews” (Suleiman 2002, p. 277).

⁴ <http://www.un.org/en/women/endviolence/about.shtml>.

and all violence against children can be effectively prevented. With strong political will, wide mobilization and steady action, it can be brought to an end”.⁵

While the emphasis on physical component of violence is understandable, violence against children can also be “mental” (art. 19 of the Convention on the Rights of the Child, 1577 UNTS 3). However improper and detrimental, this or that form of violence may be for the future conduct of a child, let us not forget that child’s conduct can also be mishandled in many other forms. From a criminological perspective, subtly manipulating child’s sense of trust, disorienting a child about his/her entitlements, mishandling mental anguish or facilitating emotional deprivations is likewise important for crime prevention. This work caters also to this broader crime prevention function and vision.

The UN has joined that vision 45 years after the Second World War (1939–1945), when the concept of “succeeding generations” (up to that point faintly related to war prevention) did receive some more attention. In 1990 “The United Nations Guidelines for the Prevention of Juvenile Delinquency” (“The Riyadh Guidelines”, A/RES/45/112) emphasised in paragraph 15 the socialisation function of family in the prevention of delinquency: “Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigent, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities, for the socialization of children have to be designed”.

Ten years later, in the “Guidelines for the prevention of urban crime”, the UN Economic and Social Council (ECOSOC) explicitly recommended Member States to “Consider the relevance to the crime prevention action plan of such factors as . . . relationships in the family, between generations or between social groups etc.” (ECOSOC resolution 1995/9). Finally, in 2002, the Council adopted the “Guidelines for the Prevention of Crime” (ECOSOC resolution 2002/13). They emphasise how crime prevention action should be developed, with a focus on local communities, where crime is experienced, as well as those with high needs, and that it be conducted through partnerships across government sectors and with civil society and the participation of communities, that it be sustained and accountable, rather than short term, and be based on sound evidence-based practice.

A set of eight basic principles is involved for pursuing these approaches (articles 7–14 in the Guidelines):

1. *Government leadership*: All levels of government should play a leadership role in developing effective and humane crime prevention strategies and in creating and maintaining institutional frameworks for their implementation and review.
2. *Socio-economic development and inclusion*: Crime prevention considerations should be integrated into all relevant social and economic policies and

⁵ Political will, ‘steady action’ can end violence against children, UN envoy tells Indonesia, www.un.org/apps/news/story.asp?NewsID=50207.

- programmes, including those addressing employment, education, health, housing and urban planning, poverty, social marginalisation and exclusion. Particular emphasis should be placed on communities, families, children and youth at risk.
3. *Cooperation/partnerships*: Cooperation/partnerships should be an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them. This includes partnerships working across ministries and between authorities, community organisations, non-governmental organisations, the business sector and private citizens.
 4. *Sustainability/accountability*: Crime prevention requires adequate resources, including funding for structures and activities, in order to be sustained. There should be clear accountability for funding, implementation and evaluation and for the achievement of planned results.
 5. *Knowledge base*: Crime prevention strategies, policies, programmes and actions should be based on a broad, multidisciplinary foundation of knowledge about crime problems, their multiple causes and promising and proven practices.
 6. *Human rights/rule of law/culture of lawfulness*: The rule of law and those human rights which are recognised in international instruments to which Member States are parties must be respected in all aspects of crime prevention. A culture of lawfulness should be actively promoted in crime prevention.
 7. *Interdependency*: National crime prevention diagnoses and strategies should, where appropriate, take account of links between local criminal problems and international organised crime.
 8. *Differentiation*: Crime prevention strategies should, when appropriate, pay due regard to the different needs of men and women and consider the special needs of vulnerable members of society.

All these UN guidelines adopted for women and children as one of the vulnerable groups with special crime prevention needs are summarised in the subsequent UN handbook, as follows: “In essence, the principles laid out in the 2002 and the 1995 guidelines, establish the normative basis with the importance of the rule of law and respect for human rights, of the social and economic inclusion of populations, whatever their status and background, and the importance of ensuring that the particular needs of vulnerable minorities, as well as gender differences, are taken into account” (UN Handbook 2010, p. 23).

On balance, in the 70 years since the founding of the United Nations, it has paid more attention to “succeeding generations” in its ideology than in its legal instruments. The specific crime prevention needs of women and children, as the succeeding generation, are only nominally addressed. Generally, so far, the balance of the UN’s mandate and functions involving “prevention” and “control” has remained negative, not only regarding the needs of “succeeding generations” pointed out above but also demographically and politically—despite the proclamation of the UN Secretary-General that “prevention is the first imperative of justice” (S/2004/616, para. 4). Notwithstanding this imbalance, academic and UN criminology studies have accumulated and reviewed evidence for diagnosing and

countering crime not only for the current but also for the succeeding generation. The goal of this work is to widen this perspective.

Before presenting the individual chapters, it may be helpful to clarify the concept of “succeeding generations”: First, on a demographical note, the expected lifespan of the present generation is, globally, over 67 years (over 65 for males and 70 for females). In 1945, at the time of the creation of the UN, the expectancy was five years shorter (ST/ESA/SER.A/313). In years 2045–2050 it should increase to 74 years (Cohen 2003, p. 1173). Of course, between one and the other generation, there are overlapping generations, and within one generation, there are smaller decimal-point generations. They may be differently (sub-)divided and named. However, certainly the division between “Generation-C” (“connect, communicate, change”) or “Digitally Native” generation (Palfrey et al. 2009; Matvyshyn 2012, p. 1979) and others is worth mentioning, because of the fundamentally different childhood than that of their parents, hence different attitudes to law and ensuing effects (violation and victimisation).

Second, in this work, “education” is a broad term. It “comprise[s] all deliberate and systematic activities designed to meet learning needs [and] involve [s] organized and sustained communication designed to bring about learning” (UNESCO 1997). It includes formal (preschool, primary, secondary, tertiary) and non-formal, i.e. outside the formal education system⁶—both mutually complementary and necessary for a socio-economic development and the implementation of the right to education (Hausler et al. 2012, pp. 72–77).

Third, education is negatively correlated with women’s fertility—“a uniquely universal negative relation between female education and fertility” (Basu 2002, p. 1779)—and positively correlated with infants’ health (Krueger and Lindhal 2001, p. 1107). In turn, girls born into smaller families are more likely to be sent to school and to complete more years of education (Basu 2002, p. 1788). This, coupled with the fact that already more than half of the world population experiences fertility rates below the replacement level of two surviving children per woman (exactly 2.1 by a conventional estimate, Wilson 2004), begs the question of the sustainability of our present culture. In particular, as far as the topic of this work is concerned, it begs the question of the sustainability of a culture of lawfulness. This axiologically Western concept—the culture of lawfulness—(Redo 2014) nominally entered the UN crime prevention agenda through the 2002 Guidelines. Only very recently the Declaration of the Thirteenth UN Congress on Crime Prevention and Criminal Justice (Doha, Qatar, 2015) made it a fully-fledged UN concept (A/CONF.222/L.6) with emphasis on education for all children and youth, including the eradication of illiteracy. Education and the eradication of illiteracy are both fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights

⁶ Education provided through nursing, kindergarten care, human rights training sessions, workshops, seminars and webinars is a non-formal education. Informal education is acquired through other life and work experience.

while respecting cultural identities. Finally, the Declaration stressed the fundamental role of youth participation in crime prevention efforts.

In 1992, in paragraph 21 of the Rio Declaration, Member States of the UN urged that “The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all” (A/CONF.151/26: Vol. I). But only now, with the forthcoming Rio+20 post-2015 UN sustainable development goals, particularly “Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” (A/68/970), the organisation took a comprehensive and incisive look into the role of culture in sustainable development. We read there, that by 2030, Member States and other stakeholders should “ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development” (ibid., p. 13/24).⁷

Fourth, it follows that non-violence is a recognised element of any legal culture. And so is anti-corruption about which the framers of the UN post-2015 sustainable development agenda speak as a part of the envisioned goal 16—the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and building effective, accountable and inclusive institutions at all levels. A global culture of lawfulness for the succeeding generation will have on its agenda such moral universals.

Interculturally universalising morality by dignifying our partners, children and others is not automatic. Bringing up children in the spirit of universal moral values starts in our bedrooms and homes, becomes public in the nurseries, kindergartens, schools and then goes into the streets, businesses and other governance. Universal morality rather than once and for all “given”, every now and then, needs to be revived to keep humanity on the track of progress. Franklin D. Roosevelt, one of the fathers of the UN Charter, said that “the test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little” (quoted after Grafton 1999, p. 61).

Since the inception of the UN, Roosevelt’s ideas have had a considerable impact on it and in the world. The organisation has witnessed a four-fold increase in the world’s quality of life, as measured by the GDP per capita. More precisely, in comparison with 1945, there are now respectively 4 rich to 1 poor *vis à vis* 4 poor to 1 rich in terms of average income per capita in the constant purchasing power parity (PPP) (Acemoglu 2012, p. 5). This considerable improvement concurs with the one

⁷ As this book goes to print, the United Nations General Assembly finalised its action on the draft sustainable development goals 2016–2030, now reflected in resolution A/69/L. 85 (pending A/RES/70/?), unanimously adopted on 25 September 2015, with unamended wording. Therefore, the references to them or quotations drawn by the contributors to this book from various earlier UN source documents are fully compatible with A/69/L. 85.

hundred year projection to that effect in 1930 by John Maynard Keynes in his *Economic Possibilities for Our Grandchildren* (Keynes 1935).

As comforting as the factual corroboration of Keynes' projection may now be, those economic possibilities have currently been monopolised by 1 % of the adult population in the world. According to Oxfam, as of 2016, 1 % will proportionally own more than 50 % of global wealth (possessions) than the 99 % of the adult population of the world (Oxfam 2015). Is this moral? In many Western industrialised countries like Germany in the last decades, more people got extremely rich and more poor; the difference between both groups is obviously not decreasing but increasing.

This two-volume book originated with the latent premise that excessive socio-economic inequality is immoral. It reduces opportunities in education, especially in quality education. Notwithstanding the different professional backgrounds of the editors of the work, and even more diverse professional backgrounds of its contributors, we believe we all share in the idea that evidence-based, quality crime prevention and education are the prerequisites for a successful Culture of Lawfulness anywhere in the world. We also believe that to achieve this goal, partnerships of all kinds will become ever more important. They should involve government agencies, the private sector, civil society, academia, philanthropic foundations and faith-based organisations. Their collaboration will prove critical to the implementation of the UN's new sustainable development agenda that stresses inclusiveness as the core vehicle for poverty amelioration and peaceful non-violent societies.

We expose this idea to the critical scrutiny of the readers in the academic spirit of "organized criticism" (Robert Merton). We are keenly aware that this interdisciplinary work covers only some criminological and other aspects of a more equitable, effective and humane treatment of women and children as victims and offenders and that much remains to be said. Yet, we still trust that the various chapters will open new visions how to reduce the victimisation of women and children as well as their offending.

The contributions to this work are opened by *Santos Pais*, the United Nations Special Representative of the Secretary-General on Violence against Children, and closed by H.E. Ambassador *Martin Sajdik*, the 70th President of the United Nations Economic and Social Council. We very much appreciate the contributions of these eminent representatives. These contributions both demonstrate that a strong political will, partnerships, sound knowledge and decisive action can help to counter violence, corruption and other crimes and their negative impact on sustainable development and the fortunes of succeeding generations.

As to the contributors, some of them are academics, some of them practitioners and still others are both academics and practitioners. We hope that this diversified authorship adds to the value of this work that aims at providing suggestions for succeeding generations to deal more effectively and humanely with women and children as victims and offenders. Some of these suggestions are explicit, others implicit. Some articles explicitly and some other implicitly invoke the UN values embodied in the UN crime prevention and criminal justice standards and norms. The five questions at the end of each text were added to stimulate discussion about

possible solutions for the problems raised. Since the two volumes are written by academics and policy-makers, scholars and practitioners, their action profile involves more often strategic than tactical work of a “manual” kind.

On the understanding of these limits, in the *Post Scriptum* we roughly outline and envision the implementation of the work’s suggestions until 2030. However, the floor is open to alternative recommendations, to a more visionary and incisive discourse, to closer fieldwork and follow-up. When the UN ideas about sustainable development and crime prevention interact with those of the academic world, in the next 15 years the academic world will have a unique opportunity to contribute to improve crime prevention for women and children. In this context we thank all the authors for their generous contributions and sincerely hope that their texts will advance “social progress and better standards of life in larger freedom” (art. 55 of the UN Charter) and the “Future We Want for All”.

These texts are grouped in six parts. **Part I “UN Principles for Crime Prevention-Treatment of Women and Children”** starts with “International Human Rights Law on Violence Against Women and Children and Its Impact on Domestic Law and Action”, examined by *Goldfarb and Goldscheid*, two US scholars. They examine the impact and potential of international human rights law as a component of efforts to prevent and redress violence against women and children. Other components, such as laws, policies and community-driven initiatives, countering violence against women and children has made important inroads internationally and in several countries domestically. The chapter’s authors not only document the scope of these various initiatives, but discuss particular legal cases and other actions against parties of the UN and regional treaties, whose residents complained about gender violence and the lack of due diligence by State authorities to protect them or their children from such a form of violence.

Dussich, an international victimologist, notes in his chapter about “Blue Victimology and Femicide: The UN Response to Victims and Female Victims of Gender Killings” that since its beginning the UN championed the rights of women and children. In the face of the fact that across the globe every day female children and adults are being killed by men (“femicide”), usually with impunity just because they are females, one of the UN’s central goals is to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men. The author gives a detailed account of the enormity of the problem in different parts of the world and puts his main hopes on the UN as the most significant forum to take unified action. It has the obligation, the resources and the will to bring about the necessary changes across the globe.

Mwenifumbo and Fuentes, two UN officers, present a chapter about “In the Pursuit of Justice for Women and Children and the Right to Development: A Review of Concluding Observations of the United Nations Human Rights Treaty Bodies”. The authors discuss relevant to the UN treaties human rights regime criminal and preventive aspects of “justice” and “the right to development”, as far as women and children are concerned. The article analyses the intergenerational issues from, both, the local and global perceptions of justice. It looks into how the UN human rights treaty bodies advance the global justice standards and norms for

the treatment of women and children, particularly with regard to victims. In the light of the concluding observations by the UN treaty bodies and the right to development in general, the article makes recommendations concerning gender mainstreaming in formal and informal education.

The final contribution to Part I is provided by *Wintersteiner*. His “International Strategies for Building a Culture of Peace Through Access to Good Education” connects this part of the book with the subsequent ones. He stresses that education may be the only instrument for creating and maintaining democratic, just and peaceful societies. Moreover, education is the cornerstone of a strategy towards a culture of peace and describes what happens when this cornerstone is undermined and education comes under attack (for a specific case, see *Carapic* and *Dönges* in Part II). *Wintersteiner* emphasises that whilst education is a fundamental human right and essential for the exercise of all other human rights, other human rights have to be guaranteed to be able to make use of the right to education. Education is a prerequisite for the economically and socially marginalised adults and children to lift themselves out of poverty and participate fully as citizens. The author concludes with a brief note on the preparation of the post-2015 education agenda in the framework of the UN sustainable development goals that marks a new step in integrating the human rights approach.

Part II “Education and Social Learning: Their Impact on the Development of Children and Adolescents” is composed of 11 chapters.

Carapic and *Dönges* present a chapter about “Attacks on Education in Conflict, Post-conflict and Non-conflict Settings”. The authors discuss the need for a more informed implementation of the right to education. They note that not much is known about the actual prevalence of attacks on education, the perpetrators involved, the circumstances under which it takes place, for what purpose it is used and how it is regulated. They suggest that understanding attacks on education requires disaggregating the phenomenon along four dimensions: frequency, targeting, repertoire and purpose. After discussing the four dimensions, the authors then show the utility of the proposed framework by examining attacks on education carried out by the Nigerian militant group Boko Haram. In conclusion, they note that despite a number of initiatives to provide more and better monitoring and reporting, the mechanisms necessary for systematic data collection have been found wanting.

In their chapter “The Role of Early Childhood Education in Social behaviour of Children”, *Nores* and *Barnett* discuss the importance of the first five years in the development of children and consequently the need for public investments into early childhood care and education. A large body of evidence on early childhood interventions has found short- and medium-term effects that extend beyond narrowly academic or cognitive outcomes to improvements in pro-social behaviours and skills such as self-regulation, commitment to schooling, employment and earnings, as well as mental and physical health (see also *Farrington* in his chapter). Given the importance of the early years in child development, the chapter focuses on summarising the evidence of the impact of early childhood interventions on children’s social and emotional behaviour in the United States and globally; it

describes which aspects of these interventions are associated with larger short-term and long-term social and emotional effects and identifies which types of programs have been found to affect parenting and households in ways that matter for children's behavioural development.

Kanngiesser, Schmidt and Rossano write on "Young Children's Understanding of Social Norms and Social Institutions" at the early preschool level. The authors remind us that as adults we typically navigate our social world effortlessly and mostly unaware of the intricate web of social norms and institutions shaping our behaviour. Children are born into this web that defines (mis-)behaviour. Social norms also form the basis of more complex social institutions such as ownership that create obligations, rights and duties. The authors use the example of ownership to argue that it is one of the first social institutions that young children understand. The chapter seeks to broaden our crime prevention perspectives by going beyond "mental violence" that victimises children (Art. 19 of the Convention on the Rights of the Child) to the question of children's understanding of ownership—an issue that may be at the core of early anti-corruption education (see also *Redo* in Part V).

Farrington ("Family Influences on Offending and Family-Based Intervention") discusses the aspect of intergenerational transmission. Mindful that "cold, rejecting parents tend to have delinquent children" and that "parental warmth could act as a protective factor against the effects of physical punishment", he reviews the insights obtained by cross-national research on the effectiveness of family-based interventions (about emotions see also *Kury* in Part V). The author concludes that a great deal still has to be learnt about family influences on offending and effective family-based programmes in order to further corroborate the present research. He points out that the time is ripe to establish national agencies in all countries willing to participate to advance our knowledge about family risk factors (from longitudinal studies) and about effective family-based interventions (from randomised experiments and cost-benefit analyses).

In "Women's Substance Abuse and Its Impacts on Children's Early Development and Deviant Behaviors", *Gao and Liu* examine from an international perspective the root causes of women's substance abuse, including women's victimisation. The authors focus on the intergenerational sociolegal consequences and impacts of women's drug abuse on children's early development. Like other authors in this work, they conclude that with the continued global growth of female substance abuse, the research and discussion in the international arena should focus not only on implementing meaningful gender-specific programmes for women, their children and families, but should also test whether programmes that were successful in other countries fit into their specific cultural needs.

The moral development of children is a complex problem, which has rather been neglected in criminology. Little attention has been paid, for example, to the relationship between justice and trust. *Brugman, Out and Gibbs* ("Fairness and Trust in Developmental Psychology") point out the importance of this relationship. They emphasise that fairness or justice is central to moral development, but without relating it to trust, there is little cooperation among people. This interpersonal relationship starts in early childhood and foreshadows the close social relationship

individuals develop later in life. These essential developments have not been sufficiently studied. The authors review them from a theoretical and empirical perspective, both of which bring new insights. They conclude that a successful mutual moral understanding, difficult in practice as it always has been, depends to a large extent on sensitive parenting and a long process of education and schooling.

Marshall discusses in her chapter “Results of the Second Round of the International Self Report Delinquency (ISRD2) Study: Importance of Education and Social Learning for 12–15-Year Olds” criminological aspects of education and schooling. She notes that, typically, policymakers tend to be more concerned about those youth who are involved in frequent, repeated delinquent behaviour. Although repeating classes and below-average performance of pupils may be warning signs, other school-related factors (such as truancy and type of school, e.g. egalitarian/quality-focused) appear to be more strongly linked to delinquent behaviour. Like *Bokil and Raghavan* (Part IV), *Marshall* notes the importance of social learning (SL) in understanding effective prevention of delinquency. Pupils with higher acceptance levels of violence also tend to have significantly higher levels of involvement in delinquency. Finally, she presents recommendations that may counter delinquency through early education, better training and pay for teachers who work in low-income areas and greater flexibility in allowing students to gradually move to higher tracks.

In “The Role of Justice and Fairness as Global Values: Promoting Public International Law at the (Pre-)university Level”, *Clark* looks into the avenues and precepts of inculcating an appreciation for international law and international principles (especially justice and fairness) through education at the university level, particularly at the pre-university level, based on the UN Charter and other international instruments that promote justice and international law as cornerstones of peace and security. The chapter discusses ways in which relevant learning takes place both in the regular curriculum and in such extra-curricular activities as Model United Nations Conferences, which involve both high school and university students. Various efforts by the UN and its specialised agencies to stimulate such education are noted, such as the “United Nations Academic Impact Initiative”. The author also points out the dearth both of curricular requirements and of teaching materials suitable for teaching the subject at the pre-university level.

Pływaczewski and Kraśnicka’s chapter “Legal Education in Transition: Is the Bologna Process Responding to Europe’s Place in the World?” looks into the implications of the Bologna Process (a series of ministerial meetings and agreements between European countries aimed at harmonising the standards and quality of higher education qualifications) for the region and beyond. The authors regret that the Bologna Process is exclusively centred on Europe and has left out from its purview other regions of the world, such as North America. Europe could, for instance, benefit from the US system of legal education, which promotes not only an effective teaching mechanisms but core fundamental principles such as rule of law and human rights. The authors show how the North American approach could be integrated into European legal education, but that also US universities could learn from the Bologna Process.

Stanners (“A Critical Examination of the Contention of the Existence of a Culture Justice Education at the Vienna International School, Austria”) deals with international justice education at the secondary level, exemplified by the curriculum choices of the Vienna International School. She explores research on justice and democracy in education in the context of a school which “gives no message of gender differences in any of its approaches or teaching” and asks which of the characteristics identified as being necessary for justice and democracy to be present exist in the school. The author thinks that whilst the curriculum plays a strong part in providing a context in which justice and democracy can be nurtured, this by itself is insufficient to guarantee a culture of justice but that the real key to the presence of such a culture in the school can be found in the relationships that exist between all the stakeholders.

Barberet writes about college-level “Education for Justice: Experiences and Prospects for Further Internationalization”. She discusses in her article the internationalisation of criminal justice education in the United States, highlighting the experiences of John Jay College of Criminal Justice (JJC) of the City University of New York (USA), a leader in international criminal justice education. The author reviews the development of the most recent JJC program, the Master of Arts program: its curriculum, faculty, the undergraduate and graduate students it attracts and the prospects of these programs for the future. The chapter then moves on to international curricular initiatives concerning women, crime and criminal justice. It ends with a discussion of why and how nations around the world might encourage similar curricular development and how the work of intergovernmental organisations such as the UN could contribute to such developments as well as benefit from them.

In **Part III “Children/Juveniles and Women as Victims and Offenders”** (18 chapters), *van Dijk* discusses “The Criminal Victimization of Children and Women in International Perspective”. The author presents an overview of the results of the national and international victims surveys regarding the distribution of victimisation according to age and gender with a focus on violent crime. The results show a consistent inverse relationship between age and criminal victimisation for all types of crime. The relationship between gender and victimisation is less straightforward. Men are more exposed to various types of non-sexual violence by strangers, including homicide. Cross-national analyses suggest that violence by intimates against females is most prevalent in countries where gender equality is low. However, self-reported victimisation rates of violence against women by intimates are also relatively high in countries where gender equality is the highest, such as in the Scandinavian countries, presumably because of increased sensitivity to acts of lesser violence among female respondents in those countries. The author ends on a practical note, recommending the expansion of special services for female victims of domestic violence and the provision of similar services tailored to the needs of male victims.

Lappi-Seppälä and Lehti analyse “Global Homicide Mortality Trends by Gender 1950–2010”. Historical data series show that the higher the level of violence, the smaller the share of female victims and perpetrators. This chapter tests the current

differences in male and female homicide mortality levels with the most extensive available data today. In spite of various differences between male and female homicide mortality, the authors find that social control and economic factors have very similar effects on lethal violence regardless of the gender of victims: High male and female homicide mortality rates as well as female/male homicide ratio correlate with the same socio-economic factors and in almost an equal manner. Increasing gender equality seems to increase the *relative* homicide victimisation risk for women. This is due to the fact that gender equality seems to go along with general welfare indicators, which reduce all types of lethal violence in society; male victimisation decreases in this case even faster than female victimisation. The authors conclude that well-governed, legitimate and prosperous democracies are safe—and equal—societies.

Schrötte and Vogt (“Women as Victims and Perpetrators of Violence: Empirical Results from National and International Quantitative Violence Research”) discuss empirical findings on the extent, causes and consequences of violence against women from national and international empirical research. These studies show that if women are victims of physical, sexual and/or psychological violence, it is most often a case of domestic violence by intimate partners. The two authors evaluate the value and effectiveness, as well as the limitations, of violence prevalence studies from a methodological and gender-critical perspective. They conclude that there is still a lack of empirically well-founded analyses that focus on the construction and deconstruction of violence, gender, disability, migration and other aspects. In this respect, a targeted expansion of qualitative research, which would also aim at deepening representative quantitative violence prevalence studies, would be a great gain, in order to be able to better portray contexts of occurrence and causality, as well as the significance of violence.

Lysova presents data about “Victims but also Perpetrators: Women’s Experience of Partner Violence”. The chapter opens with an analysis of major negative health consequences of partner violence (PV) for women around the world: homicide, suicide, injury, antenatal and postnatal mental disorders and HIV/AIDS. The author then reports on studies analysing why women themselves become active participants in PV. The author concludes that because a “one size fits all” approach does not seem to work for addressing such a complex and multidimensional phenomenon as PV, carefully tailored interventions at various levels for different types of violence and violent types/incidents should be considered. Integrating attention to the dynamics of partner violence with elements of the “violence against women” framework would allow global research to recognise and give voice to women’s diverse experiences of partner violence, help reveal its intrinsic, interactional nature and, as a result, promote a more effective approach to crime prevention at the international and domestic level.

Alvazzi del Frate in her text “A Reflection on Women, Girls and Armed Violence” discusses aspects of (lethal) violence against women and girls, with special emphasis on firearm violence. The author presents international data on armed violence against women and girls in different settings. Although there is a correlation between high levels of violence and high numbers of females killed,

most of the violent deaths of women and girls occur in settings where there is no declared armed conflict. Whether firearms are used in fatal killings very much depends on the ease of access to such weapons. In conclusion, the author expresses the hope that the UN Sustainable Development Goals and recent developments in the policy and research agendas on ending violence against women may represent a unique opportunity for a more effective prevention and reduction of many forms of violence impacting on women and girls, including firearm violence.

Nikolic-Ristanovic and Stevkovic's chapter "Women and Children as Victims and Offenders: The Impact of Armed Conflict and Post-conflict Period Challenges" assess the role played by the State, civil society and international actors concerning domestic violence and trafficking in persons in the aftermath of armed conflict. The brutalisation effect of war on crime lasts longer than the war itself, as the factors that drive up crime during armed conflicts continue in the post-war period. Once violence has been legitimised by war and the settling of interpersonal differences by force, these attitudes carry over to the period immediately after. After describing in detail the Serbian experience concerning the victimisation of women and children during the war (1991–1999), the authors acknowledge many important changes in post-war Serbia but note that the lack of timely and adequate protection and support of victims during the war has still not been remedied. They recommend therefore shifting the attention of scholars and policymakers from treating victimisation and offending of women and children merely as a legal problem to that of a social problem.

In their chapter "A Biopsychosocial Model of Female Criminality: Implications for Assessment and Evidence-Based Treatment Approaches", *Peper, Krammer and Klecha* present their cross-disciplinary research findings on offending behaviour by women and indicate how the complex factors underlying female criminality could be integrated in a multilevel model. For this purpose, the authors interlink clinical and other criminological information with recent results from the cognitive, social and affective neurosciences. In the opinion of the authors, because of the anthropological and biological antecedents of early criminology, the contemporary way of dealing with a biopsychosocial model of female criminality may be still short of taking their new approach into account, and it is hence unable to contribute to that multilevel model.

Chesney-Lind and Hadi discuss the important topic of "Criminalizing Women: Global Strategies for Denying Female Victimization". Their chapter opens with the staggering statistics that nearly one-third of the world's female population will become victims of violence and not only that, in many cases, they will also be blamed for it. The authors address the problem of victim blaming from four angles: the merging of religion and law to criminalise female sexuality and sexual expression, the demonisation and sexualisation of "enemy" women as a justification for mass rape in wartime, the criminalisation of reproductive rights and the use of courts to punish victims of sexual abuse who run away from their abusers. The authors suggest that the pattern of criminalising women and girls' victimisation requires both research to document and action to challenge the "legal" abuse of women and enforcement of patriarchal privilege. They try to establish that there is a

direct interface between women's victimisations globally and systems that both punish the victim and avoid punishing the assailants.

Krahé addresses a related topic, "Societal Responses to Sexual Violence Against Women: Rape Myths and the 'Real Rape' Stereotype", from a socio-psychological perspective. Her chapter examines the role of stereotypes and myths about rape in understanding societal responses to victims of sexual violence. She notes that there is a widely shared stereotype of the "real rape" that is squarely at odds with the reality of the sexual victimisation of women yet serves to inform the social perception of victims and their credibility. After presenting prevalence rates of sexual assault worldwide, the author analyses the attrition process from the initial police investigation to eventual court proceedings and a verdict. She provides strong evidence of the impact of rape myths and stereotypes on the handling of rape complaints and concludes with a review of potential strategies for challenging rape myths and stereotypes and reducing their influence in the criminal justice system.

Pakzad and Alipour write from an Iranian perspective about "Justice and Family Issues in the Shiite: Confronting with the Domestic Violence in Shiite Communities". The authors incisively discuss domestic violence against children and women in Shia communities and point out the great differences that exist across the Muslim world. Looking at the various approaches of Islamic sects makes it clear that religion is not inflexible in the face of social changes, or regional and cultural components. Since family issues in the Shia tradition depend on a dynamic jurisprudence, some jurists have attempted to interpret religious laws in an up-to-date manner and have brought about legal changes improving the status of women, such as giving women preference over men as primary caretakers of children or introducing sanctions for the ill-treatment of women by men. The chapter also deals with women as offenders, in particular with women who consider it their right to use violence themselves and justify such acts in the light of religion and regional cultures.

Asli and Amrollahi Byouki, also Iranian academics, comment on "Forced Marriage in Islamic Countries: The Role of Violence in Family Relationships". In their chapter, the authors make a clear argument for equality of women and men by contending the custom of forced marriage that deprives both sexes of their fundamental rights and in the case of women often leads to their victimisation. The authors point out that forced marriages have been a persistent issue in most societies, not only in Islamic countries, and have more to do with customs and traditions than with religious rules. In order suggest to eradicate this tradition, Islamic countries must insist that the religious ordinances prohibiting this kind of marriage are followed, fulfil their international obligations in terms of proper legislations for proscribing forced marriage and use the mass media and all public and private resources to raise public awareness about its harmful effects.

Bokil and Raghawan discuss "The Case of De-notified Tribes in India". Their text renews our interest in the fate of "Indian criminal tribes" under the British colonial rule, the study of which provides material for the social learning theory of criminal behaviour through the intergenerational transmission of values. The two

authors review the history of British legislation regulating the conduct of those tribes and point out the incorrect colonial understanding of the Indian caste system. This lack of understanding led to the marginalisation and social exclusion of the de-notified tribes (DNTs) and their eventual de-citizenship and criminalisation. Women and children had to bear the brunt of this process, in terms of institutional and structural violence—poor access to food security, education, healthcare, social protection and justice delivery. The authors argue that the vicious circle forcing the DNTs to remain in the criminal nexus can still be broken through concerted efforts by the state, community associations and individual members of DNTs, and civil society.

Klaus, Rzeplińska and Woźniakowska-Fajst describe “Victimization and Delinquency of Minors in Central-European Countries”. The authors note that despite the considerable differences among the individual countries, Central Europe still takes a fairly patronising and paternalistic approach to children. Their research takes a closer look at the situation in Hungary, Poland and the Czech Republic—three former post-socialist countries that have a great deal in common, both from a historical and a socio-economic perspective. The Czech Republic has the fewest juvenile issues, whilst Hungary has the highest level of crime in the region. Hungary, Poland and the Czech Republic also differ in their juvenile justice systems and the ideology underpinning their response to juvenile offences. The authors conclude their chapter by emphasising that Poland, Hungary, and the Czech Republic have been continually striving for higher standards of caring for children and protecting their rights at every stage of criminal trials in the 25 years or more that have elapsed since these countries set out on the road to democracy and during their 10 years as EU members.

Selmini’s chapter examines “Sexual Abuse of Children in Comparative and International Perspective”. Child sexual abuse (CSA) is a chronic problem that can occur in any family or any country. In recent times, it has increasingly become a priority topic of the European Union, the UN and other intergovernmental and non-governmental organisations. Scholars have also given CSA greater attention, even though more at clinical case study than at policy levels. The author analyses national and international quantitative violence studies which show that if women are the victims of physical, sexual and/or psychological violence, it is most often a case of domestic violence by intimate partners—in contrast to men, who are more often victims of violence in public spaces at the hands of persons known or unknown to them. Both women and men are primarily victims of violence by male perpetrators. Women comparatively rarely act as perpetrators of severe violence.

Kangaspunta, Sarrica and Johansen report on “Trafficking in Persons: The Involvement of Women and Children” from the perspective of the UN “Global Report on Trafficking in Persons”. The authors analyse the global dynamics and patterns of trafficking in persons, especially of women and children, who are disproportionately involved, both as victims and as offenders. Women comprise a majority of the detected trafficking victims, but women are also prosecuted and convicted of trafficking in persons in a far larger proportion than for nearly any

other crime. Children are frequently victims. The authors draw particularly on findings from the 2012 “Global Report on Trafficking in Persons” and examine some of the patterns of trafficking in persons as detected and reported by countries worldwide. They report that the share of women has somewhat declined during the last years. At the same time, the share of detected girl victims has increased which could indicate that the traffickers are turning to the exploitation of younger victims.

Shirwadkar’s chapter “Exploring Hidden Spaces: Sexual Abuse of Girl Children in India” describes different aspects of sexual abuse of girls, focusing largely on an Indian context. In spite of progress and new opportunities of education, social and structural divides, traditional cultural practices and gender inequality are some factors that make girl children particularly vulnerable and easy victims for sexual abuse. The measures taken by the state to control this danger as well as the limitations to address the issue are discussed in the context of the changing social situation in India. The author analyses the different factors underlying the sexual abuse of children and stresses the need to strengthen the effort to improve education and awareness and make every possible effort to control the threat.

In “Sexual Abuse Within the Family: The Intergenerational Transmission of Victimhood and Offending”, *Bijleveld, Hill and Hendriks* address a related topic in a European context. Their chapter provides an overview of research carried out on 185 juvenile male sex offenders who received treatment in a residential centre in the Netherlands. In their study, the authors examined both the offenders’ and their parents’ history of sexual abuse. Specifically they tested hypotheses relating to the mechanisms linking offender and victim status in cases of sexual abuse within families, i.e. intra-familial abuse. Their findings offer support for the theory of social learning of sexual abuse. Juvenile sex offenders either from families where intra-familial abuse has occurred or who have a father with a history of sexual abuse against children occurring during their childhood have an increased risk of abusing children themselves. Also juvenile sex offenders who themselves have been the victim of intra-familial abuse, or who have a sibling that has suffered intra-familial abuse, have an increased risk of committing such an offence themselves.

In his chapter “‘Violence Against Children Sells Very Well’. Reporting Crime in the Media and Attitudes to Punishment”, *Hestermann* critically evaluates the role of the media in crime reporting. In order to reach a wide audience, the media stir up emotions, especially sympathy with the victim and fear of violence. Whilst children generate a lot of attention as victims of violence, whilst older people are ignored. The more dramatic a crime, the more closely associated it is with sexual violence, the greater the chance of its being presented in detail. The media contrasts a dark image of the perpetrator (“real scum”) with a bright iconic image of an idealised victim, preferably childlike and female. Against the background of international findings from Brazil, Colombia, India, Spain and USA, the author finds this dichotomy corroborated by the results of his research in Germany. The contrast between the villain and the innocent victim facilitates the calls for tough sentencing. In effect, politicians come under pressure to introduce stiffer penalties—not as a reaction to a real increase in criminality but as a reaction to assumptions about criminality fed by the media.

Part IV “The Role of Crime Prevention: Punishment–Imprisonment–Alternative Sanctions” opens with a chapter by *Hermann and Dölling*, “General Prevention: Does It Work?” To answer this question the authors present the results of a meta-analysis of 700 international empirical studies on negative general prevention with more than 7800 effect estimates. The questions asked were two in particular: whether deterrent effects are dependent on the age of the target group and whether they also depend on the type of offence. The results vary, depending on the econometric or criminological approach taken to measure those effects. If an economic theory of behaviour is used, the deterrence hypothesis is refuted less often than with a recourse to criminological-sociological theories. The deterrent effects are also confirmed relatively rarely for young people, and they vary depending on the offence. In the light of their very comprehensive research, the authors conclude that “A high discovery probability and consistent prosecution of crimes are more important than severe punishment”. This conclusion is shared by the UN penal policy recommendations.

Zapatero’s chapter deals with “Actors, Factors and Processes on the Road to the Abolition of the Death Penalty”. He addresses the degree of compliance with two UN initiatives: the 2000–2015 Millennium Development Goals (MDGs) and the 2007 General Assembly resolution calling for a universal moratorium on the application of the death penalty. The author sees both UN initiatives as the product of political and academic work of people who have a leading role in the life of the organisation as diplomats, staff members, experts and members of non-governmental organisations that construct a cultural and political heritage of humanity. The author vigorously supports the objective of the eventual abolition of death penalty, stipulated in Art. 6 para. 6 of the International Covenant on Civil and Political Rights. Through *Zapatero*’s contribution we learn that in genuinely inclusive societies, someone’s exclusion by the death penalty is not an option. His text supports the further expansion and implementation of the right to life.

Huber in her chapter “Women Prisoners: Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules”, asks various questions. For instance, do prosecutors and judges deal more leniently with female offenders? Should prison conditions, treatment in detention and rehabilitation programmes be equal for all prisoners, and aren’t they in correctional facilities nowadays anyway? Her answers outline aspects of discrimination faced by female suspects, defendants and prisoners in criminal justice systems, their number, profile and characteristics, and the offences they are typically charged with or convicted for. The chapter covers key conditions in detention as well as programmes in place with regard to rehabilitation and reintegration. In doing so, it draws on data, country examples and findings from a number of research studies. The findings show that there are usually fewer educational and training opportunities for women and those that are available are less varied and of poorer quality than those offered to male detainees. She concludes that women undeniably face discrimination in the criminal justice system, mirroring discrimination in society as a whole.

Beichner and Hagemann write about “Incarcerated Women: Their Situation, Their Needs and Measures for Sustainable Reintegration”. Their chapter centres on

incarcerated women offenders worldwide, their experiences, specific problems and needs, as well as correctional programmes intended to help them reintegrate back into society. It provides a theoretical understanding of the general marginalisation of women in almost every modern society and an overview of theories that have been developed to explain why women commit offences. Next, the authors provide statistical information on the prevalence of women prisoners in various parts of the world and the ways in which policy changes in the war on drugs and mandatory sentencing have impacted women's incarceration rates. The chapter then explores the gender-specific differences in women's pathways to prison and their distinct problems and needs, including the detrimental effects of mothers' incarceration on children. Based on experiences of several countries, the authors conclude with suggestions for promising approaches that involve sustainable reintegration.

Gelsthorpe and Durnescu discuss "Probation Supervision for Women and Young Offenders". The authors note that ever since the question of probation has entered the international arena through the Eighth International Penitentiary Congress in Washington, DC (1910), the topic of probation supervision for women and young offenders can be located in a number of theoretical and practice contexts. The focus in this chapter is on the risk/need/responsivity model (RNR): the intensity of the intervention should match the level of risk; interventions should target so-called criminogenic needs such as antisocial attitudes, antisocial cognition, antisocial associates, substance abuse, etc. and, finally, the programme delivery has to be in a style and mode that is consistent with the learning and the ability of the offender. The authors recall in this context the United Nations Rules on the Treatment of Women Offenders and Prisoners and conclude that there is emerging evidence that provision for women offenders in the community should be even more gender-oriented, i.e. on women only.

In her chapter "Release Management for Female and Juvenile Prisoners. How Important Is Release Management in Prison for Crime Prevention?" *Pruin*, in looking for answer to this question, first takes a closer look at the recommendations and results from the debate on prisoner "resettlement" that pertain to pre-release preparation, how these recommendations have been put into practice, and whether we can identify good or promising practices in the literature. Among the most important legal instruments the author lists the United Nations Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules") and the Convention on the Rights of the Child. Her findings suggest that the use of open institutions and of strategies that allow women and juveniles to leave the prison temporarily has not yet reached satisfactory levels. Also the provision of gender-specific education, vocational training and work opportunities is greatly lacking in Europe. The author concludes that research does not paint a particularly satisfying picture of release management for women and juveniles, but that there are a number of promising approaches worth monitoring.

Allen analyses "The Impact of Sanctions on Child and Female Offenders". The author notes that meeting basic practical needs in prisons remains crucial. Research on young offenders has shown that supervisors in whatever setting are effective if they are clear about their role show positive social values and behaviour themselves

and are prepared to challenge the young persons consistently and fairly about their delinquency. Effectiveness is also enhanced if offenders are helped with problems, which they themselves identify, particularly if these are related to their offending. Tackling substance misuse, lack of employment and damaging relationships with family and peers may be particularly important. Similar factors are likely to be significant for women too. The inappropriateness of custodial sentences for juveniles and women is increasingly recognised, but developing the legal framework, policy and practice, which can reduce and ultimately eliminate its use, has proved difficult in a social climate which places a greater value on punishment than is justified by evidence.

A team of NGOs, *Robertson, Christmann, Sharratt, Manby, Ayre, Berman, Foca, Asiminei, Philbrick, Koivumaa and Garvriluta* write about “Children of Prisoners: Their Situation and Role in Long-Term Crime Prevention”. They review an innovative EU-funded project that addresses the distress caused by a parent’s imprisonment and the reaction of others to it (especially if it is stigmatising—“your dad’s a criminal”). Such responses can result in the children becoming isolated, angry and/or scared, and in some cases developing physical or mental health problems. Studies suggest that whilst parental imprisonment can increase a child’s likelihood to offend, positive responses to the situation can aid the children’s well-being, attitudes and attainment. Drawing on findings from the project, the chapter explores the factors that help a child to cope with parental imprisonment and the actions that different stakeholders can take to strengthen such factors. It identifies some of the mental health impacts at different stages of parental imprisonment, the roles played by non-imprisoned parents/carers and by schools, and suggests options for further clarifying the factors that help and hinder children of prisoners in the short and long term.

Wemmers and Cyr discuss “Gender and Victims’ Expectations Regarding Their Role in Criminal Justice System: Towards Victim-Centred Prosecutorial Policies”. These policies include therapeutic jurisprudence—an interdisciplinary approach to law that to study the extent to which legal rules, procedures or practice promote the psychological well-being of the people it affects. Law is a tool and people who engage the criminal justice system do so for a reason. Against a historical background depicting the various ways in which victims are involved in pursuing justice, the authors examine the extent to which current legal procedures meet victims’ expectations. Following a discussion of recent international policy developments regarding victims of crime and victims of violence against women in particular, the authors consider how victims’ relationship with the offender affects their expectations, including the awareness of possible future victimisation.

Kury discusses in his chapter “Mediation, Restorative Justice and the Social Integration of Offenders: The Effects of Alternative Sanctions on Punishment” the background and development of alternatives to “classical” criminal sanctions. Whereas in traditional societies procedures like victim-offender-reconciliation were common, in modern societies criminal justice, and with it the punishment of the offender, has been taken over by the State. Compensation that formerly was given to the victim is now collected by the state in the form of fines, and the victim

is left on the sidelines. Criminological research during the last decades has increasingly shown that victims are more interested in restitution than in harsh punishment of the offenders. This has revived in many countries a discussion about alternatives to punishment. Empirical results show that mediation is not only more successful in re-establishing social peace but also much cheaper than the classical handling of crime.

Dandurand's chapter "Alternative Approaches to Preventing Recidivism: Restorative Justice and the Social Reintegration of Offenders" reviews the original promises of the restorative justice approach as an alternative to the conventional criminal justice response to juvenile crime and seeks to recast mediation and restorative justice programmes as a form of reconciliation between the juvenile offender and the community and a frequent prerequisite to the offender's successful social reintegration. The author emphasises that very few restorative justice elements have been integrated systematically into community-based sentences or into post-release programmes and the capacity of existing restorative justice programmes to achieve social reintegration objectives tends to be quite limited. Some good practices have been identified, but they need to be both better understood and more systematically evaluated. Proponents of restorative justice typically deplore the lack of progress in implementing restorative justice within the juvenile justice system and will continue to do so unless new ways are found to develop restorative justice's full potential in contributing to the social reintegration of offenders.

Hamilton and Yarrow write about "Preventing and Addressing Youth Offending: Restorative Justice and Family Focused Programming". They remind us that "the primary purpose of restorative justice is just that – to restore justice", i.e. the purpose stated by the United Nations Special Representative of the Secretary-General on Violence Against Children, who also provided the Foreword to this volume. This purpose is already reflected in the 1989 Convention on the Rights of the Child, which stipulates that children who come into conflict with the law should be treated in a manner which promotes their own dignity and worth as well as their understanding of the rights and freedoms of others. Restorative justice has, however, limitations. The authors point out that restorative mechanisms often prioritise healing and reparation for victims over addressing the root causes of child offending. They conclude that restorative justice mechanisms may be most valuable where they complement, rather than replace the work done by a wide range of social agencies tackling the risk factors associated with child offending.

Ehret, Szego and Dhondt add to the restorative justice paradigm their own expertise in "Peacemaking Circles, Their Restorative and Crime Prevention Capacities for Women and Children: Insights from a European Pilot Study". Peacemaking circles are a restorative justice approach to conflict resolution that is inclusive and non-hierarchical with long historical roots in indigenous cultures going back to their so-called talking circles. Particularly, the circle traditions of First Nation people of Canada have been further developed for dealing with crime and have spread across the border to the Northern USA, Hawaii and as far as Australia. These traditions aim to repair the harm done by crime through focusing on the effects

crime has on relationships between victims, offenders, their families and their communities. The authors emphasise that it is this primary focus that requires a substantially different response to crime by moving away from the adversarial “win or lose” logic of the traditional distributive justice system towards a “win-win” approach aimed at restoring societal peace through the means of dialogue, conflict resolution, amends or redress.

In **Part V “Crime Prevention: Proactive Strategies”** (ten chapters), *Walsh* discusses “Justice, Faith and Interfaith: The Relevance of Faith and Interfaith Relations to Crime Prevention”. The chapter opens with an estimate: of the seven billion people living on this earth, the majority identify themselves as belonging to a particular religious tradition, such as Christianity, Judaism, Islam, Hinduism, Buddhism, indigenous traditions, and others. With a global resurgence of religion, along with an increase in religious plurality in many societies, the author sees the growing awareness of religion as a significant factor—sometimes positive, sometimes negative—in the lives of individuals, families, societies and nations. Consequently, we also need an increased awareness of religion as it functions in society and its potential impact on justice. In the latter context, this chapter explores the relevance of religion in particular for crime prevention.

Corrado, Peters, Hodgkinson and Mathesius comment on “Crime Reduction, Reduction of Imprisonment and Community Crime Prevention Programs: Risk Factors and Programs Implemented to Reduce Them”. The chapter reviews the general research on this subject focussing on three topics: (1) the typical victim profile, (2) factors associated with serious/violent young offending and victimisation and their distinct developmental pathways and (3) key examples of current intervention programmes that have successfully reduced serious/violent youth offending and victimisation. The authors conclude that treatment interventions will accelerate with breakthroughs in brain imaging technology, which will identify more completely the neurological bases for serious offending. Therapeutic interventions will include pharmacological approaches to target aggression/violence. More controversial therapies may regard stem cell breakthroughs concerning neurologically based disorders related to serious violence.

Lee’s chapter “Evaluating Children and Adolescents in Contact with the Justice System” focusses on developmentally sensitive, evidence-based instruments and approaches for evaluating child and adolescent offenders and victims. The author first addresses the assessment of adolescent offenders, with the main emphasis on tools designed to measure risks and needs. Secondly, she looks at the evaluation of child victims, with a focus on investigative interviewing. Once developmentally appropriate, evidence-based instruments and approaches have been established; an important next step is to illustrate whether their use contributes to changes in policy and practice. This is arguably the ideal standard for assessing whether science translates meaningfully into practice to encourage the transformation of the juvenile justice system into a system that applies a developmental framework to all decisions.

Alex and Feltes analyse “The Problem of Risk Assessment: Can Better Crime Prognosis Reduce Recidivism?” They note that every society has to face the fact

that there is a very small group of people who do not respect elementary rules of human behaviour and who repeatedly commit very serious violent crimes. But how do we know who belongs to this group and who does not? In order to find answer to this question, the authors review recidivism studies and conclude that the task of assessing the probability of serious re-offending is very difficult, and the risk of erring on the side of caution (false negatives) real. Given the fact that it will hardly ever be possible to predict human behaviour with complete certainty, Alex and Feltes recommend that other means than unlimited imprisonment of offenders labelled as very dangerous be used to manage the problem of crime prevention in a way that considers both human rights' aspects as well as public needs.

Redo writes about "Anti-corruption Education as a Form of Early Prevention of Conflict with the Law for Women and Children: Making the United Nations Law Work 2016–2030". He does so from three perspectives (Western, Eastern and UN) by reviewing some recent measures reported by the State Parties to the 2003 United Nations Convention against Corruption. The author argues that the UN anti-corruption education for women and children is a promising path to follow. In his view, against the intercultural background of anti-corruption challenges, two educational issues may decide about the character and effectiveness of an anti-corruption strategy: the prevalence of patriarchal or contractual features in any legal culture and its accommodation of the sustainable development ideology provided that both engage personal responsibility. The implementation of the UN goal of "peaceful and inclusive societies" in which countering bribery and corruption is included will depend on how well in contractual and sustainable development terms the present and succeeding generation will muster anti-corruption ethical education for women and children.

Beier's chapter "Proactive Strategies to Prevent Child Sexual Abuse and the Use of Child Abusive Images: Experiences from the German Dunkelfeld Project" describes proactive strategies used in Germany to protect children from sexual exploitation through online offences and from direct sexual abuse. These strategies include research on individuals at risk to commit first or persistent sexual offences against children, at the same time offering preventive assessment and treatment. As many offenders in this category remain undetected by legal authorities in the "*Dunkelfeld*" (literally "dark field"), this program focusses on those who admit a longstanding sexual interest in prepubescent and/or pubescent children, self-motivated by the distress experienced due to their sexual preference. The author shows that these people are reachable as long as they can rely on the professional pledge of confidentiality. Public Health Services have then a real chance of encouraging the concerned persons to seek professional help before any kind of sexual offences against children are committed.

Wöflner's chapter deals with "Women and Children as Victims of Sex Offences: Crime Prevention by Treating the Offenders?" The author provides an overview of the number of sex crimes in comparison to other crimes and discusses how valid these data are given the problem of considerable underreporting. As a measure of victim protection, one of the most important aspects of offender treatment is crime prevention. Given the tremendous traumatising effects sexual victimisation can

have on victims, it is undoubtedly justified to do as much as possible to prevent sexual crimes and to respond to sexual violence appropriately. The author discusses in this context treatment programmes for sex offenders and their impact on recidivism. Even if as yet no unambiguous conclusion on the effectiveness of such treatment programmes can be drawn, they should not be abandoned in favour of more punitive solutions. Long-term imprisonment or lifelong detention can only present an alternative for the most dangerous offenders. For less serious offences, a treatment approach may be a better way to protect the victim and at the same time open for the offender a way back into society.

Dobovšek and Slak discuss “Women and Children at the Centre of Preventing Organized Crime”. In their chapter, the authors advance the thesis that the emancipation of women is partly responsible for the greater involvement of women in crime (see also *Gao and Liu* in volume 1 in support of this view and for a different assessment *Beichner and Hagemann* in volume 2). But they also acknowledge that in egalitarian societies women are active in business and politics, which opens up new possibilities for their involvement in organised white-collar crime. The authors see education and information as the most important factor for prevention. Yet in the end, it all depends on the integrity of policymakers. The authors recommend that governments should seriously consider imposing that policymakers include criminologists, fraud experts and other social scientists on their staff.

Howell discusses “Systemic Vulnerabilities on the Internet and the Exploitation of Women and Girls: Challenges and Prospects for Global Regulation”. The Internet, as a global phenomenon, has increasingly become host to pervasive forms of cybercrime, among them sexual abuse. Women and girls are, often as a result of underlying socio-economic and political disparities, more vulnerable to many of these forms of cybercrime. This is especially true in lower-income countries. The Internet’s “new frontier” is the developing world, where its growth has been extraordinary. In this context, the author points out the “uncomfortable truth” that cybercrimes are also committed by women and even children. Using examples drawn from Africa, the author argues that global regulation is both urgent and needed, but that the development of such a framework will continue to be fraught with difficulties and needs to be contextually and strategically specific to the areas and places in which it is applied. As such, these responses, whether domestic or international, will need to draw on the intellectual capital and resources of multiple state and non-state actors, ranging from local police forces to transnational regulatory agencies, including the UN.

Quirchmayr, Buchegger and Gerö write about a related topic: “Protecting Children and Women Against Online Dangers”. The authors argue for increasing domestic and international efforts to protect children from online dangers in a rapidly changing technology-driven world. Whilst criminals usually have to make considerable efforts in the real world, the Internet is a prime platform for such activity at comparatively low costs. After briefly describing the current situation and identifying the resulting challenges for education (especially recommending a holistic approach, i.e. involving families, children, schools, crime prevention specialists, and suitable educational material), the authors present a few case studies,

introduce one of the leading European-based computer networks dedicated to this task and look at efforts aimed at online protection of female users. The chapter concludes with arguments for a truly international solution, in which the involvement of many partners, local/domestic and interstate (e.g. Council of Europe and the UN), is essential. At the same time, it is essential to empower children and young people to use the Internet safely.

In **Part VI “Final Discussion”** (seven chapters) *Zhang* writes from a Chinese perspective about “The United Nations, Equal and Inclusive Society and Crime Prevention: Chinese Philosophical Contributions to the Idea of Sustainable Development for Women and Children, and the Current Practice in China”. Her chapter takes the reader into another legal culture (see also *Reichel and Albanese* below) and points out the great difference between Chinese and Western legal thought in terms of concepts and methods for dealing with the question of crime prevention for women and children. In Western criminology very little is known in this regard. Recalling Lawrence Sherman’s saying that for the practitioners of crime prevention it should not only be an art, but also a science, her article highlights the relevant connotations of sustainable development in traditional Chinese philosophy. With a few strokes the author paints the richness of that philosophy in which Confucian thought already anticipated some of the United Nation’s ideas on inclusive and equitable education and on gender equality.

Platzer contributes “Some Insights on the Rights to a Safe City of Women and Girls”. He shows the need for such rights by giving the example of gang rapes in India, the murder of “streetwalkers” in the Americas or the kidnapping, trafficking and enslavement of girls in Africa and the Middle East. He then puts those examples in the context of a draft UN sustainable development Goal 11.7 that reads: “by 2030, provide universal access to safe, inclusive and accessible, green and public spaces, particularly for women and children, older persons and persons with disabilities” (A/68/970, p. 18/24). Yet so far, the rights of women and girls to safe cities have been painfully slow to be recognised. By bringing the policies of city officials and the urban planning concerns of adolescent girls together, this can create a real opportunity to create sustainable economic and social change that will benefit all. This means the provision of adequate, safe and affordable housing and infrastructure, but more than that, access to good education, health, transport, human development and social and recreational services. But most importantly, it should involve making cities safe.

Shaw’s chapter “Women as Actors in Community Safety: Taking Action Worldwide” approaches the topic of safety from a different angle. The author notes that it has been customary to refer to women’s involvement in the criminal justice system and in the field of crime prevention as either victims or offenders, or sometimes as professionals, but that it is much less common to think of the role, which women and girls themselves play in actively promoting safer cities or preventing the violence and crime, which affects them because of their gender. Yet an increasing number of women do assume this role, as demonstrated by the author through concrete examples of such “hands-on” women’s participatory approaches in crime prevention, and how they are helping to increase the role of women and girls in

decision-making, especially at the local level. The importance of this movement is helping to change policies, attitudes and behaviours towards women and girls in both public and private spaces. The final section of the chapter reflects on the ways in which the Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (12–19 April 2015) aims to strengthen and support this work.

Dünkel discusses “Juvenile Justice and Human Rights: European Perspectives”. He underlines that international human rights standards and in particular the Convention on the Rights of the Child (CRC) have had a major impact on juvenile justice reforms in Europe during the last 25 years. The general orientation towards the ideal of education has further been developed in Europe. The development of human rights standards has played a major role in this context. The UN 1985 Beijing-Rules on juvenile justice administration and the CRC have been landmarks in the juvenile justice human rights movement. This chapter evaluates youth justice policies and practice in Europe from a comparative perspective. The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts. The chapter explains why continental European countries generally have succeeded in resisting “penal populism” in youth crime.

Mitrofanenko writes about “Intergenerational Practice: An Approach to Implementing Sustainable Development and Environmental Justice”. She observes that “sustainable development” is a concept hardly pursued in criminal justice, even less so when it comes to the respective role of women and children. The concept is also only nascent in crime prevention, but the elaboration of the post-2015 UN sustainable development agenda may fundamentally change this picture. In line with this agenda, the chapter introduces the idea of intergenerational practice (IP) as a way to operationalise sustainable development and environmental justice (EJ) principles on the local level. Mitrofanenko emphasises that younger people living today are the link between the current and the future society. Yet different generations living today do not always enjoy equitable access to resources and opportunities to engage in the development process. IP has been shown to equalise that access, enhance community cohesion, improve understanding among the younger and older population and diminish the fear of crime in communities.

Breczko and Oliwniak write from a Polish perspective about “Biopolitics, Ethics and the Culture of Lawfulness. Implications for the Next Generation?” Europe is ageing faster than any other continent. The regional demographic crisis and the replacement of generations are currently among the problems most frequently discussed on this continent. This chapter describes the process of the formation of pastoral biopower (Foucault’s concept of biopolitics) within the framework of the European culture of lawfulness. It shows how the schools of pronatalism, antinatalism and environmental ethics have shaped the policies of European countries with regard to procreation, as well as people’s behaviours in that area. It also describes how demographic policy has evolved under the influence of progress in biotechnology. There is a failure of replacement of generations—successive generations are found to be less populous than the preceding ones; hence the interregionally emanating culture of lawfulness will not be sustained in future.

The authors bring to this volume important philosophical considerations broadening the concept of succeeding generations by including in it humankind's natural environment.

Finally, *Reichel and Albanese* write about "Comparing and Delivering Juvenile Justice Across the World". Their chapter offers a brief historical review of the question of recognition of childhood as an innocent life period followed by a discussion of the nature of formal procedures for handling juvenile offenders and specific governmental and multilateral responses to juvenile delinquency. The chapter considers the variation in attitudes and approaches used over time and place when governments respond to misbehaving young people. The similarities and differences among these approaches are evaluated to assess their contribution to fairness, justice, crime control and delinquency prevention. The authors conclude that the promise of justice for juveniles has not yet been met. Despite international consensus codified in important and universally acclaimed international agreements, the implementation of indicators and procedures to ensure justice for juveniles has lagged, largely because of a shortage of resources. The authors stress the importance to keep the attention focussed on the problem to avoid belated reactions to grave incidents, violence and crises in juvenile justice.

The work closes with the editors following up on the closing statement by H.E. Ambassador *Martin Sajdik*, 70th President of the United Nations Economic and Social Council tasked with the elaboration of the 2016–2030 sustainable development goals for the world. We complement his statement with our Post Scriptum that stresses the need for education in order to arrive at a culture of lawfulness that mirror the United Nations crime prevention and criminal justice values emanating from the United Nations Charter.

Given the size of this collective work, it is published in two separate volumes, each containing the preface, introduction, conclusions and the full index of the work. The editors would like to thank first and foremost all the authors for bearing with us through the long editorial process and attending to our many queries on points of detail. Without their fruitful and interesting cooperation, it would have been impossible to edit this collective work on a very important topic. We also thank the publisher, Springer, and especially Ms. Seyfried for their excellent advice and prompt and efficient publication.

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Swedish National Council for Crime Prevention Research Report 2011, Stockholm: Brå., 2011; *Homicide in Finland and Sweden*. In: *Crime and Justice in Scandinavia* (eds. Michael Tonry & Tapio Lappi-Seppälä), Volume 40. Chicago: The University of Chicago Press, 2011; *Social Correlates of Intimate Partner Homicide in Finland: Distinct or Shared with Other Homicide Types?*. *Homicide Studies*, 2012; *The Declining Number of Child Homicides in Finland, 1960–2009*. *Homicide Studies*, 2012. Author of *Homicide Drop in Finland, 1996–2012*. *Journal of Scandinavian Studies in Crime Prevention and Criminology*, 2014.

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Society, Favorita Papers. Diplomatische Akademie, 2013; *Vienna Vision: Peaceful, Inclusive, Prosperous, and Sustainable World*, Academic Council on the United Nations System, 2015. *Femicide: A Global Issue That Demands Action*, Volumes 1–3, Academic Council on the United Nations System, 2013, 2014, 2015.

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Abbreviations

ABA	American Bar Association
ACUNS	Academic Council on the United Nations System
ADHD	Attention deficit hyperactivity disorder
APD	Antisocial Personality Disorder
BPD	Borderline Personality Disorder
BWS	Battered Woman Syndrome
CAI	Child abusive images
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAPTA	The Child Abuse Prevention and Treatment Act (US)
CBT	Cognitive-behavioural therapy
CCPC	Chicago Child-Parent Center
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIEL	Center for International Environmental Law
CIP	Center for Inergenerational Practice
CIT	Couter Interrogation Tactics
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
ComEDAW	Committee on the Elimination of All Forms of Discrimination against Women
COPING	Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health
CoSA	Circles of Support and Accountability
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSA	Child Sexual Abuse

CTA	Criminal Tribes Act
CWS	(US) Child welfare system
DFG	Deutsche Forschungsgemeinschaft (German Research Foundation)
DNA	Deoxyribonucleic acid
DNT	De-notified tribes
DRF	Dynamic risk factors
DSM	Diagnostic and Statistical Manual of Mental Disorders
EC	European Commission
EMIL	European Map of Intergenerational Learning
EPR	European Prison Rules
ECHR	European Court of Human Rights
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENGW	European Network on Gender and Violence
ESCCJ	European Sourcebook of Crime and Criminal Justice
FBI	Federal Bureau of Investigation
FGC	Family Group Conference
FGM	Female genital mutilation
FRA	Agency for Fundamental Rights (EU)
GBAV	Global Burden of Armed Violence
GCPEA	Global Coalition to Protect Education from Attack
GTD	Global Terrorism Data Base
HOA	Habitual Offenders Act
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICC	Iranian Civil Code
ICCPR	International covenant on Civil and Political Rights
ICD	International Classification of Mental and Behavioural Disorders
ICD	International Criminal Law
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIP	The International Consortium for Intergenerational Programmes
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICPS	International Centre for Prison Studies
ICRPD	Convention on the Rights of Persons with Disabilities
ICT	Information and Communication Technology
ICVS	International Crime Victims Surveys
IHDP	Infant Health and Development Program (US)
IHL	International Humanitarian Law
IHTL	International Human Rights Law
IL	Intergenerational Learning

ILO	International Labour Organisation
IOM	International Organisation for Migration
IP	Intergenerational Practice
IPJJ	Interagency Panel on Juvenile Justice
IPV	Intimate Partner Violence
ISRD2/3	International Self Report Delinquency Study
JGG	Jugendgerichtsgesetz (Youth Court Law)
MDG	Millennium Development Goals
MST	Multi-systemic therapy
MTCT	Mother to child transmission of HIV/AIDS
NAFTA	North American Free Trade Agreement
NGO	Nongovernmental Organisation
NIC	National Institute of Correction (US)
NICHD	National Institute of Child Health and Human Development (US)
NIDA	National Institute on Drug Abuse (US)
NSCAW (US)	National Survey of Child and Adolescent Well-Being (US)
OECD	Organization for the Economic Cooperation and Development
OBC	Other Backward Classes
OSRSG	United Nations Office of the Special Representative of the Secretary-General on Violence against Children
PAHO	Pan American Health Organization
PFC	Prefrontal Cortex
PPD	Prevention Project Dunkelfeld
PTE	Potentially Traumatic Events
PTSD	Post-traumatic stress disorder
PV	Partner violence
RAD	Reactive attachment disorders
RJ	Restorative justice
RNR	Risk/Need/Responsivity Model
SC	Schedule of Castes
SCR	(UN) Security Council Resolutions
SD	Sustainable Development
SDGs	Sustainable Development Goals
SDQ	Strength and Difficulties Questionnaire
SES	Self Esteem Scale
SPT	Subcommittee on Prevention of Torture
SRH	Sexual and Reproductive Health
ST	Schedules of Tribes
STAC	Strategies Towards Active Citizenship
STD	Sexually Transmitted Disease
STI	Sexually transmitted infections
TFC	Treatment foster Care
TOA	Täter-Opfer-Ausgleich

ToM	Theory of Mind
TWP	Together Women Programme
UN	United Nations
UNEA	United Nations Environmental Assembly
UNECE	United Nations Economic Commission for Europe
UNDAW	United Nations Division for the Advancement of Women
UNICEF	United Nations Children's Fund
UNICTI	Interregional Crime and Justice Research Institute (UNICRI)
UNiTE	UN Secretary-General's Campaign to end violence against women
UNODC	United Nations Office on Drugs and Crime
UNRISD	United Nations Research Institute for Social Development
US EPA	United States Environmental Protection Agency
VOM	Victim-offender mediation
WAVE	Women Against Violence Europe
WHO	World Health Organization
WCED	United Nations World Commission on Environment and Development
YLS/CMI	Youth Level of Service/Case Management Inventory

Part IV
The Role of Crime Prevention:
Punishment–Imprisonment–Alternative
Sanctions

General Prevention: Does It Work?

Dieter Hermann and Dieter Dölling

Abstract A meta-analysis based on 700 international empirical studies on negative general prevention with 7822 effect estimates investigates whether deterrent effects are dependent on the age of the target group, and with which criminal offences deterrent effects exist. Differences in the study design and the consideration of theoretical principles are also included in the analysis. It is shown that the latter in particular has a significant impact on the study result: if an economic theory of behavior is used as a basis, the deterrence hypothesis is refuted less often than with a recourse to criminological-sociological theories. Another result is that deterrent effects are confirmed relatively rarely for young people, and that deterrent effects vary depending on the criminal offence. They are relatively low in the case of homicide, and are higher—and significant on average—in the case of property damages and theft of more expensive goods. The probability of punishment has a deterrent effect which may, however, hardly be expected of more severe penalties.

1 Introduction

The idea of controlling behavior through deterrent measures is found not just in law but also e.g. in military deterrence plans and educational concepts.¹ The concept of deterrence is anchored in the legal systems of many societies, and the establishment of international criminal courts is legitimized, among others, by the consideration that international criminal prosecutions serve to deter the commission of genocide, crimes against humanity, and war crimes.² The idea that criminal penalties can have a deterrent effect and contribute to reducing crime was developed as a theory particularly in Europe towards the end of the 18th and the beginning of the 19th century. It was assumed that the threat of sanctions and the sanctions themselves

¹ Catudal (1985); Fuhrer (2009); Hinz and Becker (2012); Ogilvie-White (2011).

² Wippmann (1999), p. 473.

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prevent potential perpetrators from committing criminal offences. Similar considerations were expressed by Cesare Beccaria and Jeremy Bentham, among others.³ Both assume that societies are constituted on the basis of fictitious contracts between its citizens and by societal consensus, whereby utilitarian philosophy holds that the objective of all government measures is to achieve the highest possible level of happiness for all members of the community.⁴

It is true that punishment will do harm to the person it is inflicted on, which will have a negative effect on the general level of happiness. However, according to the theory of negative general prevention, the deterring effect of the threat of punishment and the punishment itself also prevent criminal offences, which has a positive effect on the level of happiness. Therefore punishment can be justified, according to the principle of “the greatest happiness of the greatest number”, precisely if it improves the societal level of happiness.⁵

Deterrence exists mainly through the knowledge that breaches of the law will be punished. The certainty of moderate punishment has a greater deterrent effect than the fear of more severe punishment, if there is sufficient hope that the punishment will not be applied⁶; it is important that the suffering associated with the punishment exceeds the benefit obtained from the offence.⁷ The legal scholar Johann Anselm Feuerbach also developed a general preventative deterrence theory and took a closer look at the psychological aspects of deterrence. According to his theory of psychological coercion, all humans search for pleasure and try to avoid unpleasantness. Thus illegal acts can be prevented if every person knows that the pleasure gained from breaking the law is followed by something more unpleasant. Therefore Feuerbach argues in favor of criminal law that is based on the deterrence principle and thus guarantees the protection of mutual freedom.⁸

More recently, Gary S. Becker and Isaac Ehrlich transferred the general preventative theories of deterrence to the operationalizable level of mathematical/economic and econometric models.⁹ Becker in particular addresses the concept of “expected punishment”, whereby “expected” must be understood in terms of the mathematical expected value. Put in simplified terms, the expected punishment will depend on the severity of the punishment and the probability that the perpetrator will be held responsible for his action in the case of a criminal offence. In this sense, even less severe punishment can already have a deterrent effect in principle, if it is assumed that each offence will be discovered. Therefore the consideration that deterrence depends not solely on the severity of the punishment but also on the probability that the punishment will be inflicted is of central importance both to the

³ Beccaria (1766); Bentham (1823).

⁴ Beccaria (1766), p. 167; Müller (1996), p. 18.

⁵ Baumann (1981), p. 19; Burns (2005), p. 46.

⁶ Beccaria (1766).

⁷ Baumann (1981); Bentham (1823).

⁸ Feuerbach (1799), pp. 38–45.

⁹ Becker (1968); Ehrlich (1973); Ehrlich (1975); Ehrlich (1977).

scientific understanding of the deterrence hypothesis as well as to the practical crime-fighting policies.

Prevailing German criminal law is based on the theory of negative general prevention in addition to other penal theories.¹⁰ Court decisions hold that the severity of the punishment may be increased under certain conditions in order to deter the general public.¹¹ The German Federal Constitutional Court has acknowledged negative general prevention as a purpose of criminal law.¹²

The purpose of negative general prevention in terms of criminal law is discussed mainly with regard to the criminal law that applies to adults. On the other hand, it is generally agreed that criminal law relating to young offenders is mainly tasked with a special preventative mission, which it carries out mainly on the basis of educational initiatives for young offenders.¹³ This is underlined by sect. 2 subsect. 1 of the German JGG (Youth Court Act), which was added to the JGG by the Second JGG Amendment law of 13 December 2007.¹⁴ According to sect. 2 subsect. 1 sentence 1 JGG, the application of criminal law relating to young offenders is mainly designed to counteract repeat offences by juveniles or young adults. To attain this objective, sect. 2 subsect. 1 sentence 2 JGG sets out that legal consequences and—taking into account the parent's right to educate the child—also legal proceedings must be primarily aligned to the idea of education.

Penal theories of negative general prevention are normative theories but they also feature an empirical core; they postulate that deterrence prevents criminal activities. Many empirical studies have been conducted with regard to this hypothesis, although they have not been able to answer the question with absolute certainty. This chapter centers on the question whether the current threats of sanctions contained in legal norms pertaining to criminal law have an effect on criminal behavior and levels of crime, with a focus on comparing the deterrent effects for younger and older persons. In addition, the chapter aims to study whether deterrent effects vary depending on the type of criminal offence, whereby it focuses on criminal acts that are perpetrated by juveniles and young adults relatively frequently or rarely, hence criminal offences with significantly different rates of prevalence among younger and older individuals. In addition, criminal offences with a particular propensity to affect women as victims will also be taken into account.

According to data from German police crime statistics for the year 2012,¹⁵ the proportion of children (up to 13 years of age), juveniles (15–17 years) and young

¹⁰ Jescheck und Weigend (1996).

¹¹ Decisions by the Federal Court of Justice in criminal matters, Vol. 17, p. 321, 324; Vol. 20, pp. 264, 267; Vol. 28, pp. 318, 326.

¹² Decisions by the Federal Constitutional Court Vol. 21, pp. 391, 404; Vol. 39, pp. 1, 57; Vol. 45, pp. 187, 253.

¹³ Brunner und Dölling 2002: 40 and onward.

¹⁴ Federal Law Gazette (Bundesgesetzblatt) I, p. 2894.

¹⁵ Bundeskriminalamt (2013), p. 69; own calculations.

adults (18–20 years) in the number of suspects depends on the nature of the criminal offence. With regard to the breaches of legal norms included in the police crime statistics, this proportion is 23 % for all criminal offences. It is significantly higher in the case of robbery (45 %), property damages (42 %), theft under aggravating circumstances (36 %), dangerous and serious injury (34 %) and theft without aggravating circumstances (33 %). The proportion of young suspects is very low in the case of willful homicide (17 %), and fraud (17 %). The proportion of female victims also varies considerably. It is 40 % when all criminal offences are taken into account, drops to 32 % in the case of willful homicide, 34 % for robberies, extortionary robbery and robbery attacks on drivers, 37 % for injuries, 49 % for offences against personal freedom, and 93 % for offences against sexual self-determination with the use of force or exploitation of a dependency relationship.¹⁶ Another question concerns the mechanisms of deterrence. Feuerbach points out that already the threat of punishment has a deterrent effect. Becker and Ehrlich postulate that all costs of offences are action-relevant, in particular the expected severity of sanctions and the probability of sanctions. Others expect that especially informal sanctions, e.g. stigmatization by friends, are deterrent.

The questions regarding offence- and age-specific deterrent effects and the mechanisms of deterrence are to be answered with the help of a meta-analysis. The meta-analysis is a statistical study about studies. It concerns the quantitative and systematic study of individual empirical studies with the objective of obtaining the best reliable assessment of current research results for a specific hypothesis. The meta-analysis also aims to ascertain the reasons for the different results reached by the various studies, which may be found in particular in the study design or the frame conditions of the studies, for example the societal situation at the time the study is conducted.¹⁷ To this end, suitable statistical techniques are used for the integration and analysis of individual research results. Meta-analyses generally do not have access to the raw data. Therefore statistical estimates such as correlations or significance are collected from the individual studies and are systematically analyzed. In this chapter, the primary purpose of the meta-analysis is to assess the effectiveness of deterrence in selected framework conditions.

2 Research Status: Meta-Analyses on Deterrence Studies

Numerous studies on the effectiveness of deterrence through criminal punishment are available; they differ not just in the study methods but also in the study results. The discrepancy in results is reflected in the work conducted by Eisele,¹⁸ who

¹⁶ Bundeskriminalamt (2013), p. 41.

¹⁷ See e.g. Farin (1994); Fricke and Treinis (1985); Hedges and Olkin (1985); Rosenthal (1991); Wolf (1986).

¹⁸ Eisele (1999).

considered 28 elaborated studies on negative general prevention as part of a qualitative meta-analysis. Of these, nine studies confirm the deterrence hypothesis, while nine studies refute it. Ten studies modify the original hypothesis and postulate, for example, the dependence of the deterrent effect on the frame conditions.

Nagin takes into account approximately 20 studies, whereby the analysis focuses on the listing of methodological-statistical problems of deterrence studies—including the validity deficits of crime statistics when estimating crime rates, and a lack of distinction between the various effects of imprisonment. In this context, according to Nagin imprisonment has a deterrent effect on the general public, but also promotes crime due to the involvement of prisoners in the prisons' subculture. If the two effects are not isolated, then the results must be incorrect and deterrent effects are underestimated. Therefore Nagin demands more elaborated studies as the available results can only be interpreted with extreme caution.¹⁹

Similarly, Petrosino's meta-analysis regarding the effects of deterrent measures on perpetrators did not lead to a clear confirmation of the deterrent hypothesis. As part of a meta-analysis, Petrosino considered 150 English-language studies that were published between 1950 and 1993, and which were based on randomized experiments. The objective of the studies was to study the effects of interventions on relapse behavior, whereby only 23 studies were related to deterrent measures. Thus Petrosino's work is a special preventative deterrence study; hence the results can only be transferred to general preventative issues with great reservations. The relapse-reducing effect of deterrent measures was less than that of rehabilitation programs; however, this relationship changed if the analysis took into account a weighting using the number of cases. Seen overall, the results do not point to any stable effects.²⁰

Cameron compared approximately 80 econometric studies on the deterrence hypothesis, with a focus on problems of theory, method and statistics. His analysis showed that studies that work with aggregate data had only limited success in confirming the effects of deterrence, while studies with prisoners and victims of crime indicate that deterrent measures do not affect crime at all, or even promote it.²¹

Several meta-analyses exist with regard to capital punishment. Based on a research overview of 74 studies, Chan and Oxley concluded that capital punishment does not have a deterrent effect. This view is confirmed when the number of studies is reduced to 61 studies that use elaborated statistical analytical methods.²² The meta-analyses conducted by Yang and Lester, on the other hand, leads to the opposite result.²³ This study is based on 95 publications.

¹⁹ Nagin (1978).

²⁰ Petrosino (1997).

²¹ Cameron (1988).

²² Chan and Oxley (2004).

²³ Yang and Lester (2008).

A meta-analysis by Hermann using 82 studies capital punishment leads to the result that in particular the institutional location of the researchers and the applied action theory have an effect on the research result. Thus studies that use the idea of homo oeconomicus as a basis confirm the deterrence theory much more frequently than other studies.²⁴

3 Study Method

The project for the meta-analysis of deterrence studies was conducted by a research group²⁵ and financially supported by the DFG (Deutsche Forschungsgemeinschaft—German Research Foundation). For the implementation of the meta-analysis, the relevant empirical studies were sought out in literature databases and literature lists of publications. All studies published up to August 2006 were taken into account. The study is based on 700 studies with 7822 effect estimates. The objective of the study was an exhaustive sample, i.e. all relevant studies were to be taken into account, and all published deterrent effects per study were to be included. However, economic deterrent studies are different from others with regard to the type of publication: in economic studies, the robustness of the calculated effect is often tested by varying the underlying model. This means that economic studies frequently result in a large number of reported effect estimates, although they differ only minimally with regard to their framework conditions. For this reason, only one effect estimate per criminal offence was selected in the case of economic studies, on the basis of the random principle. In the case of criminological and social science studies, on the other hand, all relevant estimates were included. To prevent possible distortions due to the different numbers of effect estimates per study, the empirical analyses are weighted in such a way that each study—regardless of the number of its effect estimates—is included in the analysis at the same weight. A differentiated description of the study design can be found at Dölling, Entorf, Hermann and Rupp.²⁶

Effect estimates in the various studies are expressed in the form of numerous statistical values, such as correlation coefficients, partial regression coefficients, percentage rate differences, significance levels, F-values and t-values. These statistical variables are usually scaled differently and can thus only be compared with limitations. Thus all effect estimates were converted into t-values for the purpose of establishing comparable statistical values. The use of t-values is a common method

²⁴ Hermann (2012). The study originated as part of the study introduced herein.

²⁵ Prof. Dr. Dieter Dölling, Prof. Dr. Dieter Hermann and Dr. Andreas Woll (Universität Heidelberg, Institute of Criminology) and Prof. Dr. Horst Entorf and Dr. Thomas Rupp (Universität Frankfurt am Main, Department of Economics).

²⁶ Dölling et al. (2011); see also Rupp (2008).

in meta-analyses.²⁷ The t-value is a statistical value that is usually used in inference-statistical analyses for calculating error probabilities. Many association coefficients that may be viewed as benchmarks of the reliableness of drawing conclusions for the entire population from a random sample can be converted into t-values, if the number of degrees of freedom is known.

When converting statistics into t-values, they are coded so that negative values represent a confirmation of the deterrence hypothesis, and positive values refute the same. Moreover, in studies with a small number of cases the t-values were extrapolated as if they were from a larger study ($N > 200$); the effect of this correction ensures that the calculated t-value is independent of the number of cases. There are 7057 t-values out of a total of 7822 measurement values as a result of direct inclusion and conversion. Weighting reduces the number of effect estimates in the analyses to 6530 t-values and 663 studies.

For the analyses at hand, a characteristic that merely makes a distinction whether an effect estimate is consistent with the theory and significant (or not) is used as an indicator of the effectiveness of deterrence. The percentage proportion of effect estimates that are consistent with the theory and significant can be interpreted as a benchmark for the reliableness of the ascertainment of a correlation. If an effect estimate in the population has a value of zero, and if random samples with a sufficient number of cases are drawn from this population, significant estimate values are found in 5 % of samples, whereby half is consistent with the theory, even though the effect estimate for the population is zero. If the value of the effect estimate in the population is so small that it would be just barely significant in a random sample, then effect estimates that are consistent with the theory and significant would be found in 50 % of all random samples. A deterrent effect may be viewed as relevant if at least half of the effect estimates are consistent with the theory and significant. The average t-value can be used as another relevant criterion. For samples with large numbers of cases the critical threshold for separating significant from non-significant t-values is -1.96 . According to these criteria, a deterrent effect is relevant if 50 % of effect estimates are both consistent with the theory and also significant, and if the average t-value is at most -1.96 .

The result of a meta-analysis always depends on the input. Studies differ in terms of their methodological quality, and a meta-analysis is only as good as the studies that it takes into consideration. A summary can hardly improve the quality if only methodologically problematical studies are used: garbage in—garbage out.²⁸ The methodological quality of the studies under consideration was assessed in order to address this problem. The following questions in particular were used to assess the quality of the studies: Does the study purport to be representative? Does it include a test for representativity? Have error control or plausibility control been carried out? Have reliability and validity tests been performed? Have significance tests been carried out? If yes, were the criteria for testing significance met? Did the study

²⁷ Stanley (2001); Antony and Entorf (2003).

²⁸ Wagner and Weiß (2006).

control for third variables? These indicators were used to identify studies with methodological deficiencies. This analysis only took into account studies that featured no or only minor methodological deficiencies. Hence the number of (weighted) effect estimates was reduced to 5992. Of the effect estimates from methodologically elaborated studies, 41 % are consistent with the theory and significant, compared to 46 % in studies with problems; this difference is significant. It means that the probability that the deterrence hypothesis will be refuted increases with the elaborateness of the studies.

A frequent criticism of meta-analyses is that they compare studies that cannot actually be compared. A meta-analysis is then similar to a method that measures “apples and oranges” in the same manner.²⁹ Deterrence studies are conducted using different methods and data: crime statistical data, surveys and experiments. Works studying the effectiveness of capital punishment represent another methodological specialty. Some studies work with individual data, while others work with aggregate data. Using the scientific concept of Durkheim, who views the micro and macro level as *sui generis* realities, whereby phenomena at each level can only be explained by characteristics of this level,³⁰ deterrence studies at the micro level could not be compared with studies at the macro level. This is supported by the fact that correlations with micro data cannot be transferred to the macro level—and vice versa.³¹ Both arguments suggest that studies that refer to different levels should be analyzed separately as part of the meta-analysis. For this reason, the study performs separate analyses for studies that use different study methods: crime statistics studies with 3495 effect estimates, works on the effectiveness of capital punishment with 520 effect estimates, surveys with 1562 effect estimates and experiments with 798 effect estimates.

Another problem associated with meta-analyses, but also all other empirical studies, is that the researcher’s view of the world and theory preferences can influence the study result. Max Scheler and Karl Mannheim already pointed out the presence of social processes during the generation of knowledge. In this context, Scheler talks about the social nature of knowledge, while Mannheim refers to knowledge’s connection to the being, i.e. the context of the research process.³² Studies on deterrence research are usually based on either social science crime theories or the rational choice approach. The first theory approach is particularly dominant in criminology, sociology and psychology—where the idea of individuals acting in a purely rational manner is viewed with skepticism.³³ The second approach and the idea of *homo oeconomicus* are particularly dominant in older works of economy. If the selection of the basic theory for an empirical deterrence

²⁹ Wagner and Weiß (2006), p. 495.

³⁰ Durkheim (2002).

³¹ Robinson (1950).

³² Scheler (1926); Mannheim (1970).

³³ Auer (2005); Böckenförde (2001); Dahrendorf (2006); Dietz (2005); Dölling (2007); Dölling (2012); Manstetten (2002); Weber (1980).

study has an effect on the result, it makes sense that studies with a different theoretical basis should be analyzed separately as part of a meta-analysis. In the methodologically elaborated studies, 3931 effect estimates are attributable to studies that use criminal-sociological theories, and 2444 effect estimates to studies based on economic theories.

4 Results

4.1 The Impact of the Studies' Theoretical and Methodological Framework Conditions on the Study Results

The results of deterrence studies depend on how a study was structured, how variables were operationalized, which analytical methods were used, and which data was used as a basis.³⁴ In this case, only the influence of the study type and underlying theory shall be studied—all subsequent analyses regarding offence-specific and age-specific deterrent effects are differentiated according to these characteristics. The result of the analysis is shown in Table 1.

The results of deterrence studies depend on the study method and underlying theory—the differences are significant. With regard to the type of study, the greatest difference exists between experiments and studies on capital punishment. Both study types differ significantly in terms of the sanctions studied—usually informal sanctions in the case of laboratory experiments, which are imposed in game situations if a player cheats, and typically sanctions imposed on breaches of laws in traffic situations in the case of natural experiments. Compared to capital punishment, these are minor breaches of the law with rather light sanctions, but they seem to be more effective than drastic sanctions such as capital punishment. Survey studies and crime statistics studies do not differ greatly with respect to the number of effect estimates that are consistent with the theory and significant.

In all study types, results will depend on the underlying theory. If an economic theory is used as a basis, the number of effect estimates consistent with the theory and significant is higher than in the other cases. The difference is particularly glaring in the case of studies on capital punishment.

³⁴ Instead of many: Dölling et al. (2011).

Table 1 Dependence of deterrent effects on the study method and underlying theory

Type of study	Theory	Percentage share of effect estimates that are consistent with the theory and significant	Number of effect estimates
Crime statistics study	Criminal-sociological theory	39	1530
	Economic theory	42	1734
	Total	41	3264
Survey study	Criminal-sociological theory	40	1297
	Economic theory	43	171
	Total	40	1468
Experiment	Criminal-sociological theory	54	628
	Economic theory	61	143
	Total	55	770
Study on capital punishment	Criminal-sociological theory	16	306
	Economic theory	44	184
	Total	27	489
Total	Criminal-sociological theory	40	3760
	Economic theory	43	2232
	Total	41	5992

4.2 Deterrent Effects Depending on Age

Only studies whose method allows for a comparison of age groups can be included in a study of this issue. This does not apply to studies on capital punishment and studies with crime statistics data—these studies always used data without making a distinction between age groups. Only survey studies and experiments were conducted with younger and older persons, and take this difference into account. Therefore only survey studies and experiments have been included in the meta-analysis. These studies differ in terms of the object of the study—which may include juveniles and young adults (young persons) or the total population. The deterrent effects in these groups shall be compared. At the same time, this

Table 2 The dependence of deterrent effects on the study method, the underlying theory and the age of the groups studied

Type of study	Theory	Age group	Percentage share of effect estimates that are consistent with the theory and significant	Number of effect estimates
Survey study	Criminal-sociological theory	Total population	47	267
		Young persons	38	565
	Economic theory	Total population	43	81
		Young persons	^a	^a
	Total	Total population	46	348
		Young persons	37	575
Experiment	Criminal-sociological theory	Total population	35	190
		Young persons	76	197
	Economic theory	Total population	50	31
		Young persons	74	71
	Total	Total population	37	220
		Young persons	76	268
		Total	58	489

^aLess than 20 cases

differentiation by age group is not very precise, as studies using the entire population also include younger persons. This means that differences between the age groups under consideration will be underestimated.³⁵

The result of the analysis is shown in Table 2. The age group “Young persons” includes juveniles, young adults and students. This table does not include effect estimates if the analysis is based on less than 20 cases.

The analysis yields an apparently contradictory picture. While significant deterrent effects were found more frequently in survey studies relating to the entire population than in survey studies with young persons, the effect is reversed in experiments. This becomes even more noticeable if the average t-value is used as

³⁵ See also Dölling and Hermann (2012).

the indicator for the deterrent effect. It is -2.2 for survey studies with the total population and -1.0 with young persons. The first value is significantly different from zero at the 0.05 level, the second is not. The average t-value for experimental studies with the total population is -0.9 , and -2.9 with young persons. The second value is significant, the first is not.

This situation can be explained as follows: Survey studies and experiments examine deviant behavior at different levels of severity. The first case generally focuses on legal breaches in the area of criminal offences of low to medium severity, hence actions that are linked to criminal penalties. Laboratory experiments, on the other hand, usually involve the imposition of sanctions for cheating in game situations, and even in field experiments sanctions are frequently of an informal kind. In addition, it is not clear whether results from laboratory experiments regarding the deterrent hypothesis can be transferred to real life situations; the problem with experiments is that they offer a high internal but low external level of validity. Therefore deterrent criminal penalties for criminal acts do not appear to be effective, or have only limited effect, with respect to young persons; informal sanctions, on the other hand, appear to be effective.

4.3 Deterrent Effects Depending on the Criminal Offence

The analysis aims to answer the question whether deterrent effects vary by the type of criminal offence, whereby the focus is on such offences that are committed particularly often or rarely by juveniles and young adults, as well as offences that affect women in particular: robbery, property damage, theft, bodily injury, willful homicide and fraud, as well as sexual offences. Moreover, analyses regarding drinking and driving were also included, because this area appears to be particularly suited to legal deterrence measures.³⁶ The result of the analysis is shown in Table 3. In this context, only those analysis results were taken into account that are based on at least 50 effect estimates. This is designed to ensure the reliability of the results and clarity of the table.

According to the analyses in Table 1, in all study types the result of a deterrence study will depend on the underlying theory. If an economic theory is used, then the number of effect estimates consistent with the theory and significant is higher than in the other cases. This result is confirmed in an offence-specific analysis, whereby economic theories are limited to crime statistics studies and studies on capital punishment, while criminological-sociological theories were used in all study types. For all offences that are taken into account, the proportion of significant deterrent effects is higher when economic theories are used, compared to the use of criminological-sociological theories (see Table 3). As already mentioned, the

³⁶ Dünkel (2010); Iffland and Balling (1999); Schöch (1991); Spirgath 2013; Vollrath and Krüger (1999).

Table 3 Offence-specific deterrent effects: Percentage portion of effect estimates consistent with the theory and significant (only indicated if more than 50 cases)

Theory	Offence	Percentage share of effect estimates that are consistent with the theory and significant	Number of effect estimates
<i>Crime statistics studies</i>			
Criminal-sociological theory	Homicide, premeditated	34	388
	Sexual assault	29	153
	Bodily injury, premeditated	28	202
	Robbery	33	221
	Theft (non-differentiated)	27	177
	Theft (more expensive)	57	51
	Drunk driving	53	391
Economic theory	Homicide, premeditated	41	353
	Sexual assault	46	182
	Bodily injury, premeditated	40	205
	Bodily injury, negligence	36	82
	Robbery	41	360
	Theft (non-differentiated)	42	356
<i>Survey studies</i>			
Criminal-sociological theory	Bodily injury, premeditated	59	107
	Property damage	64	70
	Theft (non-differentiated)	43	166
	Theft (lower value)	53	105
	Theft (more expensive)	56	95
	Fraud	46	116
	Drunk driving	48	233
<i>Experiments</i>			
Criminal-sociological theory	Homicide, premeditated	43	84
	Sexual assault	41	51
	Fraud	68	71
<i>Studies on capital punishment</i>			
Criminal-sociological theory	Homicide, premeditated	14	284
Economic theory	Homicide, premeditated	49	168

differences are particularly significant in studies on capital punishment.³⁷ Significant differences can also be found in (crime statistics) studies on rape. If such a study was based on an economic theory, 46 % of effect estimates were consistent with the theory and significant, whereas in the relevant studies based on criminological-sociological theories only 29 % of effect estimates were significant. Because of the strong influence of the underlying theory, offence-specific analyses are examined on a differentiated level based on the theory.

In studies based on an economic theory, the proportion of effect estimates consistent with the theory and significant is always under 50 %. In the criminological-sociological studies that are taken into account, the 50 % threshold is exceeded for some offence types. At the same time, the average t-value is below the critical value of -1.96 for only two offence types. Survey studies on deterrence in the case of property damage resulted in 64 % effect estimates consistent with the theory and significant with an average t-value of -2.0 . This value was -2.3 in crime statistics studies on theft of more expensive goods. In survey studies regarding this type of offence, the value was only -1.0 however. Hence the deterrent effects seem to be limited to a few offences, which include property damage and the theft of larger amounts of cash or relatively expensive products.

In the case of rape, the proportion of effect estimates consistent with the theory and significant is relatively low if the studies are based on criminological-sociological theories, but relatively high if economic theories are included. But even in this case the percentage portion of effect estimates that are consistent with the theory and significant is below 50 %. However, deterrence is measured differently in these studies. If the number of police per capita is used as a deterrent factor (78 effect estimates), only 29 % of effect estimates are consistent with the theory and significant, and the average t-value is -0.34 . On the other hand, 50 % of the effect estimates are consistent with the theory and significant if the analysis is performed using the rate of arrests (61 effect estimates); in this case the average t-value is -1.97 . Therefore imprisonment seems to have a higher deterrent effect in the case of rape than the number of police per capita.

4.4 The Mechanisms of Deterrence

In empirical studies on negative general prevention there is frequently made a distinction between the discovery of an offence and its sanctioning as possible causes of deterrence. The question is whether causes of deterrence differ in their efficiency. The result of the analysis is shown in Table 4. Only those analysis results

³⁷ The difference in the results on capital punishment between Tables 1 and 3 is based on different case numbers. Table 1 considered all effect estimates from studies on capital punishment, whereby some studies refer not to willful homicides. Table 3, on the other hand, only takes into account such effect estimates from studies on capital punishment that relate to premeditated murder.

Table 4 Mechanisms of deterrence: Percentage of effect estimates that are significant and consistent with the theory (only indicated if more than 50 cases)

Theory	Offence	Percentage share of effect estimates that are consistent with the theory and significant	Number of effect estimates
<i>Crime statistics studies</i>			
Criminal-sociological theory	Clearance rate	48	61
	Conviction rate	43	51
	Imprisonment/arrest rate	40	245
	Length of prison sentence ^a	27	54
	Police resources	26	194
Economic theory	Clearance rate	48	141
	Conviction rate	45	99
	Imprisonment/arrest rate	60	170
	Length of prison sentence ^a	35	93
	Police resources	23	246
Total	Clearance rate	48	202
	Conviction rate	44	150
	Imprisonment/arrest rate	49	414
	Length of prison sentence ^a	32	147
	Police resources	24	440
<i>Survey studies</i>			
Criminal-sociological theory	Risk of discovery by police	55	82
	Severity of criminal sanction	70	54
Economic Theory	Risk of discovery by police	b	b
	Severity of criminal sanction	b	b
Total	Risk of discovery by police	55	86
	Severity of criminal sanction	75	64
<i>Experiments</i>			
Criminal-sociological theory	Risk of discovery	67	308
	Severity of the punishment	38	232

(continued)

Table 4 (continued)

Theory	Offence	Percentage share of effect estimates that are consistent with the theory and significant	Number of effect estimates
Economic theory	Risk of discovery	55	68
	Severity of the punishment	^b	^b
Total	Risk of discovery	65	376
	Severity of the punishment	40	259
<i>Studies on capital punishment</i>			
Criminal-sociological theory	Legal threat of capital punishment	^b	^b
	Rate of executions	16	188
Economic theory	Legal threat of capital punishment	^b	^b
	Rate of executions	48	91
Total	Legal threat of capital punishment	12	67
	Rate of executions	26	279

^aLength of prison sentence inflicted or served

^bNo indications, less than 50 cases

were taken into consideration which were based on at least 50 effect estimates. In addition, only effect estimates were included which refer to serious offences, i.e. homicide, serious injury, burglary, theft of more expensive goods, dealing with illegal drugs, robbery and rape. In the studies on the effectivity of capital punishment, a difference is made between the legal threat of capital punishment and the realization of executions.

According to the criminal-statistical studies which are based on criminological or sociological theories the detection of a crime has a greater deterring effect than a sentence or an imprisonment. Pursuant to criminal-statistical studies based on economic theories, however, the highest deterrent effect is that of imprisonment. Thus there is a contradiction in the results of the studies. It can be assumed that both detection and sanctioning of offences have a (low) deterring effect. However, in the studies on the deterrent effect of the length of imprisonment and the resources of the police, there is no contradiction: The deterrent effect of these variables is small since less of one third of the effect estimates is consistent to the theory and significant. The results do not speak in favor of a deterrent effect of the length of the imprisonment inflicted and served.

Regarding the effect estimates relating to the influence of legal threats of capital punishment on homicides, only 12 % are consistent to theory and significant. The analysis is based on 67 effect estimates, 40 of which are taken from investigations based on criminological or sociological theories—none of these effect estimates is consistent to theory and significant. Out of the remaining 27 effect estimates—those from studies based on economic theories—29 % are consistent to theory and significant. Concerning the effect estimates on the influence of the execution rate, the percentage of estimates consistent to theory and significant is 26. A deterrent effect of the capital punishment can thus not be proven.

5 Conclusion

The studies on the deterrent effect of criminal punishment come to different results. The impact of the underlying theory on the study results is particularly apparent. This highlights a research deficit: The research process itself should be examined more closely, in particular the transfer of theories to study methods, interpretation of results and the selection of results. Despite these methodological problems, the meta-analysis can be used to increase the reliability of results. For example, deterrent criminal penalties appear to be entirely ineffective or only somewhat effective in the case of young persons; and in the case of serious offences such as premeditated murder, deterrent measures apparently fail to have the desired strong effect. The results of the meta-analysis speak in favor of the hypothesis that the threat of punishment as an isolated measure has no deterrent effect; important are discovery of the offence and sanctioning. But even if these two conditions are met, the deterrent effect is not guaranteed.

The theory of negative general prevention is associated with empirical pre-suppositions. According to this approach, deterrent sanctions can only be considered legitimate if they are actually effective. The meta-analysis of deterrence studies shows that this concept cannot be confirmed as a universal penal theory that can be applied to all groups of persons and types of offences equally. At the same time, the results do not argue against an application as a differentiated penal theory. Since the deterrent effect of penalties is low in the case of young persons, it is recommendable not to react with severe punishment to offences of young persons but to apply pedagogical measures.

It is frequently supposed that severe punishment implies a strong deterrent effect. Deterrence is one of the reasons that national legal systems and Article 77 of the Rome Statute allow life imprisonment for very serious offences. In a number of countries, even capital punishment is applied. However, the deterrent effect of severe punishment should be regarded with skepticism. A deterrent effect of capital punishment is not verifiable.³⁸ Moreover it holds that a high discovery

³⁸ Folter (2014).

probability and consistent prosecution of crimes are more important than severe punishment. The required resources must be made available for this purpose. However, reflections on justice and stabilization of the sense of right and wrong may be taken into consideration for severe punishment of serious offences. These reflections may, among others, be relevant for Article 77 of the Rome Statute.

Five Questions

1. Does a connection exist between the theoretical frame of empirical studies on the deterrent effect of criminal law (negative general prevention) and the results of the studies?
2. Is the deterrent effect of criminal law different for younger and older persons?
3. Can differences of the deterrent effects of criminal law be stated according to the type of the criminal offence?
4. Does the probability of punishment have a deterrent effect?
5. Does the length of prison sentence increase the deterrent effect?

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Actors, Factors and Processes on the Road to the Abolition of the Death Penalty

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Abstract In 2015, the UN has reviewed the degree of compliance with two United Nations initiatives: the Millennium Development Goals 2000–2015 and the 2007 Assembly Resolution calling for a Universal Moratorium on the Application of the Death Penalty. These are two different but very closely related matters. The Millennium Development Goals urge the UN member States and the international community to prevent millions of deaths by famine and epidemics of curable illnesses. In the second initiative, the majority of the members of the General Assembly call on its Member States to end the use of death as a punishment in their justice systems, even in legal proceedings. In both cases the ideas of the United Nations, the product of political and academic works of people who have a leading role in the life of the United Nations as diplomats, staff members, experts, and members of non-governmental organizations that construct a cultural and political heritage of humanity. This chapter concentrates on the actors in the processes of abolition and the factors triggering them since the 1948 Universal Declaration of Human Rights and searches for elements that can exert influence over the events.

1 Introduction

In 2015, the degree of compliance with two relevant initiatives of the United Nations has been reviewed: the Millennium Development Goals (MDGs), established in the declaration of the UN General Assembly of 2000 (A/RES/55/1), and another UN resolution (A/RES/62/149), of 2007, calling for a universal moratorium on the application of the death penalty. These are two different but very closely related matters. The Millennium Development Goals urge the UN member States and the international community to prevent millions of deaths by famine and

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epidemics of curable illnesses. In the second initiative, the majority of the members of the General Assembly call on its Member States to end the use of death as a punishment in their justice systems, even in legal proceedings. It is in both cases the ideas of the United Nations, the product of political and academic works of people who have a leading role in the life of the United Nations as diplomats, staff members, experts, and members of non-governmental organizations that construct a cultural and political heritage of humanity.¹

The question of the abolition of the death penalty was not addressed at the founding of the Organization. The symbol of peace was precisely the executions of war criminals at both Nuremberg and Tokyo. The debate only began while preparing the Universal Declaration of Human Rights in 1948, but no consensus was reached and it was preferred to make no mention of the matter when proclaiming the right to life. This lack of consensus was repeated in the preparation of the International Covenant on Civil and Political Rights in 1966: article 6 enshrined the legitimacy of the death penalty, even when it was expressed in such a way that it was subjected to certain restrictions and controls for the countries that maintain that punishment in force, which has allowed notable monitoring by various United Nations bodies, especially by the UN Human Rights Council.

At the time of the adoption of the Universal Declaration of Human Rights in 1948, no more than a dozen countries had abolished the death penalty. By December 2014, more than 106 had done so, and more than a few—39—are countries that do not execute, even though they maintain the death penalty in their laws. At present, however, a relevant group of countries still detain and execute prisoners, some of them as important as the United States, China, and Japan.² The study of the data on the abolition in different countries should be completed with a study of the reasons and factors that have promoted the decision in favour of either the legal or the de-facto abolition of capital punishment.

A traditional cartography of the death penalty throughout the world would be of immense utility and might outline the transformation, since the end of the 1950s, of retentionist countries into abolitionist countries. However, the progressive changes to the colours of the political map will not in themselves convey sufficient information to understand the reasons and motives for progress or the obstacles to abolition and its trends. It will not be easy to gather the knowledge needed for a better understanding of the international harmonization of criminal law and to guide it effectively towards the abolition of the death penalty throughout the world. A modern map such as the one developed by Jean-Luis Halperin and Stefano Manacorda, the team formed by jurists from both the *Collège de France* and the *École Normal Supérieure* of Paris, seeks to do precisely that: it is intended as a resource for knowledge and understanding, capable of producing guidelines for action. These roads towards harmonization also serve as the model with which to

¹ On this topic, with references, Arroyo Zapatero et al. (2010), pp. 39–50.

² See the latest data in Hood and Hoyle (2015), p. 16.

interpret the evolution of the legal, and especially the criminal facts, which Mireille Delmas-Marty, Member and Emeritus Professor of the *Collège de France*, has prepared as a general theory over recent years, at the helm of a remarkable group of researchers.

Mireille Delmas-Marty has developed a model for technical interpretation and construction of the processes of international legal harmonization, which goes by the name of “*Les chemins de l’harmonization*”.³ In my opinion, it is an essential complement to the traditional methods of comparative law. The methodology of *Les Chemins* can be applied to numerous specific matters that today have already been harmonized, constructing new legal realities: terrorism, international criminal law, the trafficking of human beings, money laundering, corruption, etc., but also to questions that de-harmonize or that “harmonize in reverse”, such as the issue of the universal abolition of the death penalty, which almost 60 years ago began and continues to uphold a premise of universal validity.

Here, it is a question of analysing the movement towards the abolition of the death penalty, across the whole international context, in countries that have implemented it, in those that retain it without applying it, and in those that retain it and apply it:

- (a) An attempt to set out a systematic classification of the singular processes of abolition;
- (b) The actors, both organizations and private citizens, who intervene in the processes;
- (c) The factors that set abolition in motion and, if applicable, the moratorium. We will examine all of that in the processes already carried out as well as in those in which the issue is still alive. Likewise, the processes of the countries that fiercely cling on to the death penalty will be examined.

The processes of greatest impact on abolition in the modern era that assist us with the analysis may be summarised in three models.

2 Processes of Transition, Evolution and Integration

At the height of the preparation of the Universal Declaration of Human Rights, hardly half-a-dozen countries had adopted abolition.⁴ However, it was during the constituent processes after the Second World War, when the most representative abolitions took place: in Germany and Italy. In both countries, abolition represents a reaction against the excesses of Nazism and of Fascism; a strong reaction against their previous experiences leading to a complete rejection of arbitrary and cruel death inflicted by the State. Another relevant moment, without leaving Europe, is

³ Delmas-Marty et al. 2008.

⁴ Ancel (1968). For a European context, see Ancel (1962).

the departure from some countries of the old authoritarian regimes, such as in Spain and Greece, which share the rejection of the numerous capital executions in their relatively recent history, especially in the case of Spain. Similar events did not take place in Portugal, because the dictatorship had not changed the early abolition of the nineteenth century and only on limited occasions did it turn to extrajudicial execution, in order to see its enemies disappear.⁵

Abolition processes are also noted in *stable democratic systems* such as Great Britain and France. Abolition, in the former, is a process that was set in motion by two factors: the works of the Royal Commission of Inquiry on the death penalty and the public disclosure that the last execution of a prisoner, a person called Evans,⁶ had been the consequence of a tragic judicial error, as the real perpetrator of the crimes for which Evans had been executed confessed to that and to many other crimes. It was the impact on public opinion that tipped the political balance of the Royal Commission of Inquiry, as its report offered no specific conclusion on retention or abolition.

The French case is a prototype of the political decision against the death penalty, even with a majority public opinion in its favour. It is a question of the *Badinter factor*, a fervent abolitionist, who brought together the “learned” professor and the criminal lawyer specialized in cases of capital punishment. He contended, before juries and in the face of public opinion, that the personality disorders of family origin of the majority of capital punishment cases counter the punishment in its most extreme form, because the accused could not fully assume responsibility for his acts.⁷

Among the political processes of international origin, those of Turkey, Poland and Latvia are of interest. The first, as a significant member of the European Convention on Human Rights, came under pressure from the Human Rights Court at Strasbourg to moderate the Death Penalty, and at a later point in time, in its desire to integrate in the European Union, its legislators opted for abolition. Poland, at the time before it assumed full EU membership, reacted in ways that were contrary to the community viewpoint, for instance, in the case of the death penalty, but this position was reversed by the previous big decision in favour of integration and, subsequently, by the Treaty of Lisbon.^{8,9}

⁵ On the singular history of the first abolitionist country in the world, see Braga da Cruz (1967), p. 423–557; Miranda Rodrigues (2014), pp. 79–84.

⁶ A passionate account may be seen in chapter 10 of the *Adventures in Criminology* by Sir Leon Radzinowicz, p. 245 and ff. With full details, likewise, Hood and Radzinowicz (1986), p. 661 and ff. Hood and Hoyle (2015), p. 40 and ff. A presentation in Spanish in Arroyo Zapatero, *La experiencia de la abolición de la pena de muerte en Gran Bretaña*, in *Revista de la Facultad de Derecho de la Universidad Complutense de Madrid*, 62, Madrid 1981, pp. 47–66, now in Rodríguez Yagüe (2013), p. 471 and ff.

⁷ Bandinter (2008).

⁸ The **Treaty of Lisbon** is an international agreement which amends the two treaties which form the constitutional basis of the European Union (EU). The Treaty of Lisbon entered into force on 1 December 2009.

⁹ Yorke (2008), pp. 43–100.

3 The Actors

The leading role in the national processes of abolition is usually the responsibility of the Government and the parliamentary majorities. At times, no special actor stands out in the process, for example, in the case of Germany, Italy, Spain and France.

On occasions, the leading role is taken by a court, as with the Supreme Court in South Africa,¹⁰ which declared that the death penalty was a cruel, inhuman and degrading punishment. More frequently, it has been a case of regional Courts, both in Europe with the Court of Human Rights at Strasbourg, and in Latin America with the Inter-American Court of Human Rights. International jurisprudence establishes a sort of siege mentality around capital punishment that, without making a direct declaration of a conventional breach, does say as much in an indirect way, especially as a cruel, inhuman and degrading punishment. This is what happened in the cases of Soering and of O'Calan, two persons charged with murder whose extradition, asked by the US and Turkey, was rejected by the ECHR because they could be punished with the death penalty.¹¹ Their efficacy was very relevant in relation to Turkey. It has been even more relevant in the abolitionist countries, for example, in Chile and in Peru, in which the Inter-American Convention¹² proscribes the reintroduction once it has been abolished. The moratorium in the Russian Republic is in direct relation to the process of its incorporation in the Council of Europe. The only fiercely retentionist country, Belorussia, avoids for this reason and for others its incorporation into the European Convention.

There are very few examples of a solitary President of a Republic in favour of the reform, with a parliament set against it, such as in Mongolia, where President Elbeg was able to ratify the 2° Optional Protocol in his parliament within 2 years.¹³

4 International Bodies

International bodies have and increasingly are accomplishing a starring role in the range of actors in the abolition process. The first great step forward was taken by the Commission on Crime Prevention and Criminal Justice of the United Nations,

¹⁰ Chenwi (2007).

¹¹ Nieto Martín (2010), pp. 51–75.

¹² The American convention on Human Rights, also known as the **Pact of San José**, is an international human rights instrument that was adopted in 1969 and came into force on 18 July 1978. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Bourgoise and Ubeda (2011).

¹³ Halvorsen (2014), p. 297.

especially at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Caracas, Venezuela, 1980). A proposal on abolition was adopted there, supported by the whole apparatus that we know as *safeguards*, which are found under article 6 of the International Covenant on Civil and Political Rights of 1966 in the years following the aforementioned Congress, and especially in 1989.¹⁴

The Council of Europe followed a similar but more complete process and closed the question with the adoption of the equivalent of the 2^o facultative protocol of the ICCPR, protocol n^o 6 to the European Convention of Human Rights, ratified today by every country except Belorussia. The Treaty of Lisbon had the last word with its express abolition of capital punishment.¹⁵

The process at an international level provisionally concluded with the adoption of the 2nd Facultative Protocol to the International Convention that established abolition except in times of war, although certainly in a year of global optimism: 1989. But subsequently, it has been endorsed with extraordinary legislative and symbolic vigour in the three resolutions from the Security Council and the Assembly General through the rejection of the death penalty as a punishment for the most serious crimes—against humanity and war crimes—in the ad hoc Tribunals of the 1990s. The enshrining has been its inclusion in the Statute of Rome.¹⁶ Its effects on national legislations were especially evident in abolition in Rwanda, but its effects have multiplied since then throughout Africa.

Academics have played a significant role as a group of actors, both in their own university circles as well as their participation in institutions representing political order. As an example of the first, it is worth recalling, in the case of Spain, my mentor Professor Marino Barbero. His inaugural lesson from the 1963–1964 academic year on the death penalty called for its abolition with only a few months after the execution of the Communist leader Julián Grimau, who was the last person executed of the Francoist genocide time (1963). It was the end of the *first* and *second* periods of Francoism that gave way to a “solely” authoritarian version of the Regime and left a long-lasting memory in Spanish life. The maximum academic authority, the Rector of the University of Murcia, wore the uniform of the Francoist “Movement” under his academic attire. He surely shuddered when Marino Barbero Santos shouted that if they made the effort to keep it, because of its great importance, then entrust the executions to the Head of State himself to carry out with his own hands.

Another academic who successfully dedicated a good part of his life to abolition was the President of the International Society for Social Defence (ISSD), Marc Ancel. His reports to the United Nations General Assembly and then for the Council

¹⁴ About *safeguards* s. Bernaz (2008).

¹⁵ Yorke (2009), pp. 205–229.

¹⁶ The **Rome Statute of the International Criminal Court** (often referred to as the **International Criminal Court Statute** or the **Rome Statute**) is the treaty that established the International Criminal Court (ICC). It was adopted at a diplomatic conference in Rome on 17 January 1998.

of Europe have been the ashlar blocks of abolitionist thought. Over the last 20 years, leading academics have assumed responsibility for the 5-yearly report for the Secretary General: Roger Hood and William Schabas.¹⁷ Robert Badinter may undoubtedly be positioned mid-way between academia and politics.

NGOs joined the ranks of actors against capital punishment late in the day, but when they did so, on the eve of globalization, their voice was heard everywhere. Amnesty International named its campaign “when the State kills”¹⁸ and started a movement that was assumed monographically at least by the *Ensemble contre la peine de mort*, which gave way to the *World Coalition against the death penalty*, a mobilizing movement that together with other activities has propelled numerous processes, such as the launch, in 2010, of the inter-governmental organization *International Commission Against the Death Penalty*, which is chaired by Federico Mayor Zaragoza.¹⁹ At the time of the Amnesty International report, 1989, it was reported that 70 countries had abolished capital punishment by law or were *de facto* abolitionists, while 100 conserved it.

5 The Events That Brought About the Abolition Processes

In the processes of abolition, factors stand out that help set the abolition processes in motion, although there are some others that tend to have the contrary effect.

Among the factors that drive abolition are judicial errors.²⁰ The Evans case that led to abolition in Great Britain has previously been mentioned. The numerous cases of judicial error that have occurred in the USA, and were discovered primarily—but not only—on the basis, of the availability of DNA tests, and are today well recognized and systemized in the *Death Penalty Project*, are the propelling factor that has given rise to most progress towards abolition in the USA. As told by lawyer Scott Turow,²¹ over 100 people convicted of the death penalty and later declared innocent while they were on death row made Governors shudder such as the Governor of Illinois, George Ryan. Subsequently, seven US States, with or without moratorium, abolished the death penalty as a reaction to the horror of the execution of innocents over the past 5 years.²²

¹⁷ Hood has recently published his 5th edition of the most important work at a global level on the matter, in collaboration with Carolyn Hoyle. William Schabas also held again the responsibility for the report to the Secretary General of the United Nations over the period 2010–2015.

¹⁸ *When the State Kills. The Death Penalty vs. Human Rights*. Edited and published by Amnesty International, 1989.

¹⁹ For a presentation of tasks and objectives of the Commission, see Mayor Zaragoza (2013).

²⁰ The Death Penalty Project, *The inevitability of error. The administration of justice in death penalty cases*, London 2014.

²¹ Turow (2002).

²² On the effects of wrongful convictions in various countries, see Hood and Hoyle (2015), p. 323 and ff.

The general feeling of social aversion to the death penalty is fundamentally due to the awareness of risk and error and repugnance towards cruelty in the execution, specially the so-called “botched executions”.²³ But in 2014, a new factor has recently emerged that has been on the point of helping abolition by referendum in California: the economic cost to the state of the criminal proceedings with requests for capital punishment. *Due process*, surrounded by guarantees in the capital cases, multiplies the procedural costs, which replicated in thousands of cases produces a rejection in people concerned with the public *debt*, which generates strange alliances for abolition in California.

Added to wars, their horror, massacres, and so on, another relevant factor in contemporary times has been the dissolution of military blocks. Their most direct consequences, linked to the optimism of 1989, are those already mentioned in the International Convention on the Rights of the Child, which has managed to exclude children from being candidates for execution in countries that are reluctant to do so, even out of a repugnance towards accepting sources of legal authority in international organs, such as those in the United States. Its signatories also include countries fiercely committed to execution such as Saudi Arabia and China. The approval of the *safeguards* refers to the same process.

Events may also be identified that trigger contrary social processes, favourable to maintaining capital punishment or its reintroduction, which includes recourse to execution in *de facto* abolitionist countries.

Horrible crimes have resulted from *de facto* abolitionism in Gambia. Terrorism is another driving factor that breaks a moratorium. The numerous pitiless violations with or without murders, carried out, or experienced for the first time, in India, is what has reinforced the institutional social impact of capital punishment in a country that had only one execution in the past few years and only because of the terrorist attacks in Bombay that caused over 70 victims. Terrorism was the sad event that triggered the attempts to reintroduce capital punishment in Peru.²⁴

Perhaps it is the religious standpoint of certain religions, and the spirit of the Talion, that could be included among the reasons that, rather than triggering, maintain the predominance of capital punishment. The law of Talion is also a typical sociological fact that operates by itself, especially in modern-day society of mass communication.

6 Final Considerations

All of the above shows a lattice work of relevant processes, facts, and authors in the evolution of the abolition process. Completed with other research, it may all serve to develop a cartographic *opus majus*.

²³ Radelet (2014).

²⁴ Hurtado Pozo (2010), pp. 213–222.

What drives the processes of abolition is not only the positive idea that what we call the right to life but, above all, the idea and feeling of rejection of cruel treatment, causing pain to others. It is the feeling of rejection of torture and harsh cold-blooded murder. The rejection of the death penalty can form part of a contemporary “*ethical-cosmopolitanism strategy*”,²⁵ which radically rejects killing other people.

The most complex question lies in how to define and to transmit the rejection of the death penalty and the grounds of its proscription. Once again, the arts, including photography and literature, appear to be the most appropriate to define the rejection of cold-blooded death that the State inflicts with capital punishment and the solidarity towards whoever suffers such a punishment. Francisco de Goya was the first to denounce cruel and inhuman punishment, as well as the cruelties of war, in illustrated works, in which his rejection of the death penalty is manifest.²⁶ One has to wait for the modern vanguards to find similar expressions of such values and, most especially, the German expressionists of the 1920s, well represented at the centenary commemoration of the First World War, inspired by Goya in the “Disasters of War”.

Many people are today searching for a guide for human action founded on the search for the common good, in solidarity and in the rejection of cruelty based on scientific research beyond Kantian ethical universalism and Christian moral thought, including the programme for an “ethical world” of Hans Küng.²⁷ Three orientations deserve to be highlighted: the contribution of Richard Rorty in his “*Contingency, Irony and Solidarity*”²⁸ and that of Von Trotha²⁹: the former primarily on solidarity and the latter on cruelty, as well as in favour and against the “*Consentement meurtrier*” [*murderous consent*] an idea developed by Marc Crépon,³⁰ all inspired like Goya by the “Disasters of War”. Those who find themselves searching for guidelines on human actions in favour of the common good are very numerous, goodness in which human rights have a place and among them that of not losing the right to life, not even by the actions of the State in its policy on justice. A task to which the best of the generations that have constructed and developed the United Nations have dedicated themselves.

Five Questions

1. Which are the UN resolutions related to the death penalty and deaths caused by hunger and illness whose compliance will be reviewed in 2015?
2. What kind of political process usually brings about the abolition of death penalty?

²⁵ Held (2010); Charvet (1998), pp. 523–541.

²⁶ Blas and Matilla (2000). Also Arroyo Zapatero and Bordes (2013).

²⁷ Küng (1998).

²⁸ Rorty (1989).

²⁹ von Trotha and Rösel (2011).

³⁰ Crépon (2012).

3. Who have been the most outstanding scholars in the international debate against the death penalty?
4. Which kind of factors trigger processes of abolition or reinstatement of death penalty?
5. Which are the main arguments forming the basis of the abolitionists' proposals?

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Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules

Andrea Huber

Abstract Many argue that treating women differently in the criminal justice system constitutes discrimination, that women prisons are “nicer” anyway, and that the focus should be on the majority (male) prison population, given the low number of female suspects, defendants and prisoners. Others reason that for decades the attention has been focused entirely on male offenders and prisoners, and that the specific backgrounds and needs of women have been overlooked long enough to justify increased attention on this particularly vulnerable group. Is discrimination against women in the criminal justice system a myth? Are women offenders and prisoners “better off” anyway? Do prosecutors and judges deal more leniently with female offenders? Shouldn’t prison conditions and rehabilitation programmes be the same for both men and women, and aren’t they in correctional facilities nowadays anyway? This chapter seeks to outline aspects of discrimination faced by female suspects, defendants and prisoners in criminal justice systems, their number, profile and characteristics, and the offences they are typically charged with or convicted for, drawing on findings from a number of recent research studies. Based on the specific characteristics and needs of female offenders and prisoners the chapter highlights the respective standards established by the United Nations Rules for the Treatment of Women Prisoners and Non- custodial Measures for Women Offenders (the Bangkok Rules), adopted by the UN General Assembly in December 2010.

1 Introduction

Many argue that treating women differently in the criminal justice system constitutes discrimination, that women prisons are “nicer” anyway, and that the focus should be on the majority (male) prison population, given the low number of female suspects, defendants and prisoners. Others reason that for decades the attention has

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been focused entirely on male offenders and prisoners, and that the specific backgrounds and needs of women have been overlooked long enough to justify increased attention on this particularly vulnerable group. Is discrimination against women in the criminal justice system a myth? Are women offenders and prisoners ‘better off’ anyway? Do prosecutors and judges deal more leniently with female offenders? Should prison conditions, treatment in detention and rehabilitation programmes be equal for all prisoners, and aren’t they in correctional facilities nowadays anyway?

This chapter seeks to outline aspects of discrimination faced by female suspects, defendants and prisoners in criminal justice systems, their number, profile and characteristics, and the offences they are typically charged with or convicted for. It covers certain key conditions in detention as well as programmes in place with regard to rehabilitation and reintegration.

In doing so, it draws on data, country examples and findings from a number of research studies. It should be emphasised that these examples have not been chosen to “single out” certain countries, but are meant to be illustrative of the aspects covered and in particular to focus on countries where surveys have been conducted most recently. While research methodologies and scope vary, they provide an in-depth and recent insight into the situation in Argentina, Armenia, China, Georgia, Jordan, Kazakhstan, Kyrgyzstan, South Africa and Tunisia.

While some data has been published, mostly on women in prison in Western countries, research into the profile of female offenders and prisoners as well as their pathways to offending is still scarce, particularly in Asia, the Middle East, Africa and Latin America. However, a few studies have been conducted recently, not least inspired by Rule 67 et seq. of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted in December 2010 (GA res. 65/229 of 12 December 2010).

The lack of attention women suspects, defendants and prisoners received has not been limited to research, but was—up until the adoption of these Rules—also mirrored in key international standards relating to the treatment of prisoners. The 1955 UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules),¹ still the one comprehensive set of guidelines on the treatment of prisoners and conditions of detention, provide little gender-specific guidance.² They do require women and men to be detained in separate facilities and women prisoners to be exclusively supervised and attended to by female prison officers. Otherwise, however, Rules relating to female prisoners were limited to pre- and

¹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

² Please note that after this article was written, on 17 December 2015 the United Nations General Assembly completed the revision of this standard and adopted the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, Resolution 70/175). The review updated nine areas and resulted in a renumbering of the Rules. This article does not reflect the revision.

post-natal care and to nursing of infants. The UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules),³ which represent the basic principles relating to the use of non-custodial measures and sanctions, do not contain any provisions specific to female offenders at all.

The adoption of the Bangkok Rules in December 2010 therefore constituted a major step forward in recognising the gender-specific needs of women in the criminal justice system. The Rules were initiated by the government of Thailand, with HRH Princess Bajrakitiyabha of Thailand playing a pivotal role in the development of the Rules, and are therefore known as the Bangkok Rules.

The 70 Rules⁴ cover the treatment of women prisoners, but also alternatives to imprisonment by incorporating specific provisions on gender-sensitive non-custodial measures and sanctions, the consideration of gender-specific circumstances in sentencing as well as standards relating to conditions in detention. The Rules do not replace but supplement both the Standard Minimum Rules and the Tokyo Rules, rectifying the gaps related to specific needs of female offenders.⁵ This chapter therefore seeks to highlight, where applicable, the added value of this set of international guidance on the treatment of women prisoners and their access to non-custodial measures and sanctions.

2 Discrimination Against Women in the Criminal Justice System

2.1 *Gender-Specific Offences*⁶

In many countries criminal sanctions are used to curb sexual or religious ‘immorality’ through the use/designation of “offences” such as adultery, extramarital sex, sexual misconduct, violations of dress codes or prostitution. Such offences tend to penalise women exclusively or disproportionately even if they are formulated in a gender-neutral way. Some studies also suggest that females charged on moral offences are treated more harshly than males, presumably for having transgressed their gender role.⁷

In some jurisdictions, women face charges of adultery even where there is clear indication of rape, and criminal procedures place the burden of proof on the female

³ UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules): resolution/adopted by the General Assembly, 2 April 1991, A/RES/45/110.

⁴ See [Penal Reform International Toolbox on the Bangkok Rules: http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/](http://www.penalreform.org/priorities/women-in-the-criminal-justice-system/bangkok-rules-2/tools-resources/).

⁵ While they do not represent a legally binding treaty, they do express a commitment by the 193 member states, which unanimously adopted them at the UN General Assembly.

⁶ Sometimes, the term “status offences” is used, which refers to laws prohibiting certain actions based on their sex, race, nationality, religion, age etc.

⁷ UNODC Handbook (2014a), pp. 81, 97.

victim.⁸ For example, in Pakistan reports indicate a high number of women in prisons accused of or convicted for violating the prohibition against extramarital sex, including after reporting rape or after filing for divorce.⁹ Similarly in Afghanistan approximately 50 % of women in prisons were estimated to have been convicted of moral crimes.¹⁰

Criminalisation of women also occurs where abortion is illegal or legal only in limited circumstances, again including in cases of rape. In Colombia, for example, abortion is prohibited in all circumstances and women can be imprisoned for up to four and a half years for having abortions even in cases of rape or when their lives were at risk. Only narrow exceptions allow judges to waive penal sentences.¹¹

In some countries, women are imprisoned for leaving their homes without permission (“running away”). Many of these women leave in an attempt to escape from forced marriages, forced prostitution or physical or sexual violence by a family member.¹² A study in Afghanistan in 2007 found approximately 20 % of the incarcerated women were charged with the offence of running away, often combined with another offence, such as adultery or theft.¹³

Girls, in particular, tend to be treated more harshly for offences, which are atypical in terms of the behaviour expected of a girl,¹⁴ including “being beyond parental control”.¹⁵ Research in juvenile rehabilitation centres in Afghanistan, for example, found that 14 % of girl respondents were in detention, not because of an offence, but because they were without shelter. None of the boys reported being in detention as a result of being lost or without accommodation.¹⁶

Women who are sex workers, including victims of trafficking, also face imprisonment in numerous countries for offences such as prostitution. International law prohibits discrimination, including discrimination based on sex.¹⁷ States therefore need to review their legislation, policies and practice in order to ensure that women are not penalised exclusively or disproportionately.

⁸ Special Rapporteur on violence against women, A/68/340 (2013), paras. 16 and 18.

⁹ *Ibid.*, para. 17.

¹⁰ UNODC, Afghanistan (2008), para. 14; Human Rights Watch, Afghanistan (2012), p. 1.

¹¹ Human Rights Watch, Colombia (2005).

¹² Special Rapporteur on violence against women, A/68/340, (2013), paras. 19, 20.

¹³ UNODC, Afghanistan (2008), para. 14.

¹⁴ Gelsthorpe (1989).

¹⁵ Penal Reform International/Interagency Panel on Juvenile Justice (2014), p. 5. See, also for example, Human Rights Watch, Afghanistan (2012), which details how girls are convicted and imprisoned for crimes that usually involve flight from unlawful forced marriage or domestic violence.

¹⁶ Penal Reform International/Interagency Panel on Juvenile Justice (2014), p. 5, quoting UNICEF, Justice for Children: The situation for children in conflict with the law in Afghanistan, 2008.

¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, Article 2 (f) and (g) and Article 5; see also Human Rights Committee, General Comment No. 21 (1992).

2.2 “Protective” Detention

Again, in some countries detention is used as a form of (alleged) “protection” from threats of honour crime and of victims of rape, to protect them as well as to ensure that they will testify against the perpetrator in court. For example, the UN Special Rapporteur on torture has reported detention of women for their “protection” for up to 14 years because they were at risk of becoming victims of honour crimes.¹⁸ Such practices are also reported in Iraq, where “detention centers sometimes end up serving as protective shelters to prevent families from killing women and girls at risk of honour killing.”¹⁹ In Jordan also, women are held in administrative detention as a means of “protection” if they are perceived at risk of being harmed by their family, based on a decision by the local governor.²⁰

In response to such practices, Bangkok Rule 59 calls for non-custodial means of protection, for example shelters,²¹ and reiterates that any placement of women in detention centres for means of protection, where necessary and expressly requested by the woman concerned, must be temporary and not continued against her will. The Rule also demands respective supervision by judicial and other competent authorities.

2.3 Legal Representation

As a result of unequal access to economic resources in society, women in contact with the law often depend on the willingness of male family members to spend resources on due process of law for them, making them particularly vulnerable to being deprived of their liberty. Eligibility criteria for legal aid can further discriminate against women if they are based on family/household income, which women offenders do not have access to.

Many studies point to disadvantages women face in accessing legal representation. For example, while 65 % of the women offenders surveyed in Albania in 2013 were legally represented in their first judicial hearings by private lawyers, they had to turn to legal aid lawyers later on in the criminal procedure, failing to afford payment. 35 % of the women offenders could not afford legal counsel from the start and had to rely—where applicable at all—on legal aid lawyers, even though many were dissatisfied with the quality of representation.²² For women detained in

¹⁸ Special Rapporteur on torture on Jordan (2007), A/HRC/4/33/Add.3, paras. 39. and 72 lit. (u).

¹⁹ [Heartland Alliance, Iraq](#).

²⁰ Penal Reform International, Jordan and Tunisia (2014b), p. 8.

²¹ In the light of such practices, Rule 59 of the Bangkok Rules provides that ‘[g]enerally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women.’

²² Papavangjeli (2013), p. 13.

Jordan, access to legal representation was the most commonly identified support requirement.²³ In a prison in Afghanistan, it was found that “not a single female prisoner had been provided with legal representation”.²⁴

However, access to legal counsel is a prerequisite to safeguard a fair trial. Given that most legal systems are complex, access to non-custodial alternatives to imprisonment also often depends on legal representatives putting forward respective motions, such as for bail, diversion, restorative justice or mediation.²⁵ Lack of access to legal representation faced by women offenders in many countries therefore has a significant impact on the probability of their imprisonment.

Research also suggests that lawyers and judges lack awareness of gender-specific circumstances and their relevance in sentencing. As a consequence, mitigating factors relating to offences committed by women in conflict with the law are neither pleaded by legal representatives nor considered by judges. Such circumstances include a history of (sexual) violence suffered by partners/spouses prior to violence against these perpetrators or coercion to commit or abet an offence. It is likely that in many jurisdictions the interpretation of self-defence and of mitigating factors does not adequately allow for the consideration of prior long-term and systematic abuse by male family members or partners, in particular where the violent response to (sexual) abuse by the female victim is not immediate.

Such disadvantages in criminal procedures are exacerbated in many cultures by the fact that women are socialised in such a way that they do not speak up for themselves at court, and even less so about their experiences of domestic or sexual violence. Research in Albania, for example, has highlighted that women offenders remain “silent” in court, reluctant to reveal their personal experiences.²⁶

International human rights standards enshrine the right to legal counsel as a crucial element of the right to defence and fair trial.²⁷ Yet, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems²⁸ constituted the very first set of standards²⁹ encouraging special measures to ensure meaningful

²³ Penal Reform International, Jordan and Tunisia, (2014b), p. 18.

²⁴ Amnesty International, Afghanistan (2005a), p. 32.

²⁵ AdvocAid (2012), p. 13.

²⁶ Papavangjeli (2013), p. 13.

²⁷ E.g. Article 14 (3b) of the International Covenant on Civil and Political Rights, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners; Principle 8 of the Basic Principles on the Role of Lawyers.

²⁸ The Principles clarify, inter alia, that legal aid is a duty and responsibility of the state, for which it should allocate sufficient resources, and acknowledge that legal aid needs to be provided promptly and effectively at all stages of the criminal process, including unhindered access to legal aid providers for detained persons (UN General Assembly resolution 67/187, 20 December 2012).

²⁹ Bangkok Rule 26 reiterates that women prisoners’ contact with legal representatives shall be encouraged and facilitated by all means. However, the provision is located in the section on treatment in prison, does not address access to legal aid or call for specific measures for women offenders.

access to legal aid for women, including training of legal aid providers on the rights and needs of women.³⁰

2.4 *Non-Custodial Alternatives to Imprisonment*

Alternatives to imprisonment avoid the high social and economic cost of detention and have proven to be more effective than imprisonment in preventing reoffending, in particular for minor, non-violent offences. The percentage of women offenders charged with these types of offences is particularly high. However, both alternatives to pre-trial detention and to prison sentences tend not to be gender-specific, but tailored to the male majority of suspects and offenders, depriving them of equal access to such alternatives.

Women may be unable to meet “standard” bail obligations like regular reporting to authorities. They may not be allowed to leave home without being accompanied by a male, because transport to the respective police station is not affordable or feasible, or because reporting times would jeopardise caretaking responsibilities, for example conflicting with times at which mothers need to pick up their children from school.

At the sentencing stage, women offenders also face disadvantages in accessing non-custodial sanctions. Their typically high level of poverty and dependency on male family members mean that they are often unable to pay fines, which are the most frequently employed alternative to imprisonment for minor, non-violent offences. For instance in Pakistan many women were found to be detained for long periods, even for minor offences, as they had been abandoned by their families and were unable to afford bail.³¹ In England, it was found that decision-makers were reluctant to fine women and instead issued more severe community penalties. As a result, in the event of a subsequent conviction, such women could be given even more severe sentences because a step had been skipped on the sentencing ladder.³²

Moreover, schemes determining the amount of fines tend to disproportionately disadvantage the poor (see high level of poverty amongst female prisoners), and decisions on alternatives, both pre-trial and at the sentencing stage, often overlook the typical background of women offenders, their caring responsibilities, their history of domestic violence and the usually lower security risk they pose to society. The Bangkok Rule 57 therefore promotes the use of alternatives for women suspects, defendants and offenders, recognising the need for gender-specific considerations as well as the impact of imprisonment not only on these women, but also their children and families.

³⁰ Principles 10 and 37 and Guideline 9.

³¹ Law and Justice Commission of Pakistan (2012).

³² Report by Baroness Jean Corston (2007), p. 18.

Relating to the sentencing stage, Bangkok Rule 61 states that “courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women’s caretaking responsibilities and backgrounds.”³³

The impact of prison sentences on the children of the offender was the focus of a landmark ruling of the Constitutional Court of South Africa in 2007, in which the consequences for the appellants’ children aged 8, 12 and 16 lead the Court to suspend the prison sentence for four years.³⁴

Good practice has been established in some countries, not least inspired by the (imminent) adoption of the Bangkok Rules—even though most of them are limited to pregnant or breast-feeding women. In China, for example, women are not subjected to detention pending trial, but released on guarantee, placed under residential surveillance or subjected to other non-custodial compulsory measures and courts pronounce a suspension of sentences until the end of the nursing period.³⁵ In Argentina legislation allows for house arrest for pregnant offenders, women offenders with children of less than 5 years of age living with them and those caring for a child with disabilities. However, lack of awareness about this legal provision means that many children still reside in prison with their mothers and the law has not achieved its potential of providing an alternative.³⁶

Cognisant of common problems leading to women’s contact with the criminal justice system, Bangkok Rules 60 and 62 call for non-custodial interventions such as therapeutic courses and counselling for victims of domestic violence and sexual abuse, suitable treatment for those with mental disabilities, and gender-sensitive drug dependency programmes. The Rule takes into account the recognised gender differences in substance dependency and related complications that require different treatment approaches. In the delivery of community-based programmes, women may need gynaecological care, skills for negotiating safer sex, and opportunities to discuss issues such as violence and pregnancy.

2.5 *Stigmatisation*

Gender roles result in a particular stigma attached to women in prison, and while spouses regularly support their husbands in prison and upon release as a matter of course, reciprocally women tend to be shunned by their spouse—and often even by the whole family if they are detained. This also means no or less frequent visits in prison, increasing the sense of isolation and hindering reintegration upon release.

³³ Rule 64 reiterates the preference of non-custodial sentences for pregnant women and women with dependent children.

³⁴ Constitutional Court of South Africa, *S. v. M.* (2007).

³⁵ Lei et al. (2014), p. 30.

³⁶ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), pp. 5, 32.

Research in China, for example, confirmed the high level of stigmatisation of female offenders, stating that they are abandoned by their loved ones and have no one to visit them for many years.³⁷ In Jordan, 44 % of the women surveyed in judicial detention stated that they had been stigmatised by their family and community as a consequence of their conviction and imprisonment. In Tunisia, this number was 41 %.³⁸

Having fewer or no visits indirectly produces additional disadvantages as for many prisoners visitors provide not only emotional support but also vital material support such as money, or goods such as toiletries, underwear and telephone cards.

3 Characteristics of Women Offenders

The profile and background of women in prison differ significantly from those of men. Research in Europe indicates that women in conflict with the law “are women that have been physically and psychologically abused, and sometimes even sexually abused when they were children”, women with drug-dependency issues, women who “had little or no support at all during their childhood, adolescence and adulthood”, poor women, women belonging to ethnic minorities who have experienced stigmatisation, social exclusion, direct or indirect discrimination as well as women with health problems.³⁹

Concern for the welfare of children acts as a constraint on women’s choices and, within circumstances of poverty and poor support systems, provides a rationale for both non-violent and, when combined with other factors, violent crime.⁴⁰

3.1 Poverty

While marginalised groups are overrepresented in the prison population as a whole, research shows that poverty plays a particular role when it comes to women in conflict with the law. Women are twice as likely as men to live in poverty and recent data suggests that their economic and social position is deteriorating relative to men.⁴¹ The Sierra Leone Truth and Reconciliation Commission noted a “feminisation of poverty”.⁴²

³⁷ Lei et al. (2014), p. 27.

³⁸ Penal Reform International, Jordan and Tunisia (2014b), p. 14.

³⁹ Papavangjeli (2013), p. 2.

⁴⁰ Artz et al. (2012), p. xvi; UNODC, *Women and HIV*, p. 3.

⁴¹ Lawlor et al. (2008), p. 7.

⁴² AdvocAid (2012), p. 15.

While the rate of women as family heads is increasing, they face discrimination at the labour market, inequalities of salaries and lack of protection by labour laws.⁴³ Typically, if employed at all prior to imprisonment, a high percentage worked in precarious/uncertain types of work such as part-time and temporary labour.⁴⁴

Young motherhood, experiencing poverty arising from low levels of education and the breakdown of marriages and families are common features in the profile of women in conflict with the law. Research shows that a high number of female offenders led single-headed households prior to imprisonment, and economic pressure on them was high, having to raise children with no or little financial support from their partners or husbands.⁴⁵

For example, in Tunisia, 66 % of the women surveyed said that they were very poor or poor, and those employed before imprisonment had worked in low-paid jobs.⁴⁶ Of the women surveyed in South Africa, those employed (50 %) had only part-time or temporary work, and low wages still made it difficult to survive. This is reflected in women making up the highest percentage of unemployed in the country's overall unemployment rate, alongside young people.⁴⁷

Research in Albania paints a similar picture, showing the high percentage of joblessness among women prisoners and lack of access to social welfare, leaving them economically dependent on their spouses. 45.5 % were unemployed prior to imprisonment and 83 % of those employed had worked in the black market.⁴⁸

3.2 Education

Women offenders are typically characterised by a low educational profile, which cannot be seen in isolation from the usually more limited access to education for girls in the respective countries. For example, in Albania 31.5 % of the women surveyed had only eight years education and 12 % even less.⁴⁹ The explanations the women interviewed gave for this were mainly family-related, such as marriage and/or pregnancy at an early age.⁵⁰

In China, poverty and illiteracy rates amongst women prisoners were at high levels, and levels of crimes committed were found to be linked to education

⁴³ Surt Association (2005), p. 23.

⁴⁴ Papavangjeli (2013), p. 9.

⁴⁵ Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 2.

⁴⁶ Penal Reform International, Jordan and Tunisia (unpublished).

⁴⁷ Artz et al. (2012), p. 106.

⁴⁸ Papavangjeli (2013), p. 9.

⁴⁹ National secondary school participation has been reported at 84.3 % for men and 82.4 % for women between 2008 and 2012 (UNICEF, www.unicef.org/infobycountry/albania_statistics.html).

⁵⁰ Papavangjeli (2013), p. 10.

status.⁵¹ In the general population, the adult literacy rate in 2000 was 95.5 % for men and 86.5 % for women.⁵²

In Mexico, 6.1 % of women detainees were illiterate, compared to 2.4 % amongst men. Illiteracy rates were high amongst women prisoners surveyed in Jordan and Tunisia. Nearly a quarter of the women in judicial detention were illiterate, representing a higher rate than amongst the general female population in Jordan (11 %).⁵³

A common reason given by women prisoners surveyed for not continuing their education included lack of financial resources in the family (e.g., for food and electricity necessary for studying) and inability to purchase school supplies, as well as having little encouragement to further their education.⁵⁴ Others had to sacrifice their education entirely, or had little time to devote to their studies, because they had to help at home.⁵⁵ Women spoke about the numerous household responsibilities they were given as children, which were generally “gendered” and differed from tasks that male siblings were expected to assume.⁵⁶ Other reasons stated were traumatic life events, (early) marriage, childcare responsibilities and frequent moving. Two women interviewed had dropped out of school after experiences of rape, two others left after the death of family members.⁵⁷

While this clearly impacted on employment opportunities later on, it also shaped the choices (or absence of choices) women could envision for their lives in other ways, and perpetuated circumstances of poverty.⁵⁸

3.3 *Family Status/Children*

Surveys document, across the globe, the high percentage of women prisoners who are mothers. In the South Caucasus, 78 % of the women prisoners surveyed were mothers.⁵⁹ In Central Asia it was 75 % with 45 % of these having children under 18.⁶⁰ In Jordan, three quarters of women in judicial detention had children, 78 % of them under 18.⁶¹ In Albania the figure was even higher at 93.2 %, almost all of the mothers imprisoned having two or more children, of which a considerable number

⁵¹ Lei et al. (2014), p. 21.

⁵² UNESCO, Background paper (2006), p. 5.

⁵³ UNESCO, Education for All Global Monitoring Report 2013/14, p. 320.

⁵⁴ Artz et al. (2012), pp. 105–106.

⁵⁵ *Ibid.*, pp. 105–106.

⁵⁶ *Ibid.*, p. 197.

⁵⁷ *Ibid.*, pp. 31–32.

⁵⁸ *Ibid.*, p. 106.

⁵⁹ Penal Reform International, Armenia and Georgia (2013b), pp. 13–14.

⁶⁰ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 11.

⁶¹ Penal Reform International, Jordan and Tunisia (2014b, p. 11).

were placed in an orphanage as a consequence of their mothers' imprisonment.⁶² In South Africa, the percentage of mothers in the sample surveyed was 75 %, 45 % of them had their first child between the ages of 16 and 20 years.⁶³

While little qualitative research is available, women's social and family roles have been shown to play a relevant role when it comes to explaining pathways to offending, particularly in situations of family breakdown. An in-depth study conducted in South Africa, for instance, shows how the women's familial and relationship histories as well as traumatic events, especially in childhood, shaped their choices—or lack thereof—and was linked to their involvement in crime.⁶⁴

Motherhood, in particular early pregnancies, also appear to play a role in women's pathways to crime. Experiences of abuse during childhood are a factor for early pregnancies, impacting on the women's relationships later in their lives.⁶⁵ In Kazakhstan, for example, research indicated a typical pattern where women fell into debt following the breakdown of a marriage and then turned to fraud, drug dealing or theft to raise funds to make repayments. Informal marriages appear to constitute a particular factor for women's vulnerability in this country, with an estimated 30 % of children born into informal marriages.⁶⁶

Alongside low levels of education, responsibility for children, caring for other relatives and aging family members, typically constitute obstacles to employment for these women, contributing to their marginalisation and economic dependency. Often children are used as leverage to trap them in an—often violent—relationship.⁶⁷

3.4 Violence Against Women

According to the WHO, 35 % of women worldwide have experienced either intimate partner violence or non-partner sexual violence in their lifetime.⁶⁸ There is a strong link between violence against women and women's incarceration, whether prior to, during or after incarceration.⁶⁹ Women have been victims of violence at a much higher rate prior to entering prison than is acknowledged by the

⁶² Papavangjeli (2013), p. 10.

⁶³ Artz et al. (2012), p. vi, 11, 35.

⁶⁴ *Ibid.*, p. ix.

⁶⁵ See for example Artz et al. (2012), pp. xv, pp. 114–137. Early motherhood plays an important role in women's pathways to crime and in the way in which they experience incarceration. Experiences of childhood victimisation increased the women's vulnerability as young girls to early pregnancies, which impacted heavily on their relationships and support systems (Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 30).

⁶⁶ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), footnotes 42, 43.

⁶⁷ Artz et al. (2012), p. xv.

⁶⁸ World Health Organization, Factsheet N°239 (2013).

⁶⁹ Special Rapporteur on violence against women, A/68/340 (2013), p. 4.

legal system generally,⁷⁰ partly due to the persistent phenomenon of underreporting of such abuse. In many regions, it is still the victim who is stigmatised rather than the perpetrator and for many women the experience of violence has become normalised.⁷¹

Anglo-American research has found that female offenders are three times more likely than their male counterparts to have been physically or sexually abused in their past and twice as likely as women in the general public to report childhood histories of physical or sexual abuse.⁷² Another study found that a staggering 86 % of incarcerated women had, as children, suffered either sexual or physical abuse or witnessed violence at home.⁷³

In Jordan, more than three out of five women surveyed in detention had experienced domestic violence and for 92 % of these women, this was a frequent occurrence. While these figures represent a significant percentage, they are still likely to reflect under-reporting.⁷⁴ Of the women who responded to this question in a survey in Argentina, 39.04 % reported experiencing violence from a spouse or family member prior to their imprisonment; 13.6 % had been raped at least once.⁷⁵

The life stories captured in the South African study, where almost 70 % of the women prisoners interviewed had experienced some form of domestic violence,⁷⁶ revealed experiences of abuse throughout childhood⁷⁷ and adulthood (including witnessing and directly experiencing domestic violence), physical and psychological neglect, exposure to violent communities, witnessing and engaging in substance abuse, and unstable and troubled family lives. 67 % of the women had experienced some form of domestic violence and/or rape in their adult life, which is three times higher than the rate in the general population.⁷⁸

While not intending to characterise women detainees as “passive victims of the criminalisation system”,⁷⁹ it is important to understand the role trauma and violence has played in the lives of these women⁸⁰ and the links between offending and

⁷⁰ *Ibid.*, p. 4.

⁷¹ Artz et al. (2012), pp. xiii, 148.

⁷² *Ibid.* footnote 96.

⁷³ Greene et al. (2000), p. 9.

⁷⁴ Penal Reform International, Jordan and Tunisia (2014b, p. 17). Under-reporting was established, for example, by the Committee on the Elimination of Discrimination against Women (Committee on the Elimination of Discrimination against women, Jordan, CEDAW/C/JOR/CO/5 (2012), para. 25).

⁷⁵ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 2.

⁷⁶ Artz et al. (2012), p. xiii, pp. 102–113.

⁷⁷ 37 % of the women in the sample reported that they had been physically abused during their childhood, 29 % of respondents reported some form of sexual abuse in their childhood. 62 % of those who experienced childhood sexual abuse were abused by a father figure or male caregiver, with only 12.5 % stating that they did not know the perpetrator (Artz et al., pp. xii, xiii, 125, 132).

⁷⁸ Artz et al. (2012), pp. xii, xiii pp. 83–100.

⁷⁹ Special Rapporteur on violence against women, A/68/340 (2013), para. 2.

⁸⁰ Papavangjeli (2013), p. 4 referring to trauma theory.

histories of prior abuse. For example, the South African study shows that domestic abuse is related to female offending in both direct and indirect ways.⁸¹ Similarly, studies in Australia, Canada and South Africa reveal high rates of violence prior to arrest and possible links with criminal conduct.⁸²

In the cases researched of women alleged or convicted of offences against life (assault, manslaughter or murder), experiences of domestic and sexual abuse often were the direct cause of incarceration. Many women surveyed in Argentina, for example, described how they used force against their abuser after suffering severe and ongoing domestic violence, including out of fear for the safety of their children.⁸³ Such fears are not unfounded. Globally, two thirds of the victims of homicide were female in 2012 and almost half of all female victims (47 %) were killed by their intimate partners or family members, compared to less than 6 % of male homicide victims.⁸⁴

In Kyrgyzstan, a UN report noted that 70 % of women convicted of killing a husband or other family member had experienced a 'longstanding pattern of physical abuse or forced economic dependence'.⁸⁵ In Jordan, of the 26 % of women in judicial detention charged with or convicted of violent offences, 98 % of these charges/sentences relating to murder/manslaughter of a male family member.⁸⁶ Research conducted in New York State in the US found that more than nine out of ten women convicted of killing an intimate partner had been abused by an intimate partner in the past.⁸⁷

Some studies have suggested that exposure to extreme, traumatic events cause high rates of borderline personality disorder, antisocial personality disorder, substance abuse, and symptoms of post-traumatic stress disorder (PTSD) among women inmates.⁸⁸ For others, abuse led to problem behaviours such as drugs, alcohol and gambling as a way of dealing with their experiences.⁸⁹

3.5 *Drug and Alcohol Dependence*

Due to factors described above, women generally experience more psychological distress than men over their lifetimes, including anxiety, depression and guilt. Maybe not surprisingly, therefore, women prisoners have shown to have higher

⁸¹ Artz et al. (2012), p. Xiii, pp. 83–100.

⁸² Special Rapporteur on violence against women, A/68/340 (2013), p. 5.

⁸³ Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 19.

⁸⁴ UNODC, World crime trends (2014b), para. 10.

⁸⁵ Special Rapporteur on violence against women, Kyrgyzstan (2010), para. 26.

⁸⁶ Penal Reform International, Jordan and Tunisia (2014b), pp. 12, 13.

⁸⁷ Kraft-Stolar et al. (2011), p. 3.

⁸⁸ Artz et al. (2012), p. 141.

⁸⁹ See for example Artz et al. (2012), p. 162.

rates of mental health issues and histories of substance abuse than their male counterparts.⁹⁰

Research in women prisons in Kazakhstan in 2011, for instance, estimated that over 40 % of the female prison population had been dependent on drugs prior to imprisonment, an increase from 32 % in 2005.⁹¹ Canadian research in federal prisons indicated a percentage as high as 80 %.⁹² For the majority of the women surveyed in South Africa with alcohol or drug dependency problems substances had been used as a coping mechanism, including to “escape” childhood abuse and domestic violence.⁹³

Alcohol and/or drugs were found to play a central role in women’s offending behaviour, both directly and indirectly. Addictions were the cause of their offending in order to finance substance use,⁹⁴ excluded them from legal employment and provided an entry into criminal circles.⁹⁵ In some cases recorded, it was not the women’s own substance abuse that led to their criminal behaviour, but their partner’s.⁹⁶

3.6 *First-Time Offenders/Recidivism*

While statistics disaggregated by gender are scarce, studies available on female prisoners show a high percentage of women who are first-time offenders and, in general, a lower rate of recidivism than men.⁹⁷

In Tunisia, for instance, the recidivism rate according to the Directorate General for Prison Administration and Rehabilitation was 22 % for women in 2013 as compared to 44 % for men.⁹⁸ A survey in Argentina found that 81.1 % of women interviewed for the study had not been previously detained.⁹⁹ In South Africa, 74 % of the women surveyed served a sentence for the first time.¹⁰⁰ In the US a study in 2007 stated, that “female prisoners were more likely than the total sample to have

⁹⁰ WHO Regional Office for Europe, *Health in Prisons* (2007); Moloney et al. (2009), pp. 426–430.

⁹¹ Penal Reform International, Kazakhstan (2011a); Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 17.

⁹² Artz et al. (2012), p. 202.

⁹³ *Ibid.*, p. 206.

⁹⁴ In South Africa, for example, of the women with a drug dependency problem, one-third (9 % of total sample) had committed financially-motivated crimes (drug trafficking, robbery, and fraud) as a means of financing their addictions, and in one case, in an attempt to raise enough money to send herself to rehabilitation. (Artz et al., p. 210).

⁹⁵ Artz et al. (2012), pp. xvii, 203.

⁹⁶ *Ibid.*, p. xvii, pp. 138–145.

⁹⁷ Deschenes et al. (2006).

⁹⁸ Penal Reform International, Jordan and Tunisia (2014b), p. 3.

⁹⁹ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 17.

¹⁰⁰ Artz et al. (2012), pp. viii, 38.

lower rates of recidivism across all four measures (rearrest, reconviction, resentence to prison and return to prison)".¹⁰¹

4 Women Offenders and Prisoners

4.1 Statistics

On the basis of figures up to the beginning of 2013 there were more than 660,000 women in prison throughout the world. Women (and girls) comprise the minority of prisoners, constituting an estimated 2–9 % of national prison populations. However, the number of imprisoned women has increased significantly, and at a greater rate than for men.

According to the International Centre for Prison Studies, the number of women in prison increased between 2000 and the beginning of 2013, by over 40 %, ¹⁰² compared to 16 % for the world prison population as a whole in the same period. While in 2000 women represented 5.3 % of the global prison population, this figure was 6.5 % in 2013, representing an increase of more than a fifth. ¹⁰³ The proportion of female pre-trial detainees also rose in all regions from 16.4 % in 2004 to 17.5 % in 2012. ¹⁰⁴

In Mexico, for example, the female prison population has grown by 400 % since 2007. ¹⁰⁵ In China, the number of female prisoners (pre-trial and convicted) has risen significantly in the last few years: by 30.53 % since 2004, in particular due to the increase of un-convicted detainees. ¹⁰⁶ South African statistics show an increase of approximately 10 % in both the number of sentenced and unsentenced female inmates between January 2007 and February 2011. ¹⁰⁷

Nonetheless, little research has been conducted to understand why there has been such a considerable increase in women's incarceration, in particular amongst certain groups. Some studies highlighted the disproportionate incarceration rates of women from ethnic and minority groups, ¹⁰⁸ who in many countries are more likely to be imprisoned.

In Albania, 12.5 % of the female prison population belonged to the Roma minority, ¹⁰⁹ while in the last census in 2011 the proportion of the Roma population

¹⁰¹ Deschenes et al. (2007).

¹⁰² Walmsley (2014).

¹⁰³ Penal Reform International, The use and practice of imprisonment (2014a), p. 11.

¹⁰⁴ UNODC, World crime trends (2014b), paras. 15, 16, based on a sample of 40 countries worldwide.

¹⁰⁵ Agren, Female felons swell ranks among Mexican criminals, USA Today, 2 December 2010.

¹⁰⁶ Lei et al. (2014), p. 4, 5.

¹⁰⁷ Artz et al. (2012), p. 10.

¹⁰⁸ Special Rapporteur on violence against women, A/68/340 (2013), p. 5.

¹⁰⁹ Papavangjeli (2013), p. 10.

in the country was only 0.3 %.¹¹⁰ In the US, a 2005 report noted an increase in the imprisonment rate of African American women of 800 %, compared to 400 % for women of all other racial groupings.¹¹¹

Also, the percentage of convicted girls increased more than the percentage of convicted female adults.¹¹²

4.2 Offences

Research available on women prisoners (pre-trial and sentenced) shows that the majority of offences women are charged with or convicted for are non-violent, while the proportion of charges and convictions for these types of offences in the general prison population is generally much lower. While the overall figure for economic offences globally is 18 %, ¹¹³ surveys reviewed for this chapter identified rates between 22 % and almost 50 % of women charged with or convicted for economic offences.

In most countries, a significant number of women are imprisoned on drug-related offences (up to 70 %) while the rate in the overall sentenced prison population is 21 %.¹¹⁴ Other types of offences that disproportionately affect women are “sex crimes”, in particular where prostitution and similar offences are only penalised for “providers” but not for “clients”.

Statistics analysed from research in four prisons in China in 2013 show that 86.96 % of the female pre-trial prisoners surveyed had been accused of non-violent offences, compared to 67.35 % of male suspects.¹¹⁵ For the convicted prison population property crimes such as theft, fraud and extortion represented 22.32 % of offences.¹¹⁶ In the South Caucasus, too, the majority of women surveyed in pre-trial detention were charged with economic offences. In Georgia, of the convicted female prison population, 42 % had been sentenced for property offences, 29 % for drug-related offences and 6 % for violent crimes.¹¹⁷ In Armenia, official statistics on convictions of female offenders indicate a proportion of property offences of 33.3 %, followed by drug-related offences (17 %).¹¹⁸

¹¹⁰ See information at PAIRS South East Europe at <http://www.pairs-see.net/page?view=15>, accessed 2 June 2014.

¹¹¹ American Civil Liberties Union, *Caught in the Net* (2005a), p. 1.

¹¹² UNODC, *World crime trends* (2014b), para. 16.

¹¹³ *Ibid.*, para. 29.

¹¹⁴ *Ibid.*, para. 29.

¹¹⁵ Lei et al. (2014), p. 19.

¹¹⁶ *Ibid.*, p. 22.

¹¹⁷ Penal Reform International, *Armenia and Georgia* (2013b), pp. 8, 9, with reference to Georgia’s very strict drug legislation resulting in a high number of imprisonment for drug use or possession.

¹¹⁸ *Ibid.*, p. 11, noting new legislation implemented in 2009 which de-criminalised the use of illegal drugs and the transfer of small amounts of drugs without purpose of sale (e.g. sharing of small quantities among users).

In Jordan, 26 % were in prison relating to violent offences, while the vast majority of women prisoners were charged with or convicted of offences presumed to be predominantly non-violent. 23 % were detained relating to sexual offences, including prostitution and adultery, punishable with up to three years in prison.¹¹⁹ In Kazakhstan, non-violent crimes also constituted the largest share of convictions with 41 % of women imprisoned for property offences. 28 % of sentences were drug related, reflecting severe penalties for the sale of drugs in this country.¹²⁰ 23 % of the women surveyed had committed violent offences.

Statistics from South Africa, by comparison to other countries, reflect a very high proportion of violent crimes overall, with an unusually high 36.6 % of women having been convicted of “aggressive” crimes. 10 % of women offenders were incarcerated for narcotics crimes, and the largest percentage, yet again for economic crimes (45.2 % for fraud, forgery, shoplifting and theft).¹²¹ In Kyrgyzstan, too, the number of convictions for murder or manslaughter was strikingly high compared to other countries, with 20 % of women offenders convicted of the murder or manslaughter of a male family member and a further 12 % of murder of someone other than a male family member.¹²²

A survey in Argentina found over 85 % of women were convicted of economic crimes,¹²³ and the rate of women being accused or convicted of drug trafficking was particularly high (55.75 %), which appears to be common in Latin America as a whole.¹²⁴

4.3 Drug-Related Offences

Worldwide statistics show that drug-related offending is particularly high among women prisoners, and both domestic and international anti-drug policies have been identified as a leading cause for the rising rates of incarceration of women around the world. For example, according to a recent comprehensive study, over 31,000 women across Europe and Central Asia were imprisoned for drug offences, with almost 70 % of all women prisoners in Tajikistan, 40 % in Georgia, about 50 % in Estonia, Portugal and Spain, almost 70 % in Latvia and 37 % in Italy.¹²⁵

¹¹⁹ Penal Reform International, Jordan and Tunisia (2014b, p. 12).

¹²⁰ The European Monitoring Centre for Drugs and Drug Addiction describes Kazakhstan’s national drug laws as ‘the most rigid criminal legislation on the territory of post-Soviet countries’ and reports sentences imposed for the sale of drugs ranging from five to 12 years. (Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), footnote 34.

¹²¹ Artz et al. (2012), p. 11.

¹²² Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 14.

¹²³ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 2.

¹²⁴ *Ibid.*, p. 12.

¹²⁵ Iakobishvili (2012), p. 5.

In Kazakhstan and Kyrgyzstan too, a high percentage of women prisoners surveyed in 2012 were convicted for drug-related offences (about a third).¹²⁶ High rates of incarceration of women for drug-related offences have also been reported in the Russian Federation, with acquittal rates in drug cases of less than 5 %.¹²⁷ In China, drug offences by women prisoners accounted for 41.88 % of crimes and 48.17 % of non-violent crimes.¹²⁸ In Canada, about a third of women prisoners were convicted of drug-related offences.¹²⁹ In Thailand, this figure was 57 %.¹³⁰

Particularly high rates of women imprisoned on drug-related charges are documented in Latin America, with percentages up to 70 %, ¹³¹ owing to harsh drug laws. Between 2006 and 2011, the female prison population in the region almost doubled, increasing from 40,000 to more than 74,000 prisoners, usually for low-level trafficking offences.¹³² This trend has been attributed to the greater ease with which low-level crimes can be prosecuted¹³³ and gender disparities in the “war on drugs”.¹³⁴

Research in Argentina showed that women’s primary role in drug trafficking is that of a mule,¹³⁵ which makes them typically easy targets for drug enforcement authorities, even though it does little to disrupt drug trafficking networks. All of the women charged with drug trafficking interviewed in Argentina were transporting small quantities of illegal substances across the border.¹³⁶ As a consequence, harsh prison sentences, including for non-violent, low-level drug crimes, appear to affect women disproportionately.¹³⁷

In Ecuador, 77 % of women in prison were incarcerated for drug-offences compared to 33.5 % of the male prison population, indicating a gendered disparity.¹³⁸ An older study in the US also found that women were over-represented among low-level non-violent drug offenders, with minimal or no prior criminal

¹²⁶ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 12.

¹²⁷ Golichenko (2013).

¹²⁸ Lei et al. (2014), pp. 20, 21.

¹²⁹ EurekaAlert (2011).

¹³⁰ Department for Corrections, Ministry of Justice, Thailand, www.correct.go.th/eng/statistics.html.

¹³¹ E. Iakobishvili, Cause for Alarm (2012), p. 5.

¹³² Tomasini (2012), cited in OAS, Women and Drugs in the Americas (2014), p. 29.

¹³³ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 15.

¹³⁴ Special Rapporteur on violence against women, A/68/340, (2013), para. 26.

¹³⁵ Transporting drugs, often by swallowing them or introducing them into their body cavities.

¹³⁶ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), pp. 2, 17, with reference also to Transnational Institute, drug laws and prisons in Latin America, *supra* note 10, at 97 (studies suggest ‘a growing number of women, often the sole providers for their families, enter the drug trade simply to put food on the table for the children.’).

¹³⁷ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 15, with reference also to a report from the Office of the Human Rights Ombudsman in Buenos Aires.

¹³⁸ Special Rapporteur on violence against women, A/68/340 (2013), para. 26.

history and not representing principal figures in criminal organisations or activities. Nevertheless they received sentences similar to high-level drug offenders under the mandatory sentencing policies.¹³⁹

Other research has also indicated that more serious offenders, mainly male, escape imprisonment or have their sentences reduced by entering plea-bargaining deals and providing assistance to the prosecution, which women are usually unable to provide.¹⁴⁰

4.4 *Motives/Causes for Crime*

While not seeking to describe women as “passive victims” when in conflict with the law, root causes of offending and the specific contexts in which women commit crimes have to be taken into account. Research is still scarce on pathways of women to and motivations for offending, as well as the gendered nature of poverty. However, findings, for example in South Africa, illustrate the link between women’s offending and conditions of structural poverty, education levels, access to employment and the environments in which women lived and were socialised.¹⁴¹

Research also demonstrated that prior emotional, physical, and/or sexual abuse contributes to women’s criminal behaviour. Reasons for violent offences, captured by research in China, for example, rank domestic violence first, taking “extreme measures to protect themselves”.¹⁴² In Kyrgyzstan, 20 % of women cited self-defence or self-protection as the main reason for their offence.¹⁴³ In Jordan 6 % of the women in judicial detention identified that they acted in self-defence or self-protection, another 6 % said they sought to protect their children.¹⁴⁴ More research should be undertaken into domestic abuse as a trigger for violent crimes, and on the extent to which such experiences are taken into account by courts.¹⁴⁵

In some cases, women are incarcerated for illegal activities, which they commit in response to coercion by abusive partners, or as a result of their connection with others engaged in illegal behaviour. A study illustrated how women had been forced to commit offences by physical attacks or even death threats, or following more subtle pressure or provocation. This included being manipulated or “talked

¹³⁹ Amnesty International, Women in Prison Factsheet (2005b), citing Department of Justice, Bureau of Justice Statistics, Prisoners (1997).

¹⁴⁰ Special Rapporteur on violence against women, A/68/340 (2013), para. 26.

¹⁴¹ Artz et al. (2012), p. 118.

¹⁴² Lei et al. (2014), pp. 19, 26. (This affected mainly the female prison population in the age range of 30–50.).

¹⁴³ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 17.

¹⁴⁴ Interview with PRI and SIGI and Adalah Centre for Human Rights Studies, 11 December 2013.

¹⁴⁵ It is likely that in many jurisdictions the interpretation of self-defence and of mitigating factors do not adequately allow for the consideration of prior long-term and systematic abuse by male family members, in particular where the violent response by the female victim is not instant.

into” committing the offence, confessing to an abuser’s crime, or committing physical assaults in response to psychological victimisation.¹⁴⁶

Sometimes called the “girlfriend problem”, women are often caught up in the offences of their significant other by participating in crimes minimally, or unknowingly, often drug-related.¹⁴⁷ In Mexico, for example, it has been estimated that at least 40 % of the women convicted of drug-related crimes, such as transporting drugs between cities or smuggling drugs into prisons, were coerced into doing so by their boyfriends or husbands.¹⁴⁸

5 Prison Conditions¹⁴⁹

Not least because of their small number amongst the population detained, prisons and prison regimes are almost invariably designed for the majority male prison population. This includes everything from the architecture of prisons and security procedures to staffing, healthcare services, family contact, work and training. As a result, many prisons do not meet the needs of women on multiple levels.

As Debbie Denning, Chief of Programs and Support Services, Department of Corrections in Illinois, put it: “There is a view that when it comes to conditions in prison women get everything and men get nothing. In reality, women get everything that can be provided for free.”¹⁵⁰

The Committee on the Elimination of Discrimination against Women established within an individual complaint in 2001 that discrimination against women encompasses ill-treatment that affects women disproportionately as well as detention conditions which do not address the specific needs of women.¹⁵¹

5.1 Location/Allocation

Generally there are far fewer prison facilities for women or they are housed in annexes to male prisons, sometimes with insufficient separation. As a result female prisoners are often detained far from home, limiting their contact with their

¹⁴⁶ Richie (1996), pp. 127–131.

¹⁴⁷ American Civil Liberties Union, ‘Girlfriend problem’ (2005b).

¹⁴⁸ Agren (2010).

¹⁴⁹ Although rather comprehensive, this chapter does not provide a complete overview of treatment and conditions in prison or of the Bangkok Rules provisions relating to them, but seeks to capture the main areas in which gender-specific attention is required and in which the Rules provide a particular added value.

¹⁵⁰ Report of Expert Group Meeting University of Chicago Law School (2013).

¹⁵¹ UN Committee on the Elimination of Discrimination Against Women, CEDAW/C/49/D/23/2009 (2011), referring also to the Bangkok Rules.

families. Fewer facilities also often result in women being held at a higher security facility or unit than necessary, corresponding with more restrictions and less access to rehabilitation programmes.

In Kazakhstan, for example, the size of the country and the limited facilities mean that women are imprisoned far from home, family, friends and community, exacerbated by the fact that different prisons have different security categories. The ninth largest country in the world has only six women's prisons, with differing regimes of security, partly in remote areas. Koksun prison in Karaganda for instance is in a very isolated position about an hour and a half drive from the nearest city and with inadequate public transport links. This also impacts on the health of women prisoners since many of them rely on visitors to bring medicine, food, warm clothes and toiletries. Survey findings in 2013 confirmed the high level of social isolation experienced by women prisoners as a result.¹⁵²

In China, of the 36 women's prisons in total, there is only one facility in most provinces, meaning that it is "largely impossible to be allocated to a place of detention near their home".¹⁵³ In Albania also, female prisoners were placed far from their communities, family and circle of relatives and friends as they can only be placed in one of the two women's prisons in Tirana, while the majority (71.5 % of pre-trial detainees and 77.5 % of convicted women) come from cities and rural villages in the north and south of Albania.¹⁵⁴ In South Africa, it was established that, while 96.77 % of inmates housed within 30 km of their home and family received visits, 56.10 % of those inmates housed over 100 km away did not.¹⁵⁵

Bangkok Rule 4 therefore enunciates the considerations that need to be taken into account when allocating female prisoners to certain facilities, including the impact on the woman's ability to maintain links with her family, the potential impact of allocation on her children and the availability of services and rehabilitation programmes.

5.2 *Separation of Prisoners and Staffing*

As women and men being housed together in detention facilities increases the risk of abuse,¹⁵⁶ already the Standard Minimum Rules for the Treatment of Prisoners require that women and men should be detained in separate facilities.¹⁵⁷ For the same reason women prisoners should be supervised only by female prison

¹⁵² Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 20; See also Frances Shehan, Imprisoned far from home (2013).

¹⁵³ Lei et al. (2014), pp. 27–28.

¹⁵⁴ Papavangjeli (2013), p. 11.

¹⁵⁵ Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 26.

¹⁵⁶ Bastick and Townhead (2008), p. 29.

¹⁵⁷ Rule 8(a) Standard Minimum Rules for the Treatment of Prisoners.

officers.¹⁵⁸ Some countries reflect this principle in their legislation and practice.¹⁵⁹ However, in other countries or prison facilities, even 60 years after the adoption of the Standard Minimum Rules in 1955, women prisoners are still housed together with men and are exposed to sexual abuse by male staff.

A recent investigation in Alabama, US, for example, found that women prisoners at one of the state's prisons "live in a toxic environment with repeated and open sexual behavior" and revealed that "serious systemic operational deficiencies (...) have exposed women prisoners to harm and serious risk of harm from staff-on-prisoner sexual abuse and sexual harassment."¹⁶⁰

In Honduras, reporting on a "mixed prison" it was highlighted that "according to reliable reports, many of these women, when they first enter, need to find themselves a 'husband' (...) to seek protection and find a place in the social structure of the prison". This was "aggravated by the fact that it is a prison in which internal control is exercised completely by the prisoners and the women find themselves in a particularly vulnerable situation".¹⁶¹

5.3 *Protection from Violence and Abuse*

As the Special Rapporteur on violence against women has noted, "The continuum of violence during and after incarceration is a reality for many women globally".¹⁶² In many regards, women have a heightened vulnerability to mental and physical abuse during arrest, questioning and in prison.

They are at particular risk of rape, sexual assault and humiliation, by male fellow prisoners and prison staff. Custody, for many women, includes ill-treatment, such as threats of rape, touching, "virginity testing", being stripped naked, invasive body searches, insults and humiliations of a sexual nature or even rape. Women in prison are routinely monitored under surveillance, including being watched by male guards in various stages of nudity, including while undressing, bathing, using the toilet and during medical examinations.¹⁶³ Furthermore, there are cases of dependency of detainees upon prison staff, which lead to increased vulnerability to sexual exploitation, as it drives them to "willingly" trade sex for favours.

¹⁵⁸ Rule 53 (2) and (3) Standard Minimum Rules for the Treatment of Prisoners.

¹⁵⁹ In China, for example, the legal framework requires women and men to be held in separated facilities, and female prisoners to be under the direct supervision of female staff (Lei et al. 2014, p. 14).

¹⁶⁰ US Department of Justice (2014).

¹⁶¹ Inter-American Commission (2013), paras. 91–93.

¹⁶² Special Rapporteur on violence against women, A/68/340 (2013), p. 4.

¹⁶³ *Ibid.*, para. 42.

“Virginity tests” constitute a particularly gross form of discrimination and of custodial violence against women.¹⁶⁴ In Paraguay, for example, women reported that they had been asked by policemen to perform oral sex in exchange for better treatment. None of the detainees interviewed had filed complaints (...) stating that they feared reprisals or that the remedies available were ineffective.¹⁶⁵ In women’s prisons in Armenia, Azerbaijan and Georgia, male guards had an unobstructed view into the women’s showers and regularly watched female prisoners bathing.¹⁶⁶

A medical screening on entry to prison (Bangkok Rule 6) is one of the essential steps in detecting ill-treatment and torture by law enforcement authorities, and vital also in providing for the psychological and physical needs likely to arise from such abuse. Furthermore, Bangkok Rule 7 details steps to be taken by prison authorities in such cases, beyond the provision of appropriate medical treatment, including full information about their right to issue a complaint, psychological support and protection from retaliation. The principle of confidentiality should be respected during this process, and any tests prescribed need to be voluntary.¹⁶⁷

5.4 Hygiene

Hygiene, including sanitary articles and safe and regular access to hot water, is particularly important for women prisoners, yet remains one of the most common deficiencies in women prisons across the globe.

Women in Argentina reported problems in accessing sufficient sanitary pads while in prison, describing it as “a nightmare for girls within their periods” as they only received one roll of toilet paper per week.¹⁶⁸ Inmates in Russia reported that they could not wash until the next allocated shift for showering when their period started unexpectedly.¹⁶⁹ In South Africa, women prisoners reported that they were rarely supplied with painkillers for menstruation cramps,¹⁷⁰ and due to the lack of lavatories they got up at 2 am or 3 am in order to queue for the shower to be ready for the parade.¹⁷¹

Often access to hygiene products depends on women having the means to purchase such items themselves, or on NGOs providing them. This was the case

¹⁶⁴ Special Rapporteur on torture, A/HRC/7/3 (2008), para. 34.

¹⁶⁵ Subcommittee on Prevention of Torture, Paraguay, CAT/OP/PRY/1 (2010), paras. 134, 141.

¹⁶⁶ Council of Europe, Parliamentary Assembly, (2007), para. 53; Special Rapporteur on violence against women, United States of America, A/HRC/17/26/Add.5 and Corr.1. (2011).

¹⁶⁷ See also Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004).

¹⁶⁸ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), p. 22.

¹⁶⁹ European Committee for the Prevention of Torture (2006), para. 31.

¹⁷⁰ Artz et al. (2012), p. 47.

¹⁷¹ *Ibid.*, p. 54.

in China, for example, where only 3 % of the women surveyed were provided with free sanitary pads, which were donated by women's federations, charitable organisations and other community organisations.¹⁷²

While provisions relating to toiletry articles and items for men to shave regularly are included in the Standard Minimum Rules,¹⁷³ for decades provisions have been lacking regarding women's needs, even though a failure to provide a hygienic environment that meets basic health needs infringes the right to health and dignity.

Bangkok Rule 5 therefore fills a crucial gap, finally recognising the specific hygiene needs of women and requiring, explicitly, the provision of free of charge sanitary towels, as well as a regular supply of water for personal care, in particular to those women who are pregnant, breastfeeding or menstruating.

5.5 *Health-Care*

Provision of adequate healthcare in prison is a major issue faced by prison systems around the globe, even more so because in the prison population (both male and female) individuals with poor health and chronic untreated conditions, mental health problems and health risks related to drug injection are over-represented. The prison environment can exacerbate these preconditions.¹⁷⁴

Yet, beyond this general situation, women prisoners have different and greater primary healthcare needs in comparison to men. This is partly due to physiological differences, and partly because of their typical backgrounds, which can include drug use, physical or sexual abuse, sex work and unsafe sexual practices. HIV and other sexually transmitted and blood-borne diseases are more prevalent among female prisoners than their male counterparts, due to the combination of gender inequality, stigma and women's vulnerability to contracting sexually transmitted infections and diseases.

Health conditions of women prisoners may have been untreated before admission due to discriminatory practices that prevent women from accessing adequate healthcare in the community.¹⁷⁵ Typically, there is limited reproductive health-care available for women in prison and even less so antiretroviral therapy, even for HIV-positive pregnant women although such treatment could prevent mother-to-

¹⁷² Lei et al. (2014), p. 33.

¹⁷³ Rules 15 and 16. Rule 16 reads: 'In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.'

¹⁷⁴ International Centre for Prison Studies, Guidance Note (2005).

¹⁷⁵ A study undertaken by the European Fundamental Rights Agency, for instance, on inequalities in accessing healthcare in EU countries has found that financial barriers affect women's access to health-care (European Union Fundamental Rights Agency 2013, p. 41).

child transmission. Many prisons do also not provide adequate substance abuse treatment programmes, or do not tailor programmes to women. Many penitentiary systems also overlook that medical examination by male doctors puts women prisoners at risk of re-traumatisation as a high percentage of them have been victims of violence, including sexual violence.

As the UN Special Rapporteur on violence against women noted, “The mere replication of health services provided for male prisoners is (...) not adequate.”¹⁷⁶ Yet, most prison facilities do not meet women’s medical needs, and prior to the adoption of the Bangkok Rules, standards on health-care for women in prison were limited to pregnancy, pre- and post-natal care. In Argentina, for example, a survey showed that over a third of women prisoners surveyed had never received a Papanicolaou test (PAP) (32.31 %) and almost three quarters reported that they never received breast cancer screening (73.36 %). This number was even higher among pre-trial detainees; 42.11 % and 82.11 % respectively had not received a PAP test or breast cancer screening. 75.53 % of pre-trial detainees versus 53.78 % of convicted women indicated they never received HIV-prevention education.¹⁷⁷

In China, both initial health-screening and gynaecological care later on during imprisonment were found to fail women’s healthcare needs. In the facilities surveyed, medical screening on entry was limited to blood and urine tests, chest X-rays and blood pressure checks, not providing gynaecological examination.¹⁷⁸ Such examinations were found to only be prescribed every one or two years and only for “female workers who enter menopause”.¹⁷⁹ 40 % of the surveyed women had never undergone any specific gynaecological health and disease examinations.¹⁸⁰

Access to substance abuse treatment programmes, in many countries, is discriminating against women. In Kyrgyzstan, for instance, in 2008 a planned methadone programme in women’s prisons fell victim to funding cuts, and as a result opioid substitution therapy (OST) was only available in men’s prisons.¹⁸¹ When finally established,¹⁸² contrary to the programme provided in eight men’s prisons, no separate ‘clean zone’ was available with the programme for women, but those undergoing the treatment mixed freely with the other prisoners.¹⁸³ In Georgia, too, a survey in 2008 found that methadone as an opioid substitution therapy (OST) was available in some men’s prisons but not in women’s prisons, a common practice

¹⁷⁶ Quoted in Lines (2008), p. 13.

¹⁷⁷ Cornell Law School’s Avon Global Center for Women and Justice et al. (2013), pp. 3, 21.

¹⁷⁸ Lei et al. (2014), p. 37.

¹⁷⁹ *Ibid.*, p. 8.

¹⁸⁰ *Ibid.*, p. 37.

¹⁸¹ Stoicescu (2012), p. 129.

¹⁸² The programme ‘Atlantis’ was established in Stepnoye prison in 2009, providing a six month long treatment for up to 12 women at a time on a voluntary basis.

¹⁸³ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 17.

mirrored also in reports on discrimination against women regarding the accessibility of substance abuse programmes in the Russian Federation.¹⁸⁴

While the principle of non-discrimination in the treatment of prisoners, including on the ground of sex, has already been enshrined in other standards, the common deficiencies in providing adequate health-care to female prisoners underlines the added value of guidance put in place by the Bangkok Rules.

A provision on medical screening upon entry finally spells out the need for a comprehensive examination, explicitly including the reproductive health history, presence of drug dependency, of sexually transmitted or blood-borne diseases and mental health-care needs, and whether sexual abuse or other forms of violence have been suffered prior to admission (Rule 6, Rule 7 details the precautions in case prior abuse is determined). Due to women prisoners' backgrounds it may be the first time in their lives that they have a medical examination or have access to a doctor.¹⁸⁵

Bangkok Rule 10 (2) requires that women are examined and treated by a woman physician or nurse if she so requests, except for situations of medical urgency. Rule 11 captures that, with limited exceptions, only medical staff should be present during examinations. Conscious of the fact that women feel particularly vulnerable exposing their bodies and of experiences of sexual abuse, the Rules require health-care services to be provided in a culturally and gender-sensitive manner, ensuring privacy and dignity.

Gender-sensitivity and responsiveness to the specific needs and backgrounds of women is one of the common features in all respective provisions, alongside the principle of equivalence of health-care to that delivered in the community, which includes close cooperation between prison and public health services (Bangkok Rule 10).

Bangkok Rule 8 captures the principle of confidentiality of medical information as well as the voluntariness of examination and treatment, not yet included in the 1955 Standard Minimum Rules. As both principles are human rights standard regardless of the sex of the patient or the environment medical examination or treatment are taking place, their first explicit incorporation in the Bangkok Rules is of added value to all prisoners. Women specifically may not wish to share their reproductive health history or status,¹⁸⁶ but the Rule also prohibits 'virginity testing' as exercised in some countries¹⁸⁷ in violation of the right to dignity and the right not to be subjected to ill-treatment.¹⁸⁸

¹⁸⁴ Penal Reform International, Russia (2010).

¹⁸⁵ UNODC, WHO Europe (2009), p. 21.

¹⁸⁶ Research in China, for example, documented mandatory pregnancy tests (Lei et al. 2014, p. 31).

¹⁸⁷ For example, such practice was reported in Egypt in 2011 (Amnesty International, Egypt, 2011).

¹⁸⁸ Special Rapporteur on torture, A/HRC/7/3 (2008), para. 34.

5.6 *Specific Health Issues*

Gender-specific treatment and care for HIV/AIDS is required by Bangkok Rule 14, acknowledging that medical treatment for women with HIV/AIDS needs to be different than treatment of men. The components of a treatment and prevention strategy include the provision of reproductive health and family planning advice, information on the transmission of sexually transmitted infections and HIV and ways to reduce those risks. Education initiatives and an appropriate diet and nutrient supplements are another important component, with extra care for pregnant or breastfeeding women.¹⁸⁹

Gendered differences in substance dependencies and related complications are acknowledged by Bangkok Rule 15, which highlights the need for ‘specialised treatment programmes designed for women substance abusers’. Access to harm reduction programmes,¹⁹⁰ rehabilitation programmes and drug-free areas must not be discriminating against women. Treatment programmes need to take into account prior victimisation, diverse cultural backgrounds, any history of abuse or domestic violence and mental health problems common among women with substance dependencies as well as the special needs of pregnant women and women with children.

Health-care, for all prisoners, should include preventative health-care measures, but for women these need to comprise pap smears and screening for breast and gynaecological cancer (Bangkok Rule 18). Other preventative health-care measures required by women may include the provision of contraceptive pills, as necessary, for instance in cases of problematic menstruation. Sport activity, for example, is also a key preventative health-care measure to maintain the physical and mental well-being of prisoners. However, in many prisons recreational activities are gender-stereotyped, and often sports facilitated for men are not available for women.

Provision of adequate and healthy food also constitutes a requirement of physical and mental health, and the lack of it—often discriminatory to access granted to male prisoners—can give rise to concerns. For instance, research in South Africa revealed women prisoners’ limited diet and poor quality of food, including smelly and rotten vegetables and meat mostly consisting of skin and fat. This appeared to result mainly from the fact that the food was prepared in the men’s prison kitchen by male offenders who selected meat and vegetables for themselves, leaving the less desirable food for the women.¹⁹¹ It was also found that women prisoners rarely had any fruit, because they only received the leftovers when excess was sent over from another male prison.¹⁹²

¹⁸⁹ See more guidance in WHO et al., *A Framework for an Effective National Response* (2006).

¹⁹⁰ Such as pharmaceutical interventions, for example, opioid substitution therapy (OST).

¹⁹¹ Artz et al. (2012), pp. 63, 64.

¹⁹² *Ibid.*, p. 64.

5.7 *Mental Health*¹⁹³

Women who are admitted to prison are more likely than men to suffer from mental health problems,¹⁹⁴ often as a result of previous domestic violence, physical and sexual abuse. Mental health issues can be both the cause and consequence of imprisonment, sometimes further exacerbated by overcrowding, inadequate health-care services and abuse. Moreover, family break-ups and feelings of failure in their parental responsibilities have been found to cause women particular stress, feelings of guilt and anxiety.

Parental concerns have been found to have a significant impact on women's experiences of incarceration, in part emanating from the fact that due to societal gender roles women have a higher sense of guilt for not fulfilling their role as mothers when detained and suffer more from the separation from their children.¹⁹⁵ Research in China, for example, confirmed the greater emotional damage to female prisoners following family breakdown due to detention, resulting in depression, loss of hope, anxiety and other symptoms.¹⁹⁶ Of the women surveyed in Georgia a significant number suffered from post-traumatic stress disorder and various mental health problems.¹⁹⁷

Half of the women surveyed in Kazakhstan and 38 % in Kyrgyzstan experienced depression as a consequence of their imprisonment.¹⁹⁸ In Jordan, psychological problems as a consequence of imprisonment was the most commonly identified concern. Yet, only 27 % had received treatment for psychological/psychiatric problems.¹⁹⁹ As many as 71 % of the women surveyed in Tunisia said that they experienced depression as a consequence of their imprisonment and 61 % experienced anxiety, but only a third had received treatment for a psychological or psychiatric problem.²⁰⁰ In the US, nearly 75 % of incarcerated women have been diagnosed with mental illness, a rate much higher than their male counterparts.²⁰¹

Yet, adequate psychological care, counselling and support relating to the causes of mental health problems are often missing, and much too frequently, symptoms are addressed through medication. In Argentina, women surveyed described the common practice of receiving sleeping pills at their appointments with the

¹⁹³ 'Mental health' is defined as a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community (World Health Organization).

¹⁹⁴ For example according to a study conducted by the Bureau of Justice Statistics in 2002 and 2004. See UNODC Handbook (2014a), p. 9.

¹⁹⁵ Artz et al. (2012), p. 167.

¹⁹⁶ Lei et al. (2014), p. 10.

¹⁹⁷ Penal Reform International, Armenia and Georgia (2013b), p. 18.

¹⁹⁸ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 18.

¹⁹⁹ Penal Reform International, Jordan and Tunisia (2014b), p. 16.

²⁰⁰ Penal Reform International, Jordan and Tunisia (2014b), p. 28.

²⁰¹ American Civil Liberties Union, *Worse than Second Class* (2014).

psychiatrist without further inquiry into their specific health issues.²⁰² In Canada, an investigation found a dramatic spike in prescriptions for all mood-altering medications among female prisoners in the last decade, at least until 2011. So-called psychotropic medications overall surged in 2013 to 63 % of female prisoners, up from 42 % in 2002. Medications prescribed included *quetiapine* as a sleeping aid, although approved only for treating bipolar diseases and schizophrenia. 21 out of 22 women interviewed said that they had been prescribed this drug in either a federal or provincial institution. Health professionals stated that the drugs used have side effects that can be lethal.²⁰³

5.8 Suicide and Self-Harm

Linked to women prisoners' state of mental health, research has shown a higher risk in comparison to men of women prisoners harming themselves or attempting suicide.²⁰⁴ This has been attributed, in part, to the higher level of mental health problems and substance dependency and to the harmful impact of isolation from the community due to the distances of women's prisons from their family and community. An Australian report argues that in contrast to male prisoners, who express anger and frustration by engaging in physical violence or initiating riots, women are more likely to turn to self-harm.²⁰⁵

A case in Canada, for example, demonstrates the fatal consequences of the failure to address a young woman prisoner's mental health needs. A woman prisoner committed suicide in 2007 while she was under suicide watch. Rather than providing treatment and support, her mental health issues were 'treated' through excessive periods of segregation, use of force and restraints.²⁰⁶ In his report on the incident, the Federal Prison Ombudsperson found that the death was "the result of individual failures that occurred in combination with much larger systemic issues within ill-functioning and under-resourced correctional and mental health systems."²⁰⁷

In Kyrgyzstan, over a quarter of women prisoners surveyed had attempted suicide and 29 % had harmed themselves at some point in their life.²⁰⁸ In Tunisia

²⁰² Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 22.

²⁰³ CBC News, Prisoners given powerful drugs off-label, allegedly to 'control behaviour', 14 April 2014.

²⁰⁴ WHO Regional Office for Europe, Health in Prisons (2007).

²⁰⁵ Special Rapporteur on violence against women, A/68/340 (2013), footnote 119.

²⁰⁶ Canadian Association of Elizabeth Fry Societies (2013).

²⁰⁷ Bingham and Sutton (2012).

²⁰⁸ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 18. In Kazakhstan authorities had requested four questions to be removed from the questionnaire, which related to the provision of psychological or psychiatric treatment and to suicide and self-harm prior to and during imprisonment, and no research results are therefore available.

40 % of the women surveyed had either harmed themselves and/or attempted suicide.²⁰⁹ Certain times were highlighted by interviewees as constituting a heightened risk of self-harm and suicide: during the first weeks of admission; the period before and after trial; and following a six months' period of detention.²¹⁰ In some countries self-harm and suicide attempts are penalised as criminal offences, rather causing further deterioration than a solution to the problem.

Bangkok Rule 12 acknowledges that successful treatment of mental health issues requires an individualised gender-sensitive approach, addressing the root causes and taking into account any trauma that the female prisoner may have experienced. Rule 16 requires the development of a strategy to prevent suicide and self-harm in consultation with mental health-care and social welfare services.²¹¹

5.9 Body Searches

Body searches,²¹² in particular strip and invasive body searches are prone to humiliation and abuse for both, male as well as female prisoners. Yet, given women's background (anatomy, socialisation) and the high rate of prior abuse, the impact of such searches on women is disproportionately greater than on men, in particular where conducted by male staff or in the presence of men. Such searches require prisoners to undress and lift their breasts, bend over at the waist and spread their cheeks. In some countries they are conducted on a more or less routine basis or by male guards.²¹³ The Special Rapporteur on violence against women described the improper touching of women during searches carried out by male prison staff as 'sanctioned sexual harassment'.²¹⁴

The Rapporteur documented, for example, highly invasive and often traumatic strip searches in Australia, which were not proportional to preventing illegal items from being smuggled into prison.²¹⁵ A prisoner described how they were strip

²⁰⁹ Penal Reform International, Jordan and Tunisia (2014b), p. 28.

²¹⁰ Penal Reform International, Armenia and Georgia (2013b), p. 18.

²¹¹ For more detailed guidance on the key components of a suicide prevention programme in prison, see Preventing suicide in jails and prisons, Co-produced by WHO and IASP, the International Association for Suicide Prevention, 2007.

²¹² Searches include all personal searches, including pat down and frisk searches, as well as strip and invasive searches. A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas. Invasive body searches involve a physical inspection of the detainee's genital or anal regions. Other types of searches include searches of the property and rooms of prisoners. Visitors to prison are also frequently searched.

²¹³ Special Rapporteur on violence against women, United States of America, /HRC/17/26/Add.5 and Corr.1, (2011), para. 43; Human Rights Watch, Unjust and Unhealthy (2010); South African Human Rights Commission (1998), p. 67.

²¹⁴ Special Rapporteur on violence against women, United States of America, E/CN.4/1999/68/Add.2, paras. 55, 58.

²¹⁵ Penal Reform International, Guidance Document (2013a), p. 62, footnote 209.

searched after every visit, ‘naked, told to bend over, touch our toes, spread our cheeks. If we’ve got our period we have to take the tampon out in front of them. It’s degrading and humiliating. When we do urines it’s even worse, we piss in a bottle in front of them. If we can’t or won’t we lose visits for three weeks.’²¹⁶

In Belarus, the search by a male guard of a female arrestee led to a widely noted complaint to the UN Committee on the Elimination of Discrimination against Women. During the search, one of the guards had poked her buttock with his finger, made humiliating comments and threatened to strip search her.²¹⁷ Such practices were also reported, for example, by inmates at a prison in Zambia, which involved prison officers inserting their fingers into women’s private parts, on a routine basis on Saturdays, in search of valuables and money.²¹⁸ In Greece, reports stated that prisoners who refused to undergo such searches were placed in segregation for several days and forced to take laxatives.²¹⁹

Bangkok Rules 19 and 20 are therefore of particular relevance, even more so as until the revision of the Standard Minimum Rules in December 2015 they provided the only explicit international standard on body searches, differentiating between pat down, frisk and visual searches as compared to invasive and body cavity searches.

The Rules reiterate that strip or invasive body searches should only be carried out by someone of the same gender,²²⁰ only in exceptional circumstances when absolutely necessary, and should be replaced by scans and other alternative screening methods. Where necessary, it should be undertaken in two steps, meaning that the detainee is asked to remove his/her upper clothing at separate times so they are never fully naked.²²¹

5.10 Restraints

While certain restrictions for the use of restraints were already included, in general, in Rule 33(a) of the 1955 Standard Minimum Rules, Bangkok Rule 24 finally

²¹⁶ Australian Human Rights Committee (2012) and George (1993), p. 211.

²¹⁷ UN Committee on the Elimination of Discrimination Against Women, CEDAW/C/49/D/23/2009 (2011).

²¹⁸ Mweetwa (2013).

²¹⁹ Penal Reform International, Guidance Document (2013a), p. 61, footnote 208.

²²⁰ The principle that women prisoners should only be supervised and attended to by female officers is already enshrined in Rule 53 of the Standard Minimum Rules, and has been emphasised by various international and regional bodies in order to prevent sexual abuse and humiliation of prisoners. Yet, increasing use of mixed staff also means that male staff is carrying out searches of women prisoners in some countries, and the Standard Minimum Rules do not include any explicit guidance on body searches.

²²¹ World Medical Association, Statement on Body Searches of Prisoners (2005). It states, *inter alia*, that physicians should not participate in prison’s security system and that searches should not be conducted by physicians who will subsequently provide medical care to the prisoner.

prohibited the use of any kind of body restraint on women during labour, during birth, and immediately after birth. In the US, for example, the shackling of pregnant prisoners still persists to this day, even though there is no reasonable chance of a woman escaping during labour, while giving birth or after birth.²²²

Such practices have also been documented in the Occupied Palestinian Territory,²²³ and have been described by the Special Rapporteur on violence against women as ‘representative of the failure of the prison system to adapt protocols to unique situations faced by the female prison population’.²²⁴

Serious health concerns arise from this practice. As women in labour need to be mobile so as to assume various positions as needed and so they can be moved to an operating room if necessary, shackling of women in labour compromises the mother and baby’s health. Lack of mobility can cause hemorrhage or decrease in fetal heart tones. In particular, if complications arise during delivery, a delay of even five minutes can result in permanent brain damage for the baby.²²⁵

5.11 *Solitary Confinement*

Disciplinary segregation or solitary confinement²²⁶ in general have been found to be extremely harmful to a person’s psychological health and wellbeing. Medical research confirms that the denial of meaningful human contact can cause ‘isolation syndrome’ the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and can destroy a person’s personality.²²⁷ Where prolonged or indefinite, such treatment can amount to torture and ill-treatment, as emphasised by the Special Rapporteur on Torture.²²⁸

Yet, for women, the particular distress experienced when in isolation needs to be taken into account, even more so if they have mental health issues, are pregnant or have recently given birth. Solitary confinement also places women at greater risk

²²² American Civil Liberties Union, Briefing Paper (2012).

²²³ Special Rapporteur on violence against women, Occupied Palestinian Territory, E/CN.4/2005/72/Add.4 (2005).

²²⁴ Special Rapporteur on violence against women, A/68/340 (2013), para. 57.

²²⁵ Provided to Amnesty International by Chicago Legal Aid to Incarcerated Mothers, December 1998, and printed in Amnesty International, Not part of my sentence (1999).

²²⁶ There is no universally agreed definition of solitary confinement, but authoritative sources such as the Istanbul Statement on the Use and Effects of Solitary Confinement and the Special Rapporteur on Torture have described it as the ‘physical (and social) isolation of individuals who are confined to their cells for 22-24 h a day.’ See Special Rapporteur on torture, A/66/268 (2011), paras. 57–58.

²²⁷ Grassian (2006), pp. 124–156; Haney (2003); Shalev (2008).

²²⁸ See Special Rapporteur on torture, A/66/268 (2011). See also Rules 44 and 45 revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly Resolution A/70/175, adopted on 17 December 2015.

for physical and/ or sexual abuse by prison staff. For example, a report by the American Civil Liberties Union revealed that a number of women perceived to be mentally ill were held in solitary confinement, some of them as a punishment for raising complaints. The isolation has also been found to jeopardise access to pre-natal care.²²⁹

In May 2014, for instance, a women detainee in Texas was forced to give birth in her solitary cell, resulting in the death of her newborn baby. A respective lawsuit claims that “obvious signs of labor and constant requests for medical assistance” were ignored and she was left unattended in a solitary cell. The woman reported that the nurse on duty had examined her, but said she was not in labour. While in her solitary cell, repeatedly requesting to see a doctor, the guards ignored her until a detention officer walking by her cell saw that she was delivering.²³⁰

Even though Bangkok Rule 22 is not very far-reaching, at least it incorporates an explicit prohibition of the use of solitary confinement or segregation as a disciplinary measure for pregnant women, women with infants and breastfeeding mothers. Beyond this explicit restriction, due to its harmful and often irrevocable consequences disciplinary segregation or solitary confinement should be used only as a last resort in exceptional circumstances and for the shortest period of time possible.²³¹

5.12 Visits

In many prisons around the world, women receive fewer visits than men. This is caused by fewer prison facilities for women, resulting in greater distances from family and community and greater logistical difficulties and costs involved in arranging such visits. Women offenders’ particular stigma also often means that they are shunned by their families. Prison regulations and institutional barriers may add additional factors in lacking or limited family contact.²³²

For example, in England and Wales (UK) half of all women on remand were reported not to receive visits from their family, compared to one in four for male prisoners.²³³ Stigmatisation of female offenders was found to be a reason for isolation in China, with female offenders having no one to visit them for many years, as they were abandoned by their loved ones.²³⁴ In Ghana, research confirmed as contributing factors for fewer visits of female prisoners the smaller number of women prisons and the different gender roles in Ghanaian culture. As a result

²²⁹ American Civil Liberties Union, *Worse than Second Class* (2014).

²³⁰ Counter Current News (2014).

²³¹ UNODC Handbook (2014a), p. 47.

²³² See for example Artz et al. (2012), p. 52.

²³³ The Corston Report (2007), p. 18.

²³⁴ Lei et al. (2014), p. 27.

women prisoners were less likely than their male counterparts to be delivered necessary items, including food.²³⁵

The subsequent absence of contact with the family, in particular children, is detrimental to women prisoners' mental health as well as to rehabilitation and reintegration efforts,²³⁶ even more so where the legal framework allows for the termination of parental rights in case of disrupted ties. For example, in-depth interviews in South Africa illustrated that for women prisoners, the separation from their children constituted one of the most difficult aspects of imprisonment, and that concern for their children played a crucial role in the determination of these women to resist future offending and substance abuse.²³⁷ In addition to emotional support friends and family often provide vital material support for incarcerated family members, by bringing money or goods such as toiletries, underwear and telephone cards.²³⁸ Those without such support are at a considerable disadvantage.

The UN Standard Minimum Rules for the Treatment of Prisoners therefore provide that prisoners should be allowed to communicate with their family and friends. Yet, the Bangkok Rules add value in the light of the realities in many countries, resulting in increased isolation of women prisoners. Bangkok Rule 4 requires, as far as possible, for women to be allocated close to their home. However, as this is often not the case, Bangkok Rule 26 calls for measures to counterbalance the disadvantages that stem from this. Where visits are not possible or infrequent due to the distances, other means of communication should be facilitated and contact should not be prohibited as a disciplinary sanction (Bangkok Rule 23).²³⁹

Other measures to compensate for disadvantages caused by farer distances can include extending visiting hours or providing overnight accommodation if family members have to travel a long way. School and standard working hours should be taken into account, even if this is outside regular visiting hours, and families should be provided with information about the location and any transfer of their imprisoned family member. Also the frequency and length of telephone calls should be increased, if families are unable to travel to the prison, and cooperation should be developed with organisations which can facilitate visits.

The conditions and atmosphere of a visit also play a crucial role as they strongly affect the quality of a visit and are likely to impact on the number of visits women receive. Often visitors and prisoners are separated by a wire mesh or glass, and can

²³⁵ Amnesty International, Ghana (2012), p. 28.

²³⁶ UNODC, Afghanistan (2007), p. 47. Bangkok Rule 43 recognizes that visits are an important prerequisite to ensuring women prisoners' mental well-being and social reintegration.

²³⁷ Artz et al. (2012), pp. 189, 191.

²³⁸ Ashdown and James (2010), p. 132.

²³⁹ Bangkok Rule 44, conscious of the fact that a significant proportion of women in prison has experienced violence and may not wish to be visited by them, emphasises that women prisoners should be consulted on who is allowed to visit them.

only communicate through an earpiece, even though such precautions are not necessarily based on actual security risks.

Bangkok Rule 28 is therefore supplementary to other prison standards in recognising the strong need for mothers and children to have physical contact and requires a child-friendly environment to reduce any distress felt by the children. It is good practice to allow for visits with physical contact in a comfortable, inviting setting, which provides an opportunity for interaction, bonding and for playing with children.²⁴⁰

Humiliating search procedures of visitors are likely to discourage visits, in particular for children. Complaints about such procedures have been documented, for instance, in Brazil, including even elderly women and children,²⁴¹ or in Afghanistan. In a men's prison on the edge of Kabul, reportedly a blanket order to conduct invasive body-cavity searches of female visitors was argued as a measure to keep out contraband, while most male visitors got into the prison with a mere pat down search.²⁴²

While Bangkok Rule 21 does not provide guidance for searches of visitors in general or in a comprehensive manner, at least for children it explicitly refers to the need for any searches of children to be carried out in a way that protects their dignity. Conjugal visits,²⁴³ in some countries, are allowed for male prisoners, but not for their female counterparts. For example in Chile, women prisoners are generally prohibited from having sexual relations with their partners. While two pilot programmes have been introduced, female prisoners are only eligible for conjugal visits if they have already been sentenced and if certain requirements are met, such as having a stable partner, 'good behaviour', and if the absence of sexually transmitted infections has been verified. Male inmates, by comparison, are not required to meet any such criteria, but have the right to conjugal visits.²⁴⁴

To address such gender-based discrimination, Bangkok Rule 27 requires that male and female prisoners are allowed conjugal visits on an equal basis.

²⁴⁰ Currie (2012), p. 16.

²⁴¹ Subcommittee on Prevention of Torture, Brazil, CAT/OP/BRA/1.en (2012), para.118.

²⁴² New York Times, *Afghan Prison's Invasive Searches of Female Visitors Stir Fear of Slipping Rights* 16 March 2012; Human Rights Watch, *Afghanistan: End Invasive Searches of Women Visiting Prison*, 20 March 2012.

²⁴³ A conjugal visit is a scheduled period in which a prisoner can spend time with a visitor in private, usually their spouse or long-term partner. These visits help to maintain a couple's intimate bond, including their sexual relationship. The couple usually spends the visit in a small unit, which contains, at a minimum, a bed, a shower and other sanitary facilities.

²⁴⁴ Organisation Mondiale contre la Torture (2004), para. 123.

5.13 *Children Living in Prison with their Mother/Parent*²⁴⁵

Almost all countries allow babies and children to live in prison with their mothers, typically until they reach a certain age. For example, Argentina allows children up to the age of four to reside with their mothers in prison.²⁴⁶ In England and Wales, babies can stay with their mothers until the age of between 9 and 18 months—or longer if the release date is imminent.²⁴⁷ In contrast, prison rules in most states in India permit imprisoned mothers to keep children with them up to the age of 6, and some state prisons have allowed girls of 10 and 12 who have a disability to remain in prison with their mothers.²⁴⁸

While allowing infants and young children to live with their incarcerated parents (co-residence programmes) reduces some risks associated with separation, life in prison is a distressing and traumatic experience for children and has to be implemented with adequate safeguards, proper infrastructure and necessary resources.

The Bangkok Rules therefore include specific provisions tailored to children living in prison with their parent (mother or father).²⁴⁹ Bangkok Rule 49 stipulates that decisions to allow children to stay with their mothers/fathers in prison need to be based on the best interests of the children. If they co-reside with their parent in prison they should never be treated as prisoners (Bangkok Rule 49), their experience must be as close as possible to life for a child outside (Bangkok Rule 51). Children living in prison with their mothers (or fathers) are likely to also have health-care and psychological support needs, which are recognised in Bangkok Rules 9 and 51.

The conditions in detention inevitably impact on the children living in prison with their parent, in terms of overall conditions as well as due to the lack of infrastructure suitable for children. Sierra Leone prisons, for example, were found to lack dedicated infrastructure for co-residence, and infants frequently became ill due to the conditions in prison and the spread of contagious diseases.²⁵⁰ Most of the children in prison with their mothers were under two and held in a maximum-

²⁴⁵ Standards relating to children of imprisoned parents, other than in the Bangkok Rules, have been developed by the African Committee on the Rights and Welfare of the Child, General Comment No. 1 (2014) and Committee on the Rights of the Child, Day of General Discussion. (2011). See <http://acerwc.org/wp-content/uploads/2013/12/GC-No1-on-Article-30-of-the-African-Charter-on-the-Rights-and-Welfare-of-the-Child.pdf>.

²⁴⁶ Cornell Law School's Avon Global Center for Women and Justice et al. (2013), p. 5.

²⁴⁷ Penal Reform International, Submission (2011b).

²⁴⁸ *Ibid.*

²⁴⁹ Para. 12 of the Bangkok Rules' preliminary observations state that "Some of these rules address (...) both men and women, including (...) parental responsibilities (...)." See further recommendations in the Report and Recommendations of the General Discussion on 'Children of Incarcerated Parents', 30 September 2011, UN Committee on the Rights of the Child, and; General Comment 1 on the African Charter on the Rights and Welfare of the Child Comment (2014).

²⁵⁰ Special Rapporteur on violence against women, A/68/340 (2013), para. 80.

security prison, which was seen to have the best facilities. However, babies were observed to be malnourished, whether breast-feeding or eating on their own, because of the lack of food and basic hygiene.²⁵¹

As most countries provide in their laws for a specific age until which babies and children can live in prison with their parent, inevitably, they will be separated at some point, resulting in emotional stress for both, the parent and the child, and raising questions about alternative child-care arrangements.

In recognition of the difficult situation arising from separation, Bangkok Rule 52 requires that such decisions shall be based on individual assessments and the best interests of the child and that the removal of the child from prison shall be undertaken with sensitivity, and only when alternative care arrangements for the child have been identified.

6 Rehabilitation and Reintegration

6.1 Classification

In order to achieve the rehabilitative purpose of imprisonment, the prison term has to be used to ensure to the extent possible that upon return to society the offender is able to lead a law-abiding and self-supporting life.²⁵² Classification, usually conducted upon arrival, constitutes a crucial tool to ensure suitable rehabilitative services.²⁵³

Women prisoners may face discrimination in such classification processes, which can result in the allocation of a security level higher than necessary, usually linked to more restrictions and less access to work and rehabilitation programmes.²⁵⁴ Common causes are the low number of women prisons and procedures that are not gender-sensitive, in particular with regard to women's experiences of violence and typically poorer state of mental health, which is often misinterpreted as security risk.²⁵⁵

In Australia, for example, the insufficient number of women prisons has resulted in women being detained in maximum-security prisons with male prisoners.²⁵⁶ In the women's section of a prison in Thailand, there was only one male prison guard in charge of classification and all women were classified as high-risk, even though the prison director said that only six of them actually met the criteria.²⁵⁷ The lack of

²⁵¹ Penal Reform International, Submission (2011b).

²⁵² Rule 58 Standard Minimum Rules.

²⁵³ See Standard Minimum Rules 63 and 67–69.

²⁵⁴ Ashdown and James (2010), p. 130.

²⁵⁵ Penal Reform International/Association to Prevent Torture (2013), p. 9.

²⁵⁶ Australian Human Rights Commission (2012).

²⁵⁷ Report from East Asia-Pacific Regional Meeting, UNODC/JSDO/BKEGM/2013/1 (2013), para. 39.

gender-sensitive processes is also illustrated in South Africa, where sentence plans are drawn on the basis of an initial admission interview of incoming offenders, including the determination of rehabilitation programmes. The design of the process resulted in women only indicating recent events and issues directly related to their arrest, rather than violence and trauma dating back further.²⁵⁸

Taking into account these common problems in classification methods, Bangkok Rules 40 and 41 stipulate the development and implementation of classification methods that are gender-specific and ensure appropriate rehabilitative plans.

6.2 *Consequences of Imprisonment*

In designing rehabilitation programmes it is important to understand the consequences of imprisonment for detainees in general, and to identify particular obstacles women face in this regard.

Overall, former prisoners will experience loss of employment while they were imprisoned, and the criminal record will make it difficult to find work again. Loss of housing will also be a common feature, although women may be more affected in societies where they face increased stereotypes and are rejected by their families. If they have left a violent relationship, women will have to establish a new life, which is likely to entail additional economic, social and legal difficulties. Already before imprisonment women are likely to have faced discrimination in the labour market, which will be exacerbated following imprisonment.

The low levels of education and vocational skills, which has been identified as a common feature amongst women prisoners, if unaddressed during their prison term, will remain an equally big challenge as prior to imprisonment. Break-up of families tends to affect women more than their male counterparts, and they are likely to have a particular sense of guilt towards their children. In some countries they may lose their parental rights. Confidence and life skills also tend to be lower amongst the female prison population than amongst their male counterparts.

Health problems are a common concern, for both male and female prison population, as a generally poor state of health amongst prison populations is likely to have been further deteriorated by prison conditions, poor nutrition, the prevalence of infectious diseases²⁵⁹ and poor health services. Yet again, former women prisoners will be affected by discrimination in access to health-care services and social welfare in countries where equality has not been achieved in the respective policies.

²⁵⁸ Artz et al. (2012), p. 46.

²⁵⁹ There is a heightened risk of mental illness and infection rates for tuberculosis, HIV and hepatitis B and C can be up to a 100 times higher in prisons than in the outside community (International Centre for Prison Studies, Guidance Note: Improving Prison Health Care, January 2005). The TB rate in prisons in Europe in 2002 was 84 times higher than in the general population (UNODC/WHO Europe, Good governance (2013), pp. 1, 2).

The lack of attention for women's particular health issues in many prisons, not least reproductive and preventive health-care needs, may result in a particularly poor state following their release. Mental health problems, typically higher amongst the female prison population, are likely to have worsened in prison rather than improved, and they may have long-term consequences due to isolation and the higher rate of self-harm and suicide.²⁶⁰

Other challenges and forms of discrimination in society may equally affect women following their release. Research in China, for example, has revealed that spouses often force their wives in prison to unfair divorce settlements or secretly initiate property transfers, leaving them without financial security when they are released.²⁶¹ Women prisoners are therefore likely to face different and additional challenges following release, which need to be addressed in a gender-sensitive way preparing them for release and following discharge from prison.

6.3 *Rehabilitation Programmes in Prison*

Pre-release preparation and post-release support policies and programmes are typically structured around the requirements of men and rarely address the gender-specific needs of women offenders. There are usually fewer educational and training opportunities for women, and those that are available are less varied and of poorer quality than those offered to male detainees.²⁶²

Furthermore, in many prisons the types of activities offered to women as part of rehabilitation programmes are gendered,²⁶³ traditionally thought appropriate for women. While skills taught to men are generally framed in terms of preparation for employment on release those taught to women rarely are. Where they are not mirroring domestic work conventionally conducted by women in the household, they equip for the most low-paid jobs in the economy. This reinforces women's dependency on men and the inability to find employment with sufficient income following release.

A UN report on Abomey prison in Benin, for instance, reflects this phenomenon, stating that women prisoners "appeared not to have equal access to the training courses and workshops provided for some male prisoners, nor to the education classes provided to male adolescent detainees."²⁶⁴ In New Hampshire state prisons,

²⁶⁰ Suicide attempts are more prevalent compared to women outside of prison, and compared to men in pre-trial detention. (See for example WHO/ISAP, Preventing suicide in jails and prisons, 2007).

²⁶¹ Lei et al. (2014), p. 10.

²⁶² Special Rapporteur on violence against women, A/68/340 (2013), para. 68.

²⁶³ See for example *ibid.* and Report of the Special Rapporteur on the right to education, A/HRC/11/8 (2009), para. 51.

²⁶⁴ Subcommittee on Prevention of Torture, Benin, CAT/OP/BEN/1 (2001), para. 277.

a report by the State Advisory Committee observed, that “It is noteworthy that the vocational training opportunities made available to incarcerated men reflect the kinds of well-paying work from which women have been traditionally excluded – automotive mechanics, carpentry, and the like while the sole industry available to women at the Goffstown prison is sewing. (...) The facts speak for themselves regarding the state’s complicity in sex-based discrimination confronting incarcerated women within the state.”²⁶⁵ The Committee also found that the significant contrast of services offered to women prisoners resulted in exceptionally high recidivism rates for female offenders in New Hampshire. In 2005, the reoffending rate for women was at an unprecedented high of 56 % compared to 49 % for men.²⁶⁶

The discrimination of women prisoners in access to rehabilitation programmes is also captured in a report of the UN Special Rapporteur on the Right to Education stating, “[i]n many countries, the quality and range of programmes is poorer than those provided for men and, where they are offered, they often reflect traditional female roles such as sewing, kitchen duties, beauty care, and handicrafts.”²⁶⁷ The Special Rapporteur on the right to education noted that generally “it is unsurprising that research involving female detainees has uncovered deep expressions of frustration with the extent and quality of education and training they received”.²⁶⁸

Other support, like social services, counselling, confidence-building and life skills, too often are lacking or ignoring the fact that similar needs operate differently for men and women.²⁶⁹ For women, interpersonal skills, with a special focus on family, have also been found to be important. A parliamentary review of educational programmes for women in British prisons found that literacy and numeracy were over-emphasised, with insufficient focus on ‘emotional literacy’.²⁷⁰ Criminologists with gender-specific expertise also emphasise the importance of “assertiveness training programmes, anger management and activities, which enhance women’s skills and experiences”.²⁷¹

Surveys on women’s priorities with regard to rehabilitation programmes confirm this approach. Programmes to build confidence and life skills represented the second most important support desired in a survey in the South Caucasus, even before vocational skills training (19 % in Georgia and 21 % in Armenia).²⁷² Women prisoners interviewed in South Africa also highlighted life skills (‘surviving out

²⁶⁵ New Hampshire Advisory Committee to the US Commission on Civil Rights, (2011), see also the Guardian, Discrimination against women in prison keeps them going back, 4 January 2013, accessed 22 January 2013, www.guardian.co.uk/commentisfree/2013/jan/04/discrimination-women-prison-recidivism.

²⁶⁶ *Ibid.*

²⁶⁷ Special Rapporteur on the right to education, A/HRC/11/8 (2009), para. 12.

²⁶⁸ *Ibid.*, para. 51.

²⁶⁹ Artz et al. (2012), p. 61.

²⁷⁰ The Corston Report (2007).

²⁷¹ Artz et al., p. 61.

²⁷² Penal Reform International, Armenia and Georgia (2013b), p. 20.

there'), for example how to open a bank account, how to use an ATM, how to get a cell phone contract, how to draft a CV or apply for a job with 'missing years', how to apply for social grants, how to secure housing and handle rental contracts, as highly important for rebuilding their lives.²⁷³ If a variety of rehabilitative programmes are provided in women's correctional facilities, often they are dependent on external funding and volunteers.²⁷⁴

Responding to discrimination of women prisoners in access to appropriate rehabilitation programmes, Bangkok Rule 46 requires prison authorities to implement comprehensive, individualised rehabilitation programmes which take into account women's gender-specific needs and aim to address the underlying factors that led to their offence so they can better cope with them following release. Programmes offered should not be limited to skills, which are traditionally considered appropriate for women due to gender-stereotyping and emphasise training and work that increases women's chances of earning a living wage after their release.

In light of the impact of family breakdown and separation from children, maintaining relationships with the family, in particular children, is also of key importance in preparation of successful reintegration of female offenders. Support for child-care and reunification with family was highly ranked in surveys, for example in the South Caucasus. 49 % in Armenia and 50 % in Georgia stated they required this kind of assistance to build a new life.²⁷⁵

6.4 *Reintegration Support Following Release*

Although many problems women face upon release are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. On top of typically having access to fewer and/ or lower quality rehabilitation programmes preparing them for release, "they are commonly burdened with low social and economic status in society and within their own families, and therefore face more difficult conditions upon release than do men."²⁷⁶

For women prisoners in Jordan, stigmatisation was the biggest obstacle preventing reintegration (71 %), followed by family abandonment (50 %). Women prisoners in Tunisia had equal anxieties, 69 % of them identifying stigmatisation as the most serious obstacle to reintegration.²⁷⁷ Obstacles in finding employment despite a criminal record usually constitutes the biggest challenge following release from prison in general, but even more so for women. Confronted

²⁷³ Artz et al. (2012), p. 59.

²⁷⁴ See for example Artz et al. (2012), p. 59.

²⁷⁵ Penal Reform International, Armenia and Georgia (2013b), p. 20.

²⁷⁶ Report of the Special Rapporteur on the Right to Education, A/HRC/11/8 (2009), para.49; Special Rapporteur on violence against women, A/68/340 (2013), para. 67.

²⁷⁷ Penal Reform International, Jordan and Tunisia (2014b, p. 31).

already with low levels of education and discrimination in access to the labour market, work and rehabilitation activities in prison—if existent—may not have equipped them with the necessary skills.

Help with finding employment was the most common support need expressed by women surveyed in Central Asia and the South Caucasus. For example, nearly 60 % of women in Kyrgyzstan and half of the respondents in Kazakhstan highlighted this as a priority and stated that their criminal record prevented employment.²⁷⁸ In Georgia, 70 % of the women surveyed indicated that they needed support in finding employment following release, in Armenia this figure was 65 %.²⁷⁹ In Tunisia, too, support in finding employment lead on the list of support requirements expressed by women prisoners; 56 % highlighted this as a priority.²⁸⁰

Finding housing is also a significant challenge for former prisoners, who often lose their accommodation due to imprisonment. Following release, they are likely not to have financial resources to afford housing, in particular to pay rent upfront or make security deposits. Applications may also require the disclosure of criminal records.²⁸¹ For women the situation may be exacerbated by being shunned by their families, or not being able to return to their spouses in case of a previous history of domestic abuse. In Australia, research has shown that women are left homeless, or forced to remain in secure custody, due to fear of payback and retaliation by the community.²⁸² A survey of women prisoners in Afghanistan highlighted that women released from prison cannot sign a property rental agreement without a man's signature, restricting their ability to lead an independent life.²⁸³

In a survey in Kazakhstan and Kyrgyzstan accommodation was perceived as a problem by 40 % of the women.²⁸⁴ In England and Wales 30 % of women offenders lost their accommodation while in prison, and of the women who had reoffended following release, 56 % stated that homelessness contributed to their offence.²⁸⁵

Another barrier faced by women prisoners following release is to address various health problems, either through denial of access or inability to afford health-care insurance.²⁸⁶ In the South Caucasus, the majority of women identified treatment for health problems as the most important support to receive as helping them with reintegration following release (48 % in Georgia and 60 % in Armenia).²⁸⁷ In Jordan as well as Tunisia, the women surveyed indicated that their poor

²⁷⁸ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 20.

²⁷⁹ Penal Reform International, Armenia and Georgia (2013b), p. 20.

²⁸⁰ *Ibid.*

²⁸¹ Special Rapporteur on violence against women, A/68/340 (2013), para 73.

²⁸² *Ibid.*, para 75.

²⁸³ UNODC, Afghanistan (2007), p. 34.

²⁸⁴ Penal Reform International, Kazakhstan and Kyrgyzstan (2014c), p. 22.

²⁸⁵ The Corston Report (2007), p. 3.

²⁸⁶ Special Rapporteur on violence against women, A/68/340 (2013), para 70.

²⁸⁷ Penal Reform International, Armenia and Georgia (2013b), p. 20.

psychological state was a major obstacle to reintegration (50 % in Jordan and 61 % in Tunisia).²⁸⁸

Absence of substance dependency treatment following release is particularly damaging as the lack of care “means that the conditions that rendered them vulnerable to drug involvement in the first place are sometimes replicated and augmented in prison, and after release”.²⁸⁹ According to a study in Canada women released were 10 times more likely to return to prison within one year when they did not participate in a drug treatment programme.²⁹⁰

Attention to mental health problems is equally important following release, as former women prisoners have a propensity to self-harm, including overdosing on drugs. For example, a study in England and Wales found that within one year of being released, former female prisoners were 36 times more likely to die by suicide than the general population.²⁹¹

While the Bangkok Rules could be more specific and detailed on the elements of gender-specific aftercare, Rules 56 and 47 emphasise the requirement to design gender-specific reintegration programmes in cooperation with probation and/or social welfare services, local community groups and NGOs and to provide additional support to released women who need psychological, medical, legal and practical help.

7 Conclusion

Women who come in conflict with the law certainly should not be described as unaccountable passive victims of male making. At the same time, undeniably, they face discrimination in the criminal justice system, to a considerable extent sustaining discrimination in society in general.

Patriarchal structures, perceptions of gender-appropriate behaviour, economic dependence and discrimination in the labour market as well as in access to education in many countries shape women’s lives. It is not surprising that these factors leave a trace and directly or indirectly contribute to women offending—or in case of moral crimes and protective detention to their penalisation in the first place. Penitentiary systems are designed for the majority male population of offenders and prisoners, overlooking—often in a misunderstood claim of equality—the specific characteristics and needs of women.

The link between violence against women and imprisonment is particularly striking. What available research there is shows that the pathway of many women offenders is paved with domestic or sexual violence, mostly at the hands of their

²⁸⁸ Penal Reform International, Jordan and Tunisia (2014b, pp. 19, 31).

²⁸⁹ Special Rapporteur on violence against women, A/68/340 (2013), para 71.

²⁹⁰ *Ibid.*, para 71.

²⁹¹ *Ibid.*, para. 69.

partners or family members. Once in detention they may easily find themselves, yet again, in a 'toxic environment'²⁹² of (sexual) abuse and harassment. International standards ignored their needs for too long, maybe most evidently symbolised in the self-evident provision for shaving items in prison standards since 1955, whereas it took until 2010 to incorporate sanitary pads.

The UN Bangkok Rules do not provide guidance on all issues surrounding women in the criminal justice system (discriminatory penal laws or sentencing, gender-specific offences, legal representation are not within their scope). However, they are a truly comprehensive set of standards covering not only conditions in detention but also non-custodial measures and gender-specific considerations in sentencing. In a few areas the Bangkok Rules are not very progressive or far-reaching (e.g. limitations to the use of solitary confinement or restraints) and in others guidance could be more concrete and specific (co-residence, visits, search procedures regarding children for example).

That aside, they are a milestone in the recognition of the need for gender-sensitive penal systems, and have a considerable added value to guide states and authorities on how to rectify their blind spots when it comes to women offenders and prisoners. The call for gender-sensitive justice systems does not mean that attention should suddenly shift from the majority male prison population to their female counterparts. Yet, in the light of the amount of ignorance and neglect vis-à-vis women in contact or conflict with the law for decades counter-balancing is now in order.

Human rights for offenders and prisoners are not only rights for the majority and the mere replication of services provided to men does not produce gender equality.

Five Questions

1. Why is the number of women prisoners and their rate amongst prison populations rising across the globe?
2. To what extent does the 'feminisation of poverty' contribute to the increasing number of women in prison?
3. Has the 'war on drugs' resulted in gendered disparities in the penal system?
4. To what extent do judges take into account systematic domestic or sexual violence as a mitigating factor or plea of self-defence in criminal proceedings against women who have committed violent offences against their abusive husband or spouse?
5. What considerations should be taken into account to decide whether babies/children should co-reside with their parent in prison?

²⁹² US Department of Justice (2014).

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Incarcerated Women: Their Situation, Their Needs and Measures for Sustainable Reintegration

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Abstract This contribution centers on incarcerated women offenders worldwide, their lived experiences, specific problems and needs, as well as correctional programming intended to help them reintegrate back into society. The chapter provides a theoretical understanding of the general marginalization of women in almost every modern society and an overview of theories that have been developed to explain why women commit offenses. Next, statistical information is provided concerning the prevalence of women prisoners in various parts of the world and the ways in which policy changes in the war on drugs and mandatory sentencing have impacted women's incarceration rates. The chapter then explores the gender-specific differences in women's pathways to prison and their distinct problems and needs, including the detrimental effects of mothers' incarceration on children. It concludes with promising approaches from different countries.

1 Introduction

This chapter is a collaborative effort between two scholars: A US American and a German. Although we attempted to gather comprehensive information on the topic of women and aftercare for all regions of the world, the emphasis in the contribution is slightly biased on North America—responsible for more than 30 % of all incarcerated women offenders—and Europe. This chapter is divided into four distinct subsections: Overview of Women's Marginalization, Statistics on Women and Crime Worldwide, Prison and Aftercare Programming, and Conclusions and Recommendations. An overview of each of the subsections is outlined below.

To explain Women's Marginalization (Sect. 2), we refer to Intersectionality Theory originally posited by Crenshaw (1989). The section also provides an overview

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of women's mental health and depression prevalence rates worldwide. Furthermore, the section explores research examining the variety of traumas women experience over their lifetimes, including child abuse and physical and sexual victimizations.

In addition to providing Statistics on Women and Crime Worldwide, Sect. 3 outlines four primary theories that have been developed to describe women's involvement in crime and the gendered patterns in criminal offending. The section provides information on criminal justice policy changes that have contributed to the growth of women in prison globally. The section concludes with a review of world incarceration rates for women.

Section 4, Prison and Aftercare Programming for Women, begins with an examination of maternal incarceration and family-centered programming. The section highlights programs offered in prisons to strengthen and empower women inmates, such as art therapy and theatre. It also synthesizes the literature on the challenges of returning home from prison and promotes gender specific aftercare programming. The section concludes with some best practices from Denmark, Northern Ireland (UK), Germany, England (UK), and the USA.

In the last section of the manuscript, Conclusions and Recommendations, we present four proposals for reform. First, we explore the abolition of prison sentences for non-dangerous women offenders. Second, we call for the conversion of existing correctional institutions into restorative prisons. Third, we provide an overview of Restorative Justice procedures specific to release from prison. Last, we call for sensible transition management, which addresses incarcerated women's personal deficits (e.g., educational/vocational, substance abuse, mental health issues, debt, housing) and provides a detailed plan for successful reentry.

2 Overview of Women's Marginalization

2.1 Intersectionality Theory

Following the conventions set forth in contemporary research on the consequences of incarceration on women and their families (Christian and Thomas 2009; Foster 2011; Henriques and Manatu-Rupert 2001), we use the theory of Intersectionality as the framework through which to explore the individual and systematic oppression of incarcerated women and their access to aftercare programming worldwide. It is important to note that contemporary developments in this area are built from the theoretical perspectives developed by Crenshaw (1989, 1991) and later expanded by Collins (2000). According to Crenshaw (1991), Intersectionality Theory explains how social identities, at both the micro and macro level, overlap and create unique experiences for women.

Intersectionality Theory posits that social identities are interdependent and not mutually exclusive; the identities do not stand-alone and are often complicated and intersecting (Bowleg 2012). Considering that our focus is on women who have been incarcerated and their access to aftercare programming, the micro level social

identities of race, ethnicity, sexuality, and gender and the macro level social identities of socioeconomics and poverty are critical. Moreover, as Barberet (2014, p. 7) points out, internationalization contributes other social identities, such as nationality, migratory and refugee status, indigenous status, and postcolonial perspectives. Each woman's lived experiences—before, during, and after prison—are shaped by the social identities that she embodies and the discrimination and oppression that she faces.

When Crenshaw (1989) originally posited Intersectionality Theory, she demonstrated her theory with a USA example, stating that the oppression resulting from being African American and a woman was much more crippling than sexism or racism alone. Today, in the age of globalization, we must also consider how the various layers of women's oppression are further shaped by the larger global, economic, and political forces, as well as women's nationality, migratory and refugee status, and colonialism (Barberet 2014; Mohanty 2003, 2013). In this larger context, we can compare and contrast the African American woman's experience in the USA with that of a Roma woman in an Eastern European state or a Rwandan woman whose family was killed in the genocide. By expanding Intersectionality Theory to include an international perspective, we broaden our scope beyond race, class, and socio-economic status and achieve a deeper understanding of how women involved in criminal justice systems are more marginalized than any other women in the world.

Women's disadvantaged statuses—especially as manifested in our incarcerated population—also shape the experiences of their respective children and other family members. Maternal incarceration forces immediate changes in children's living arrangements and presents ongoing challenges to family members in the community to provide care for the children left behind. The caregivers face the challenges of raising the children in the mother's absence, including assuming the requisite financial burden. Lastly, the amount and type of support available to families of incarcerated women varies greatly based upon the community; whereas families in urban centers may have access to numerous social services, those in suburban, rural, or underdeveloped areas may not. Given that incarcerated mothers often return to their role as primary care-providers to their children, their pathways home to their communities and families are shaped by the interlocking layers of oppression that they face. We will explore how these varying intersectionalities impact women's access to aftercare programming, as well as how children and families lives are impacted.

2.2 Women's Mental Health and Depression Prevalence Worldwide

As the World Health Organization (2014) reports, gender is influential in determining the differential power and control that men and women have over the determinants of their mental health and lives, their positions in society, societal status, treatment in society, and their susceptibility and exposure to specific mental health

risks. Worldwide, women experience depression at much higher rates than their male counterparts (Harvard Medical School 2014). According to the World Bank (2014), globally, depression as a serious health risk ranks 6th for women and 16th for men worldwide. Using the lenses of internationalization and Intersectionality Theory, it is important to recognize that women's rates of depression vary worldwide based upon women's position in society; societal attributes such as political power, participation in the labor force, and overall value impact women's prevalence of mental health issues. Considered another way, although women's rates of depression are higher than men's worldwide, in the USA, women experience depression at a rate of two to one to that of men (Harvard Medical School 2014). In the Middle East and North Africa, women experience higher rates of depression than any other area of the world (World Bank Organization 2014). Women's higher rates of depression and mental health issues partially stem from living in patriarchal societies and having reduced levels of social, economic, and political power.

Another reason that women's rates of depression worldwide are greater than men's relates to women's experiences with early childhood or lifetime trauma and victimization. Research examining adolescent women indicates that young women have lower self-concepts and are more likely to attempt suicide than their male peers (Miller et al. 1995). Given what we know regarding the prevalence of past victimizations among incarcerated women, this is critically important to aftercare programming. In a study examining incarcerated women in the USA, more than one out of five women had reported attempting suicide in the past (Holley and Brewster 1996). Contemporary research examining incarcerated women in the USA has estimated that three-quarters or more of the incarcerated women population has been subject to a variety of traumas over their lifetimes, including child abuse and physical and sexual victimizations (Bloom et al. 2004; Green et al. 2005; Lynch et al. 2012; McDaniels-Wilson and Belknap 2008). Exposure to such traumatic experiences greatly increases women's likelihood for post-traumatic stress disorder (PTSD), depression, substance abuse issues, and other mental health problems (Campbell 2002; Dutton et al. 2006; Hedtke et al. 2008; Lynch et al. 2012). The extent of the exposure to traumatic experiences explains why incarcerated women's mental health issues exceed women in the general population, as well as those of incarcerated men (Drapalski et al. 2009; Hills et al. 2004; James and Glaze 2006).

3 Statistics on Women and Crime Worldwide

3.1 *Theories Explaining Women's Involvement in Crime*

Most of the criminological theories addressing why certain individuals commit crime has centered on men. Despite the important differences that exist between men and women in gender socialization, opportunity, and equality, historically, there were no theories that focused on the differences in male and female offending.

Many feminists have outlined how theories describing criminality have focused only on what motivates men to commit crime (Messerschmidt 1993; Naffine 1996). As Kathleen Daly (1995) remarked, early criminological approaches to studying women's involvement in crime was to take the male-focused theories, add women, and stir. There have, however, been four primary theories developed to describe women's involvement in crime: emancipation hypothesis, economic marginalization, gender inequality, and pathways (Barberet 2014).

The emancipation hypothesis, largely developed by Adler (1975) and Simon (1975), purports that women will become more criminally involved as they gain more gender equality and crossover from the private sphere of home life to the public sphere of employment. According to this theory, as women become emancipated from domestic responsibilities and become more educated and have greater access to employment, they will have greater opportunities and skills to commit offenses. Proponents of the emancipation hypothesis see women's liberation and commensurate gains in economic and political equality as precursors to criminality, whereby increases in power translate into additional opportunities to commit crime.

Economic marginalization, as an explanation of women's criminality, is the opposite of the emancipation hypothesis (Barberet 2014). According to this theory, it is the feminization of poverty and globalization that explains women's decisions to commit crime. For example, a woman who lacks funds to provide for her children's basic needs might be motivated to commit a financial crime, in order to make ends meet. In the global context, examples abound where a woman facing economic marginalization is coerced or recruited to commit crimes (i.e., human or drug trafficking) by males, but in the systems of criminal justice, she is viewed not as a victim, but as an offender.

Gender inequality as a theory to describe women's involvement in crime takes this conceptualization further, by focusing on the lack of women's free will and determination in crime commission, as well as their involvement in secondary or lesser roles than their male counterparts (Barberet 2014). This theory posits that women are involved in crime due to their exploitation and victimization by men. Global gender inequality pushes women into committing such crimes as low-level drug trafficking and recruitment in human trafficking circles, wherein men have more primary roles. Gender inequality also provides a framework for understanding crimes of immorality in Islamic countries (i.e., adultery, running away, eloping), for which only women are arrested or detained. The theory is also useful in understanding young women's disproportionate representation in status offenses (i.e., running away) in the USA.

The final theoretical explanation of women's involvement in crime, pathways, is distinct from the other three theories, in that it is an individual-level theory (Barberet 2014). There is a growing body of literature that examines the many pathways to criminality that women experience, including abuse, poverty, and gender inequality (Brown and Bloom 2009; Covington and Bloom 2006; Few-Demo and Arditti 2013). The most documented pathway to offending for women is that of victimization; women are often victims of trauma and abuse in

their childhood home environments and may continue to be abused throughout their lifetimes (Few-Demo and Arditti 2013).

3.2 Policy Changes and the Growth of Women in Prison

Critics of the prison industrial complex criticize harsh drug laws, mandatory sentencing, and policing strategies focused on smaller crimes for the growing population of women in prison (Alleyne 2006). Globally, the policy that has contributed most to the growth in the number of women arrested and detained is the war on drugs. Although this “war” began in the United States of America, it quickly influenced drug interdiction practices in the illicit market globally (Barberet 2014). Due to what Steffensmeier (1983) termed “underworld sexism,” women are often given the most visible, lowest paid positions in the criminal underworld. This is certainly the case in the illicit drug market worldwide. Because drug interdiction methods globally are focused on small-scale dealers, women are more likely to be detected and arrested, as this is where women predominate (Barberet 2014). Most often, women involved in the illicit drug economy are low-level dealers and drug mules—the positions which are of central focus to law enforcement.

A second policy that has been highly influential in the increase of incarcerated women is that of presumptive or mandatory arrest in cases of intimate partner violence in the USA (Belknap 2015). In effect, presumptive or mandatory arrest policies eliminate law enforcement officers’ discretion; if an assault has taken place, at least one, but sometimes both, of the parties involved are subject to arrest. Since the inception of this policy shift, more women are arrested for assault charges. This is especially important, when we consider that approximately 30% of the world population of incarcerated women is in the USA (Walmsley 2012; Walmsley 2014).

It is important to note that, in the European Union (EU), there have been policy changes intended to reduce the use of incarceration for women. In the late 1990s, the EU introduced the approach of gender mainstreaming (European Institute for Gender Equality 2014). Among other efforts, the strategy of gender mainstreaming includes conducting gender assessments of policies. In some European states and on the transnational level of the Council of Europe, policy initiatives aiming at reducing incarceration have been started. For example, in 2009, the Parliamentary Assembly of the Council of Europe (PACE) passed Resolution 1663, which stated in part, “prison should be used as a last resort only if no other options are available and alternative forms of sentencing, including community service orders and Restorative Justice approaches should be considered first” (Quaker Council for European Affairs 2014). Moreover, the promotion of Restorative Justice practices, such as the efforts by the United Nations, is a step toward reducing the numbers of incarcerated women.

3.3 *Women's Involvement in Crime*

Globally, the vast majority of crimes are committed by men; women constitute a small minority of offenders in all countries (Walmsley 2012; Walmsley 2014; Belknap 2015). There are stark gendered patterns in the research examining offending; whereas men are more likely to be incarcerated for a violent offense (i.e. murder, rape), women are more likely to be incarcerated for non-violent offenses, such as drug or property crimes (i.e. larceny, fraud, forgery, and embezzlement) (The Sentencing Project 2012). This “gender gap” in offending (Schwartz and Steffensmeier 2008) appears to be rather consistent worldwide.

In the USA, which has the largest number of women incarcerated worldwide, there are both similarities and differences in the patterns of criminal offending by men and women (Schwartz and Steffensmeier 2008). Given the USA's mass incarceration policies, both men and women prisoners are likely to be incarcerated for crimes that would likely not result in incarceration in other parts of the world, such as minor property crimes or offenses related to substance abuse and addiction. The differences in offending among men and women in the USA are most often related to crime seriousness. Men in the USA commit serious offenses, such as murder, robbery, and aggravated assault, at much higher rates than women. In the USA, men's involvement in crime surpasses that of women in all categories except prostitution (Belknap 2015). Moreover, there is only one additional crime—embezzlement—for which there is a gender-neutral pattern of offending. In short, studies of offending in the USA consistently show that women generally commit fewer crimes than men and also that their offenses are much less serious.

The European Sourcebook on Crime and Criminal Justice Statistics is a compilation of statistical information from European countries. The most recent published edition from 2010 contains data on convicted females and women prisoners. Very high percentages (>16 % of all convicted persons) for females have been observed in Denmark, Finland, Germany, Sweden and England & Wales (as part of the United Kingdom); the lowest percentages (<8 %) are observed in Albania, Armenia, Cyprus, Romania, The Former Yugoslav Republic of Macedonia and Turkey. The average is 12 %, which is true for The Netherlands (WODC 2010, Table 3.2.2.1, page 195). Considered together, the average percentage of the female prison population was 5 %, which is close to the more recent data published by Walmsley (2012). Countries where women form the biggest proportion of inmates (between 6.2 and 6.7 %) are Finland, Hungary and Portugal; the lowest proportions could be found in Albania, Armenia, Bulgaria, France, Lithuania, Turkey and Northern Ireland, ranging between 2.6 and 3.8 % (WODC 2010, Table 4.2.3.1, page 309).

3.4 *Global Numbers of Women Arrested and Detained*

Although the rate at which women are involved in the criminal justice system varies widely across the world, in all geographic areas, women's involvement is much less than their male counterparts. The United Nations Office on Drugs and Crime publishes annual data on the number of individuals who have had formal contact with the police and/or criminal justice system, which includes information on individuals suspected, arrested, or cautioned. In 2012, there were 38 countries/territories reporting data on women (UNODC 2012). The percentage of women reported to have had formal contact with the police or other criminal justice authority ranged from a low of 1 % in Grenada to a high of 27 % in the Hong Kong Special Administration Region of China (UNODC 2014), with an average of 12 %. Although 20 of the 38 reporting countries and territories reported rates of formal contact of women at or below 10 %, seven places reported that women comprised 20 % or more of the total individuals in formal contact (Hong Kong, Australia, New Zealand, Columbia, Guyana, England/Wales, and Northern Ireland (UK)).

When we examine women's incarceration globally, there are two important trends: although women make up a small proportion of the total world imprisonment population, the rate at which they are being incarcerated is increasing, sometimes exceeding the growth in the world population of incarcerated men (Belknap 2015). According to the World Female Imprisonment List, which includes incarceration data for 212 prison systems worldwide, the percentage of women prisoners is growing on all five continents (Walmsley 2012). Whereas the population of women prisoners increased 6 % in Europe between 2006 and 2012, the increase in the same 6 year period was 23 % in the Americas.

Worldwide, there are 625,000 women and girls being held in penal institutions, either as pre-trial detainees or serving incarceration sentences (Walmsley 2012). Not surprisingly, almost one-third (32 %) of all women incarcerated worldwide are in prisons and jails in the USA. In the USA alone, 201,200 women are detained or incarcerated (equals 8.8 % of all inmates). Considered another way, the incarceration of women and girls in the USA exceeds that of the 27 European Union Member States by a factor of 6, even though the USA has only two-thirds of the European female population (Moloney et al. 2009). Other countries with relatively high rates of incarcerated women are China (84,600 = 5.1 %), Russia (59,200 = 7.8 %), Brazil (35,596 = 6.9 %), and Thailand (29,175 = 14.6 %). Of the 212 independent countries and dependent territories represented in the World Female Imprisonment List, only five others incarcerate more than 7000 women: India, Vietnam, Mexico, Ukraine, and the Philippines.

Consistent with the variation in rates of incarceration across world regions, the numbers of women incarcerated also varies considerably from place to place. On average, women comprise between 2 and 9 % of the total prison population in most countries. Whereas women in the USA make up approximately 9 % of the total incarcerated population, the rate is much higher in Hong Kong (20 %), Bahrain (18.5 %), Qatar (15 %), and Thailand (15 %). Moreover, although the median level

of women's incarceration is 4.45 % worldwide, levels are significantly higher in Asia (5.95 %), the Americas (5.15 %), and Europe (4.9 %) and lower in Africa (3.1 %) and Oceania (3.9 %) (Walmsley 2012).

4 Prison and Aftercare Programming for Women

Women prisoners are among the most neglected, oppressed, and misunderstood groups in society (Belknap 2015). As mentioned in the previous sections, although women make up a small proportion of offenders globally, their incarceration has a distinct impact on the children that are left behind. Moreover, given women offenders' unique victimization, mental health, and substance abuse histories, educational/vocational backgrounds, as well as their likelihood of resuming the role as primary care provider to their children following incarceration, women face a number of unique challenges in the journey home from prison. Despite the critical nature of women's reentry into their home communities and reunification with their children, there is a dearth of prison-based programs and aftercare programming that centers on women globally. In this section, we provide an overview of available programming.

4.1 Maternal Incarceration and Family-Centered Programming

In terms of the magnitude of the effects on children, there is compelling evidence to suggest that women's incarceration is much more disruptive for children than men's (Jones and Wainaina-Woźna 2013; Murray and Farrington 2008; Prison Reform Trust 2013; Bloom 1993). There are a number of important gendered patterns in the research. First, incarcerated women are somewhat more likely to have children under the age of 18 than their male counterparts; recent figures indicate that three-quarters of incarcerated women leave at least one child under the age of 18 behind, compared with two-thirds of incarcerated men (Murray 2005; Prison Reform Trust 2013; Bloom and Steinhart 1993; Morton and Williams 1998; Pollock 2002). Additionally, approximately one quarter of all recently incarcerated women have delivered a child in the past year or are currently pregnant (Fogel 1995; Clarke 2013). Research studies also reveal that incarcerated women are far more likely than incarcerated men to be the primary care providers for their children (Quaker Council for European Affairs 2007; Bloom and Steinhart 1993; Hairston 1991; LaPoint et al. 1985; McGowan and Blumenthal 1978; Pollock 2002; Snell and Morton 1994) and the majority believe that they will be the primary care providers upon their release from prison (Crawford 1990; Pollock 2002).

The negative consequences of parental incarceration have been well documented over the past 3 decades. In their comprehensive examination of the negative effects of incarceration on children, McGowan and Blumenthal (1978) asked the question, *Why Punish the Children?* Subsequent studies examining the disruption caused by parental incarceration confirm that the detrimental impact of parental incarceration meets or exceeds that posed by death or divorce; whereas support is readily available in situations of the latter, the negative stigma attached to deviance precludes open dialogue and support for families and children of incarcerated persons (Kazura 2001).¹ Moreover, children of incarcerated parents often suffer from emotional and behavior problems; research confirms that children of incarcerated parents are more likely than other children to exhibit sleep disruptions, depression, anger, poor school performance, delinquent behavior, and juvenile detention (Jones and Wainaina-Woźna 2013; Bloom and Steinhart 1993; Hairston 1988, 1991; Hannon et al. 1984; LaPoint et al. 1985; Kazura 2001).

Parent and family-centered programming presents many potential advantages for both incarcerated women and their children. The research examining women enrolled in parenting programs reveals that women participants are less likely than non-participants to engage in institutional misconduct (Carlson 2001). Similarly, studies examining prisoners' reintegration back into society have consistently revealed that family support has an enormous influence on a person's successful transition back into society. Formerly incarcerated persons who were enrolled in family-centered programming during confinement and had family support following their incarceration demonstrate an increased commitment to goals, as well as lower rates of recidivism, drug usage, and relapse (Carlson 2001; LaPoint et al. 1985; Martin 1997; Stöver and Thane 2011; Vera Institute of Justice 2004). In fact, respondents from a recent study examining former prisoners' experiences reintegrating into Chicago land area, identified family as the most important factor in helping them stay out of prison (Lynch and Sabol 2001).

The benefit of reduced criminality also applies to the children of incarcerated persons; there is a reduced likelihood of juvenile delinquency when family bonds are maintained and fostered throughout the period of incarceration (Hairston 1988, 1991). Findings such as these have spawned the creation of a variety of parenting programs for incarcerated individuals, as well as family-centered prisoner reintegration programs (Vera Institute of Justice 2004).

¹ This is exactly the starting point for the German project TAKT, which is named from the connotation with tact or tactfulness. Central to this project, social workers assist relatives of male and female prisoners and their family members in finding a variety of services, support and advocacy. The project has developed material to be used for educative purpose in schools and institutions of child and youth welfare, as well as for all persons with close contact to families where a parent is or has been incarcerated. Furthermore it has implemented a network approach, focusing on sensitizing police officers and professionals working in the youth welfare service, in schools and kindergartens for questions related to incarcerated parents. (<https://www.treffpunkt-nbg.de/projekte/takt.html> accessed 18.7.2014).

There is a wide range of parenting programs made available to incarcerated women in the USA and globally (See Barberet 2014 and Pollock 2002 for a review). Although many women's correctional facilities provide some form of parenting courses, there is institutional variation in the types of visitation permitted with children and the overall comprehensiveness and intensity of programming. Whereas less intensive programs provide for classroom-based parenting courses only, more intensive programs provide for additional parenting amenities, such as special visiting areas for mothers and children,² reading programs, and day camps. Most correctional facilities in the USA provide programs that are consistent with the latter, whereas programs in other countries tend to focus more on fostering bonds between mothers and children.

Globally, women do not have an automatic right to have their children in prison with them (Barberet 2014). Instead, when granted, co-habitation with children is viewed as a privilege, determined by authorities to be in the best interest of the children. Worldwide, the vast majority of countries permit some women to have their children with them during incarceration (Barberet 2014). The most comprehensive study examining children residing with mothers in prison included 76 countries and was conducted by a Quaker nongovernmental organization (Robertson 2011). For most countries that permit children to live with incarcerated mothers, the child age limit ranges from newborn to 6 years. It is important to note, however, that in the USA, the global leader in women's incarceration, only a small number of facilities have intensive mother-child programs which permit inmates to have overnight visitations with their children. Some countries, such as Spain, have taken great efforts to accommodate motherhood in prison, including child care centers (which follow national standards for daycare facilities), arrangements for outside childcare, weekend furloughs, and parenting cells, in which parents who are both incarcerated can live together in a cell with their child(ren) (Barberet 2014). Only three other countries—Denmark, Sweden, and Finland—allow children to stay with both incarcerated fathers and mothers.

Thirteen of the 76 countries in the Quaker study (Bulgaria, Cuba, Democratic Republic of the Congo, France, Germany, Ghana, Kiribati, Mongolia, Spain, Sweden, Tanzania, United Kingdom, and the United States of America) permit newborn children to reside with mothers. In several countries, the period of cohabitation is limited to the time period in which the infant is nursing. In others, no such limit is placed. In the USA, New York, Nebraska, Indiana, and Illinois are among a small number of states which provide a prison nursery program, in which expectant mothers complete a parenting course and are permitted to keep their newborn babies with them until they have been released from the institution, generally for a period of up to 2 years following birth. In Mongolia, pregnant

² In some Italian provinces, the project Spazio Giallo (yellow room) of the child lobby organization "Bambinisenzasbarre" supports children visiting an incarcerated parent. The organization found that in Italy about 100,000 children are visiting their parents every year, sometimes suffering from traumatic experiences as a consequence of the emotional impact of these visit (See Sacerdote 2014).

mothers are temporary released for the birth of their children and remain in the community for 18 months, at which time mother and infant return to the correctional facility (Robertson 2011).

Research examining family-centered programs and moms and babies units is quite sparse. For example, although mother and baby units have existed in Finland since 1881, there is very little data about them (Poso et al. 2010). Moreover, much of the extant research in this area is rather dated. Despite these issues, research tends to confirm that parenting programs that include expanded visitation between mothers and children are more effective in offsetting the negative consequences of incarceration than those that do not (Pollock 2002). Parenting programs in which mothers are able to have ongoing contact and communication with their child(ren) throughout the period of incarceration appear to produce the most positive results for both mothers and children (Hairston 1991; LaPoint et al. 1985; Snyder et al. 2001). The prospective benefits of the program are impacted by both the quantity and quality of mother-child visits. McPeck and Tse (1988) found that children who were only able to visit their mother once per month or less were at an increased risk of developing emotional problems. Furthermore, the authors found that the overall quality of the visit had an even more profound effect: negative effects were not offset by weekly visits alone; only those children who were given adequate time for parental bonding during the weekly visits were at a lower risk of developing emotional problems (McPeck and Tse 1988). One recent study, comparing levels of attachment among babies and mothers—incarcerated and not—found secure attachment levels (Byrne et al. 2010).

4.2 Healing Past Trauma Through Art and Theatre Programming in Prisons

Women's pathways to prison are often marked with victimizations and damaged childhoods, including intimate partner violence, sexual abuse, familial estrangement, addiction, and violence (See Beichner and Rabe-Hemp 2014 for a review). Art therapy and educational theater are effective forms of rehabilitation for incarcerated persons; these programs serve a bridging function to open up the inmates for further therapeutic offers. The literature³ on art and theatre programming for incarcerated women promotes the potential advantages of such programming on offender rehabilitation. Art and theatre programs for incarcerated women exist in several countries around the world. In this subsection, we provide an overview of the relevant research.

Much of the research examining art therapy for incarcerated women finds favorable results. Gussak (2008) found improvement in mood, behavior, and

³There is a dearth in the literature examining prison art programs; although many examples abound, few programs have been empirically researched.

problem solving among participants in a prison art program. Merriam's (1998) research with incarcerated women survivors⁴ revealed that art images enabled women to contain potentially destructive thoughts and feelings associated with the traumatic experiences that they had experienced across their lifetimes. Another pilot program, which used visual art, storytelling, music, and journaling to heal and empower incarcerated women with histories of abuse, centered on re-conceptualization of their identities from victims to survivors (Johnson 2008, p. 103).

Art therapy may be used to respond to several types of traumatic life events experienced by incarcerated women. For example, Ferszt et al. (2004), evaluated an art therapy program used with incarcerated women who were grieving the death of a loved one, with promising results. Moreover, an evaluation of the women's art and wellness education program revealed improvements in women's personal and interpersonal growth, including improvements in self-esteem, self-concept, and relationships with others (Mullen 1999). Marian Liebmann (2007) of the United Kingdom has worked extensively with prisoners and edited four books on using art therapy for restorative purpose in addition to her book on Restorative Justice.

Similar to art programming, theatre programming has many rehabilitative applications for incarcerated women. The transformative power of theatre been touted for healing from past abuse and trauma (Salas 2002; Schrader 2012; Wilson 2013), empowering women by giving them voice (Clark 2004; Davies 2012) and reclaiming their bodies (Clark 2004), as well as building community within the prison environment (Fraden 2001; Wilson 2013). With regard to healing, The Playback Theatre, which has troops in over thirty countries, uses the method of storytelling as a method of healing (Salas 2002). The connections that are achieved through sharing personal stories can serve as a counterforce to isolation and alienation (Salas 2002: 290), making this especially useful in a prison environment. In the USA, Wilson (2013) worked with incarcerated women on a theatrical production that included a symbolic burial scene, in which women placed items that represented their old selves inside a coffin (i.e., victimization, pain, drug use, abandonment, anger, self-hatred). Not only did the play address the underlying causes of the incarcerated women's oppression, it also included a reinvention of the women as survivors, imparting wisdom to their incarcerated peers in the audience.

Clark (2004), who spent 20 years working with incarcerated women in Melbourne, Australia, is a proponent of prison theatre as a tool of empowerment in restoring women's voices and bodies. Incarcerated women are often subject to others—lawyers, judges, psychologists, and policymakers—defining who they are and speaking about them (Clark 2004: 104). Through theatre, and participation in a collective creative process, incarcerated women are able to discover the power of

⁴In therapeutic circles, the term "survivor" is commonly used to replace the term "victim." Whereas the former term centers on empowerment by acknowledging survival of past serious victimizations, the latter often has a connotation with weakness or being a loser. The term "survivor" is regularly used in feminist literature (See, among others, Chesney-Lind 1989).

their own voices (Wilson 2013). The Lebanese actress and drama therapist, Zeina Daccache of Catharsis—Lebanese Center for Drama Therapy (NGO), has set up a theatre project in the women’s Baabda Prison in Beirut. During the project, which led to a publicly sold film of the play on DVD, the women described how they felt free for the first time in their life. A quote from a 28-year-old woman serving a 3-year jail term for fraud illustrates the rise in self-confidence: “I was so worried about appearing in front of the camera, then after thought if I hide my face I’d be only contributing to hiding myself, my voice, the women and human being within me. I’m taking off my mask and showing (myself) as I wish to” (Davies 2012). Beyond the empowerment of voice, participation in theatre and acting provides incarcerated women an opportunity to reclaim their bodies, which are often handcuffed, observed through camera observations and strip searched in penal institutions (Clark 2004: 104). As Clark (2004) notes, this can be quite empowering in a prison environment, where an incarcerated women’s bodies are not their own.

4.3 The Challenges of Returning Home from Prison and the Call for Gender Specific Programming

The research examining prisoner reentry has confirmed that the formerly incarcerated confront many challenges in assimilating back into their communities. They confront barriers in their attempts to find housing, gainful employment, health care, and substance abuse and mental health treatment. Research also confirms that the consequences of incarceration are not confined to the ex-offender alone; incarceration produces detrimental effects on the ex-offender’s neighborhood, family, and children. Another important finding from the literature is that the ex-offender’s family plays an important role in the reentry process; ex-offenders who have supportive families are more likely to abstain from substance use and criminal offending (Zurhold et al. 2011; Stöver and Thane 2011; World Health Organization (WHO)/United Nations Office on Drugs and Crime (UNODC 2009). We posit, however, that although women share *some* of the same needs returning home from prison as men, women’s reentry or aftercare needs are distinctly unique (Krucsay 2007; Hedderman et al. 2011).

The concept of gender-responsive programming is a relatively new concept, which has only received attention for the past 15 years (White 2012). Women who enter prison have been characterized as socially and economically marginalized individuals who have unique needs pertaining to their histories of traumatic victimizations, substance abuse histories, and mental health issues (Wright et al. 2012; Fretz et al. 2007; WHO 2001; WHO and UNODC 2009). Research on women offenders consistently reveals low levels of educational attainment and poor job skills, both of which relegate them into low-paying, low-skilled occupations. Prior to incarceration, they are often financially dependent on others (i.e., significant

others, family members, or public assistance) and many have spent some of their lives homeless or living in shelters. Moreover, women are more likely than men to be responsible for young children prior to incarceration and immediately following release. Considered together, these factors demonstrate the overall need for women-centered programming.

Advocates of gender-responsive aftercare programming have identified five primary areas of need of special importance to women: childcare and parenting skills development; healthcare, mental health counseling, substance abuse treatment; housing and transportation services; education, employment and job training services; and social support programs (Scroggins and Malley 2010). Generally, proponents recommend that aftercare programming provide a continuum of services in three phases (Garcia and Ritter 2012; Holliday et al. 2012). Phase one, or the institutional phase of programming, centers on identification of offenders' needs and acquisition of institutional programming. Phase two, which generally takes place in the weeks leading to the offender's return home from prison, focuses on offender's plans for return home to their families and communities. The third phase, community reintegration, includes a follow-up phase, in which a caseworker meets with the client in the immediate period following incarceration.

"Transition management" (Matt 2014) or "through the gate care" (Prison Reform Trust 2011) are two expressions for more comprehensive programs, combining phase two and three into one program. Transition management involves inter-agency collaboration for the social reintegration of people returning home from prison. The collaborative effort includes judicial authorities, institutions of offender support, and health and human service providers (see Wirth 2010: 81). Matt (2014) argues that "transition work" would be a more appropriate term, referring to actions and processes which are necessary to achieve transition and to cope with it on the individual level as well as on organizational and societal level.

Worldwide, there are a limited number of gender-specific programs available to women in prison and as they return home to their families. Many of the programs were developed for men, but have expanded focus to include women prisoners. In the section that follows, we provide some examples of what we consider to be some of the best practices around the globe. Prior to this exploration, however, it is necessary to understand some general background information on available programs. After reviewing the extant literature on gender-specific aftercare programming, three important trends emerge. First, aftercare or reentry programming not only varies widely from country-to-country, but also within specific countries. Meaning, it is difficult to identify country-wide trends in programming. Second, consistent with the discussion of women's invisibility in global justice systems, some of the programs that exist for incarcerated mothers and most programs for women returning home from prison began as programs for males, but have expanded over time to include women. Third, there is a paucity of research in this area; few women-centered programs have been evaluated to date. This is an important trend, given that research in England and Wales suggests that women have different predictors of program completion than males (Martin et al. 2009).

4.4 Examples of Gender-Specific Parenting and Aftercare Programming Around the Globe

Gender-specific programming and—to a lesser extent, family reunification programs—are relatively new in justice systems globally. Our hope is that programming in this area will continue to expand and evolve over the next decades, as will the evaluative research in this area. The program summaries that follow are some of what we believe to be the best practices for women offenders and their children. We give special attention to those programs that have been evaluated.

4.4.1 Denmark: “Familie Huset Engelsborg” (Family House of Engelsborg)

Worldwide, one of the most progressive and unique reunification programs that exists for children of incarcerated parents is the “Family House” in Lyngby, Denmark (Bundesarbeitsgemeinschaft für Straffälligenhilfe e.V., Chance e.V. Münster und Der Paritätische Landesverband NRW e.V. 2013). To date, this is the only prison based on the needs of the children of incarcerated parents. If the social services of the Danish prison system deem that it is in the child’s best interest, an inmate will be permitted to live with his/her children and partner, during the parent’s final period of incarceration. Whereas the inmate’s mobility is restricted during the period of cohabitation, the children and partners are not confined and may travel freely. Not only does the program provide incarcerated parents and children a unique opportunity for cohabitation, it also provides services from a family therapist and a social worker. In order to be eligible for the program, parents must meet a number of risk assessments and be nearing completion of their incarceration. During the last segment of the offender’s incarceration, s/he may live in an apartment setting with her/his family. Since the project’s inception in 2005, there have been 89 inmates in the program, 39 of whom are women (information gathered by telephone call with director in August 2014 from co-author Hagemann). Preliminary evaluative research on this project reveals positive developments of the families involved; trends include strengthening of self-efficacy, self-consciousness, and sense of responsibility of the parents (Halmø 2008).

4.4.2 Northern Ireland: The Inspire Women’s Project

In Northern Ireland, women comprise only about 3 % of all offenders, but research on women offenders in this area reveals significant mental health and substance abuse issues (O’Neill 2011). Accordingly, the Probation Board of Northern Ireland created the gender-specific program, The Inspire Women’s Project. The project began as a pilot in 2008, but has been sustained through Department of Justice funding to date. The program is designated for women probationers sentenced to

community supervision. The program provides childcare for participants and includes five subprograms: (1) a life coaching subprogram, aimed at increasing self-esteem and responsibility, (2) anger management, (3) alcohol and drug counseling, (4) Job Track, a subprogram that provides clients with employment advice, and (5) a mentoring program which links participants to women mentors in the community. There is also an enhanced program for habitual women offenders with more than three prior convictions, which provides a cognitive behavior curriculum. A preliminary evaluation of the program in 2010 revealed success in clients' self-esteem, as well as an overall reduction in recidivism for program participants.

4.4.3 Germany: Women's Prison at Preungesheim

One of the most comprehensive programs for incarcerated women and their children is in Frankfurt, Germany.⁵ In the Preungesheim prison, high-security inmates are permitted to stay with their newborns through age 3, and lower-security inmates may reside with their children up to age 6 (Kauffman 2001; Einsele and Rothe 1982). Mothers and children reside in a separate, "mother-child house," on the prison grounds. Generally, children in the toddler through preschool age go to a neighborhood preschool, while incarcerated mothers work. Moreover, in this prison, motherhood is recognized as an occupation and therefore one of the options for work-release in the community. Mothers who have school-age children outside of the correctional facility and are eligible for the family work-release program take public transportation to their children's homes and assist children with their morning routines. Once the children leave for school, mothers are responsible for completing other household tasks, such as grocery shopping and other household management activities. When the children return from school, the mothers assist them with homework, provide them with dinner, and carry out any other tasks related to their children's needs. At the children's bedtime, the mothers return to the prison to sleep. There is a long-lasting close cooperation with an exclusively feminine non-government organization, specifically centered on the care of the women, as they are released from prison (See Einsele and Rothe 1982 and Geiger and Steinert 1993).

4.4.4 England: The Feminist Organization Together Women and Women Centres

The positive role of the England-based Feminist Organization Together is emphasized in the final report of the Women's Justice Taskforce (Prison Reform Trust

⁵ Although the passage focuses on one prison's model, there are similar programs in five other German prisons.

2011). Women Centres, inspired by the feminist movement, have quite a long tradition; the Centre in Nottingham was founded in 1971. The Together Women Programme (TWP) was developed to establish and assess gender-specific approaches for women offenders—namely, identifying the causes of crime and re-offending among this group and reducing the need for custody. Facilities include one stop centres, crèches, and support for finding housing.

TWP aims to meet the needs of women at all stages of their involvement with the criminal justice system, including prevention and diversion, custody, and reentry planning following prison. By offering a low-threshold institution not solely focusing on crime-related problems, the TWP women centers have effectively assisted former offenders and met their needs in the community. Assessments of the TWP indicate success in reducing recidivism; only 3 % of women using the services committed further offenses and only 7 % breached their community order (Prison Reform Trust 2011: 1). Often the threshold to contact a professional case manager or social worker is quite high, especially taking the shame into account if someone has failed again. The women centres offer a continuous contact and opportunity to get support while clients are awaiting therapy. This problem can be met by proactive social work arising in a setting of confidentiality where the client and the professional know each other but their relationship is not restricted to official appointments.

4.4.5 The United States of America: Examples from Delaware, Maine, and Illinois

As mentioned in previous sections, the USA is the world leader in incarceration of both men and women. In recent years, there has been national attention focused on reducing recidivism through reentry programming. Since the inception of the Second Chance Act of 2008, the federal government has provided competitive federal grants to governmental agencies and nonprofit organizations to provide support, strategies, and services to individuals returning home from prison. Accordingly, there are a number of emerging gender-specific family and aftercare programs in the USA, centered on incarcerated women and their children. Three such programs have yielded favorable outcomes in improving relationships with children and/or reducing recidivism.

Delaware One of the most comprehensive aftercare programs for women returning home from prison is the CREST Outreach Treatment Center in the state of Delaware (Robbins et al. 2009). The program, although originally designed for men, is now open to all individuals with histories of substance abuse returning home from prison. Clients in the work-release, therapeutic environment complete a 6 month program, during which time they either work or attend educational classes in the community. The CREST program provides a comprehensive treatment environment, designed to transform behavior, attitudes, emotions, and values of clients. The treatment center employs trained counselors and former CREST graduates,

who guide clients through a program of mutual self-help. After successful completion of several weeks in the treatment program, clients may either have their children visit them in the treatment facility or request a home furlough to visit children in their place of residence. Preliminary research on program participants revealed that clients who completed the CREST program were more likely to be arrest free in the 18-month follow-up period, than individuals who did not complete the program.

Maine Transitional programming for women in the state of Maine's prison system begins 6 months prior to release and extends up to 6 months after release, and provides a comprehensive transition plan for returning home from prison (Fortuin 2007). The program is part of the Women's Center at the Maine Correctional Center. The programming phase that takes place inside the correctional institution is based on an individual assessment tool completed jointly by the woman inmate and the correctional staff. The assessment is a strengths-based approach, which emphasizes skill-building, treatment, self-efficacy, and family reunification plans for each of the women. A holistic, integrated approach is used to match each woman's identified needs (i.e., financial, family reunification, housing, mental health, substance abuse, medical, employment/vocational/educational, and mentoring) to natural supports in the community, including mentors and community providers. Following release, the women continue to work with transition case managers, program staff, and community mentors for a minimum of 90 days and a maximum of 180 days. Follow-ups in the post-release months are conducted face-to-face and by telephone contact. Preliminary research of program participants reveals that women returning home from the Women's Center at the Maine Correctional Center have a significantly lower rate (17 %) of recidivism, compared to national figures (33 %).

Illinois A third USA example that warrants coverage in this section is the Decatur Correctional Center in the state of Illinois (TASC 2013; IDOC 2014). This premiere correctional facility offers both a family reunification program and a prison nursery program, through a partnership of the Illinois Department of Corrections (IDOC), Treatment Alternatives for Safe Communities (TASC), and a team of community-based partners. Both programs are available to women who meet a strict set of criteria: non-violent offenders who have no cases with the Illinois Department of Children and Family Services. Women in both the Family Reunification and Moms & Babies programs are housed in a separate wing of the prison and are required to participate in comprehensive educational/vocational training and counseling. The curriculum in the special wing focuses on five core areas: (1) facilitation of support networks, (2) parenting classes, (3) healing from past abuse and trauma, (4) substance abuse counseling, and (5) preparation for transition home to families and communities. Whereas women in the family reunification program are granted contact visits with children for up to 8 h per day, the women in the prison nursery program reside with their infants from birth through age 2. Acquisition of Second Chance Act funding in 2011 has made enhanced aftercare programming available for women in the prison nursery program. As Moms and Babies participants

transition home from prison, they are provided ongoing case management and home visits by TASC staff who assist them in referrals to services and support in the community. From the Moms and Babies program's inception in 2007 to the present, 59 mothers have resided with their newborns in the Decatur Correctional Center and only one has returned to prison within 3 years following release.

In summary, incarcerated women have unique needs—namely, substance addiction histories, exposure to past abuse and trauma, low self-esteem, limited vocational training, and familial responsibilities—which require gender-specific programming. The prison and aftercare programs that we have highlighted are comprehensive in approach, addressing women's past histories and focusing on skill-building for successful reunification with families and reintegration with communities. It is critical to have sustainable reentry service systems on the formal level and informal networks of care, so that women returning home from prison do not return. Restorative Justice, as a philosophy of connectedness and community-building, has much to offer in this critical transition home from prison. This concept is addressed in the final section, as one of several recommendations.

5 Conclusions and Recommendations

Thus far, we have demonstrated that incarcerated women are at a disadvantage to men; their needs are hardly taken into account and they have fewer programming opportunities to prepare them for better life circumstances after release from prison. We have to find answers to how reintegration after release can be achieved and how relapses can be prevented. Furthermore, we must address how we can offset the consequences of maternal incarceration on children and disrupt patterns of intergenerational incarceration. In this section, we present four recommendations, three of which take the prison as a starting point.

5.1 Abolition of Prison Sentences

Committed feminists (e.g. Radosh 2008 and Chesney-Lind 1989, 2002) have demonstrated convincingly that the vast majority of incarcerated women have endured abuse and trauma that have led them into committing offenses; they are offenders, but also survivors. Other research describes how abuse and trauma are common pathways into criminality for women offenders (See Beichner and Rabe-Hemp 2014 for a review). Radosh's (2008) research provides an overview of the cognitive dissonance that this situation presents for incarcerated women. Many of the women, who were severely victimized by their intimate partners or fathers, see that their perpetrators either are not punished at all or are punished only minimally

for their abusive acts. At the same time, when these women commit non-dangerous offenses, they are severely punished by the criminal justice system.

Therefore, our first recommendation, which is consistent with a demand of the Women's Justice Taskforce (Prison Reform Trust 2011: 3) in the UK, is to abolish prisons and prison sentences for women offenders. Thus, both the cognitive dissonance situation (Radosh 2008) and the collateral consequences of maternal incarceration on the minor children would be eliminated. Of course the measure would be extended to remand imprisonment (see Edgar 2004 for gender-specific misuse in UK) and to imprisonment for failure to pay a fine (jail sentence in lieu of a criminal fine) (see Swedish imprisonment avoidance model, von Hofer 2002). Although the abolition of prison is the main premise of this recommendation, this must be coupled with treatment for victims. Victims must receive support in coping with their past victimization and trauma, through individual or group therapy. We propose that this might be funded through compensation to victims for crime induced costs.

It is important to note that the abolition of imprisonment for women could be regarded as a violation of legal equality principles, if the imprisonment of men continues unabated. It is not merely a question of women receiving equal treatment to men. In the prison system, equality is everywhere conflated with uniformity; women are treated as if they *are* men" (Home Office 1997, paragraph 3.46). Especially in conjunction with the current "discourse about dangerousness," we see no realistic general abolitionist perspective, but the possibility of abolishing imprisonment for at least "non-dangerous" offenders or for certain offenses, such as crimes without the use of weapons or property and drug offenses below a certain monetary threshold (See WHO and UNDOC 2009; Prison Reform Trust 2011, among others). With the abolition of prison for "non-dangerous" offenses, female prisoners would comprise about 10 % of the current female prison population, which would simultaneously reduce the number of children impacted by incarceration. If all of the money saved by incarcerating only "dangerous" men and women would be spent on support actions (see Waller 2008), it would be a cost-neutral proposal. Moreover, in the long term, the proposal might even lead to considerable savings, since many of the affected children would grow up to become taxpayers rather than marginalized outsiders. Nevertheless, for the remaining violent perpetrators, all the considerations presented in the previous section are true because in at least a large part of these cases the offense evolved from a deprived social status or from the position of a victim.

5.2 *Converting Existing Institutions into Restorative Prisons*

If the abolitionist strategy cannot be implemented,⁶ then women's prisons must be fundamentally redesigned through a Restorative Justice approach. The "Restorative

⁶ Bianchi (1994), in his work on sanctuaries, has shown that the prison for offenders is a relatively new institution and that historic societies were able to handle serious crime in a way we would now call restorative.

Prison” model is centered on a “culture of respect,” in which a victim-focused perspective is used within the prison, including victim awareness training and mediation (van Ness 2007; Hagemann 2003). Since 1998, this model has been used in Belgium prisons (Robert and Peters 2003; Mariën 2010) and since 2000 in the UK, it has been used in several male and female prisons (Newell 2002; Edgar and Newell 2006). “Restorative Prisons” are characterized by an orientation on victims’ issues, a greater permeability between the prison and the community (e.g., prisoners offering services for the community; community access to the prison), and an openness to outside advocacy (e.g., Victim Support, Restorative Justice organizations, community or church-related organizations). Restorative Justice consultants in Belgium, however, faced some problems with staff and with the traditional prison hierarchy in their pursuits to change past practices (see also Correctional Service Canada 2011).

Although the philosophy of Restorative Justice is already successfully implemented in criminal justice practices around the world, it is most commonly implemented as a diversionary program at the pre-sentence level, enabling the conflicting parties involved to solve relevant criminal (or civil) disputes themselves in the form of a mediated dialogue before formal court proceedings are required. In some countries, Restorative Justice methods exist on the post-sentencing level. That is, victims and perpetrators—possibly supported by caring others from their informal networks—attempt to restore social peace despite, after or in addition to punishment in a dialogic process. Participation in Restorative Justice processes is voluntary. Therefore, the idea of “ownership” (Christie 1977) is a core feature; participants determine how such a process takes place and who will be involved. The focus is on life-world actors,⁷ the informal network of key stakeholders. Professionals (system-actors) are included for specific questions, but neither determines the process nor the outcome. The central figure—in this case: the woman prisoner—along with her caring others, develop a plan and take responsibility for its implementation. The professionals may consider this plan and they are asked to accept parts explicitly, if costs are to be borne by public authorities or the community or if specific decisions require their consent (e.g. release from prison, certain bail conditions).

⁷ The term “life world actors” has been derived from Husserl’s (1977) notion of the life world or “Lebenswelt,” further developed by Schütz and Luckmann (1979). The concept of life world gives people the autonomy to act using a common sense base, following subjective convictions or traditional customs, whereas the system concept (see Habermas 1981) is organized by a different logic of rationality. Thus, “life world actors” denotes ordinary people, not professionals or experts in the criminal justice system.

5.3 Restorative Justice Procedures Specific to Release from Prison

Due to the ownership concept of Restorative Justice, aftercare plans will be developed that are tailored to the individual needs and abilities of the incarcerated woman and the specific conditions in the life-world. Since the prisoner is at the center of the effort and the composition of its participants largely self-determined, she is taken seriously; her contributions are appreciated and her needs are acknowledged. Due to this setting, there is no reason to neutralize the result later as something that others have imposed on one-self. On the contrary, she agrees to all points of the plan explicitly; in the ideal case, most aspects go back to the woman's own suggestion. This type of Restorative Justice programming has shown very good results (Sherman and Strang 2007; Shapland et al. 2011). In our opinion, this model should be offered in all cases in which women prisoners are amenable, because the informal network (e.g., friends, family members, colleagues, neighbors) can be integrated. It has also been found that the self-determined plans are more targeted, detailed, realistic and appropriate to the specific situation than plans that have been devised by professionals (e.g. regular prison treatment and discharge planning staff). The Restorative Justice approach is based on considerations of bonding and control theories; reintegration into a social network (e.g. family, neighbors, friends) provides a tighter control with the possibility of a more timely intervention.

If a situation emerges in which a prisoner wishes to engage in a Restorative Justice process, but there is no informal network, or members of the informal network want no more contact, the approach must be modified. One of the co-authors visited a so-called faith-based unit in Rimutaki Prison for male prisoners in New Zealand (Workman 2007). In this case, a Christian community carried out intensive volunteer work with the prisoners and assisted with their reintegration into the community after release, providing employment assistance, housing, and support in various problem situations. We advocate that this same approach be used with the women returning home from prison; meaning, in the absence of an informal support network, we would call on volunteers from the community.

5.4 Sensible Transition Management

The fourth recommendation centers on the idea of transition management, which addresses incarcerated women's personal deficits (e.g., employment, education, substance abuse, mental health issues, debt, housing). In contrast to the Restorative Justice-based interventions, this approach is morally neutral and mainly provided by criminal justice practitioners, in conjunction with health and human service professionals. The only requirement for the prisoner is a willingness to change, by desisting from illicit substance abuse and criminal behavior (see Maruna 2006;

Matt 2014). The approach requires a basis of trust with the responsible case manager and it is therefore recommended, if possible, to have the same contact person(s) throughout the process, which begins several months before release and lasts usually until about 6 months after release. Whereas a relationship of trust with friends and family is cultivated over years of time, this approach requires a great deal of bonding in a short time frame. Moreover, because most transitional management programs operate over a limited timeframe, the professional person disappears from the life of the target person after about 1 year. This could be problematic, especially for people with negative attachment experiences, who might be reluctant to invest much personal energy into a short-term relationship.

We propose that transition management be implemented using the Restorative Justice approach of relying on involvement of the informal network. Past research suggests that the traditional, formal approach to transition management is more suitable for male offenders and ex-prisoners than for females (Holst 2004; German Expert Committee 2012). The transition management does not seem to be so different from other traditional approaches with offenders. The specificity lies in the coordination and pooling of once very scattered resources, which had to be integrated by the formerly incarcerated person. It remains the case that formerly incarcerated persons often lack self-confidence and take a more passive stance in their aftercare plans. The offender's informal network is sometimes not included and the—albeit incomplete—formal control is experienced only as such, not as a way of support. By using a Restorative Justice approach to transition management, we can more fully support offenders and prisoners and help them to invest in their futures after prison. Meaning, as McNeill (2006: 47) observed, “It is not just the events and changes that matter, it is what these events and changes *mean* to the people involved.” Although there is a risk that undesirable developments may be detected too late, traditional transition management is the only promising option for individuals without a social network or without an openness to participate in Restorative Justice.

In conclusion, far too many women are forced to spend years of their lives behind bars, even though they have not committed dangerous crimes. On the contrary, they have been subject to serious victimizations in childhood and in adult life. Compared with incarcerated men, incarcerated women receive much less attention and because of their marginalization, they get fewer opportunities to prepare for reintegration following imprisonment. Programs addressing incarcerated women's specific needs are rare. Moreover, there is a dearth in women's aftercare programming. Women leaving prison typically have access to the general—predominantly male—support organizations, which often focus on control.

This societal neglect is especially problematic, given that women prisoners are often the primary care providers for their children. Indirectly, these children are collaterally punished by their mothers' incarceration and society should be aware that they might follow in their mothers' footsteps later in life. Instead of punishment and formal control, the mothers and their children need assistance in this very challenging life experience. This support can be offered by professionals from social work and health services. Because many of the women have had bad experiences in a male-dominated world, it should preferably be offered by

gender-specific institutions, such as the Women Centres in England or the project in Frankfurt-Preungesheim prison. Both gender-specific approaches seem to be very successful in establishing trustful relationships and assisting women in their desistance from crime. Currently, the concept of transition management also offers a promising outlook.

Although professional support is necessary, it covers only a part of life. Restorative Justice initiatives, aimed at reconciling the ex-prisoner with her community—to the extent that it is possible—and reintegrating her into a community of care, built by relatives, friends, and neighbors, could be even more important. In criminological theory terms, the focus should be on *informal* social control structures, which are available around the clock and are not primarily about control, but rather care and support. Often the persons involved have had lasting relationships over time and can build or reestablish a trustful relationship in which to plan aftercare. These long term relationships are much more conducive to aftercare programming than short-term relationships with professionals alone. Members of this informal network, however, also need to be supported by health and human service providers.

Studying women's crime generally does not lead to an argument in favor of incarceration, at least not for 90 % of the women currently imprisoned. As long as imprisonment exists, we need to focus on aftercare and reintegration, but it would make much more sense not to exclude these women from society by putting them into prisons. The exclusion posed by incarceration is often a result of a preceding societal exclusion by being female in a male-dominated world. It would save a lot of money and suffering—for both incarcerated mothers and their children—if the primary exclusion from education, the labor market, community, and justice were prevented by more gender adequate policies.

Five Questions

1. Programs and practices that embody the Restorative Justice (RJ) approach can be effective alternatives to incarceration, promising better reintegration for individuals who commit crime and offsetting the negative side effects of incarceration. What potential RJ practices are especially suited for women offenders?
2. Some state (e.g. Council of Europe, World Health Organization, UNODC) and non-governmental (e.g. Prison Reform Trust, Quaker Council for European Affairs) transnational organizations have acknowledged the plight of women prisoners and developed elaborate recommendations. How can these recommendations, which are consistent with results of scientific research, be implemented in binding laws and criminal justice policies?
3. Currently, the US seems to be the (negative) trend setter when it comes to the development of prison sentences. How could examples of countries with low incarceration rates contribute to a trend reversal?
4. Many women prisoners, who were severely victimized by their intimate partners or fathers, see that their perpetrators either are not punished at all or are punished only minimally for their abusive acts. At the same time, when these women commit non-dangerous offenses, they are severely punished by the criminal

justice system. How can we achieve both sensitivity and justice within the criminal justice system?

5. Of the four reforms proposed—abolition of prison sentences for non-dangerous offenders, converting existing institutions into restorative prisons, restorative aftercare programming, and transition management—which is the most practical for affecting change for women offenders?

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Probation Supervision for Women and Young Offenders

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Abstract The issue of how to work effectively with offenders has long since been of concern. There is evidence that the risk principle, the need principle and the responsivity principle are useful in determining ways of reducing reoffending, but it has not always been clear how far this tri-partite model applies to women and young offenders. Thus the chapter reviews the evidence on what seems to facilitate effective supervision—including cognitive-behavioural and cognitive social learning strategies—but also looks at other evidence to see what might optimize returns in young people’s and women’s rehabilitation and reintegration.

1 Introduction

Ever since the question of probation entered the international arena through the Eighth International Penitentiary Congress in Washington, D.C. (1910), the topic of probation supervision for women and young offenders can be located in a number of theoretical and practice contexts (UNICRI 1997). For the purpose of this chapter, we consider these two groups of people on probation and under parole supervision from a “what works” perspective and also from legitimacy and “justice as fairness” points of view.

Probation supervision generally means supervision provided by a statutory Probation Service. Parole supervision (post prison release supervision) is similarly provided by the same service. However, there is different nomenclature in different countries, and different services may be fulfilling the function of supervision. For example, in England and Wales, the supervision of young offenders—under 18—is undertaken by local Youth Offending Teams/Services.¹

¹ The cut off may vary from area to area—with some Probation Services taking over the supervision of offenders at 16 as opposed to 18 years of age. Moreover, the Probation Service is being

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In Scotland, the supervision of young offenders is undertaken by criminal justice social work services.²

The issue of how to work effectively with offenders has long since been of concern, but rather than focus on the history here we focus on more recent developments and particularly from the time when the *risk/need/responsivity model* (RNR) entered mainstream practice almost everywhere around the world. In short, the RNR paradigm suggests that interventions that follow the risk principle, the need principle and the responsivity principle are the most effective in reducing reoffending (Andrews et al. 1990). The *risk principle* suggests that the intensity of the intervention should match the level of risk: low risk of reoffending should be met with minimum intervention while high level of risk of reoffending should be matched with high intensity intervention. Later, Andrews and Bonta (2010) suggested that treatment services (interventions) should be delivered almost exclusively to moderate and higher-risk offenders³ so as to maximize impact. Indeed, it is suggested that interventions are more effective with this group and least effective with lower risk offenders. The *need principle* emphasizes that interventions should target so-called criminogenic needs (that is, crime-related needs) such as: antisocial attitudes, antisocial cognition, antisocial associates, substance abuse and so on. The *responsivity principle* refers to the delivery of a programme in a style and mode that is consistent with the learning and the ability of the offender.

According to Andrews and Bonta (2010) the most powerful influence strategies are (a) cognitive-behavioural and (b) cognitive social learning strategies, although it is recognized that this does not necessarily take account of gender differences. Nevertheless, this practice paradigm emphasized for the first time in systematic fashion that not all offenders have the same criminogenic needs (that is, crime needs relating to their pathways into crime) and that they do not learn the same way. Therefore, women and young offenders may have specific criminogenic needs that are different from those of other groups of offenders. Moreover, they might be open to some specific learning strategies. In other words, no one model of intervention works for all offenders. In the next two sections of this chapter we discuss the specific needs of young offenders and women. We also provide examples of how these needs are met within some probation services.

restructured in England and Wales so that from the latter part of 2014, there has been a single national Probation Service (as opposed to a number of Probation Trusts) responsible for the supervision of tier 3 and 4 offenders (serious offenders); private companies (working in conjunction with voluntary agencies in some cases)—called Community Rehabilitation Companies—are responsible for tier 1 and 2 offenders (the less serious offenders). See: <https://www.gov.uk/youth-offending-team>.

² See, for instance: <http://www.scotland.gov.uk/Topics/archive/law-order/offender-management/offender/community/16910>.

³ A conclusion reached on the basis of research evidence, which shows that interventions work best where they are appropriately targeted; less serious offenders can be dealt with via other forms of penalties, such as unpaid work in the community.

2 Young Offenders

The definition of “young offender” is often quite difficult to establish because it is linked to what is defined as “youth” in the general social context. In the criminal justice system a young offender is most often defined as a criminally responsible person under the age of 18 or 21. However, whilst there is some consistency regarding the upper limit of who might be considered to be a “young offender”, there is no consistency regarding the lower limit. This is mainly because the age of criminal responsibility varies across the world: it is 10 in England and Wales, 8 in Scotland, 15 in Scandinavian countries and so on. The minimum age of criminal responsibility is different in many North American States: it is 7 in Oklahoma, 14 in California and New Jersey, 10 in Colorado, and 13 in Georgia and Illinois. Interestingly, some USA states do not have a specific age minimum: Alabama, Arizona, Hawaii, Indiana, and Kansas, for instance. Within the category of “young offenders” some countries differentiate even further: in Romania, for instance, the minimum age of criminal liability is 14 but between 14 and 16 the state has to prove that the young person understands the difference between right and wrong. After the age of 16 the person is seen to be fully responsible for their illegal actions. In Sweden and Austria there are separate sentencing options for 18–21 years old (Düinkel and Pruin 2012).

In order to be as comprehensive as possible, but maintaining a focus at the same time, this chapter defines the young offenders as belonging to the 10–21 age group.

2.1 *Young Offenders’ Needs*

Developmental psychologists have pointed out that neurological and psychological research indicates that the brain continues to develop from the childhood, through adolescence and to early adulthood. This development takes place on different levels: the process of myelination continues to happen, the white matter increases, the synapses are pruned etc. The dorsal lateral prefrontal cortex that is responsible for controlling impulses reaches maturity in the early 20s (Giedd 2004). These developments in the prefrontal cortex lead to improvements in the functioning of reasoning, abstract thinking, anticipating consequences, impulse control and planning (Sowell et al. 2001).

In their literature review, Prior et al. (2011) conclude that physical maturity occurs around the age of 12 or 13 whereas the intellectual development matures around the age of 18. However, they also conclude that superior intellectual functions such as planning, verbal memory, impulse control and so on are not fully developed before the age of 25.

From a psychological point of view, it is thought that behavioural controls are fully developed in early adulthood. Steinberg et al. (2009), for example, argue that if the ability to plan ahead and anticipate consequences improves before the age of

20, decision-making, careful risk taking, delay of gratification and resistance to peer pressure mature later, in early adulthood.

After dividing psychological maturity into three different categories (*responsibility*—ability to act independently; *temperance*—ability to control aggression, risk taking and thinking before acting, and *perspective*—the ability to understand another's point of view), Prior et al. (2011) have noted that temperance is most often associated with offending behaviour. If the other two dimensions tend to mature before the age of 18, temperance continues to develop up until the mid 20s.

All these research findings have led Lösel et al. (2012) to conclude that:

... juveniles have less mature judgment, poorer emotion-regulation, poorer self-regulation, poorer decision-making abilities, poorer executive functioning, poorer reasoning capacities, less ability to think abstractly and poorer planning skills. (p. 1)

The authors continue to state that, due to these characteristics, juveniles are more likely to take risks and commit crimes for a sense of excitement rather than on any rational cost-benefit calculation. They tend to be more open to peer influence, more changeable and less set in their offending behaviour.

Changes in modern life styles and in the labour market in different countries make these psychological developments even more important. If we look at youth as a transition period towards an independent life, we will note that in modern times this period tends to become longer and longer. As mentioned by Dünkler and Pruin (2012), in the 1950s more than 70 % of German juveniles finished school at the age of 14 or 15 and entered the labour market. Nowadays, in Germany financial independence is achieved at about the age of 25. Furthermore, the labour market becomes more and more sophisticated, with an increasing number of knowledge-based jobs. This structural change requires young people to spend more time in education and therefore postpone the moment of independence from their own families. The same applies to family life. The average age of a man at the time of getting married has increased considerably in Europe from 26 in the 1970s to over 30 in the twenty-first century (Dünkler and Pruin 2012). And the average age of marriage for women in Western Europe and in other developed countries is similarly above 25, although a quarter of women in developing regions will be married between 15 and 19 years of age (United Nations 2000). (This leaves aside the difficult issue of non-consensual marriage, of course).

All these psychological and sociological factors have led international organizations and states around the world to redefine youth—in the sense of raising the upper age limit of those who can be still considered young or a young adult.

2.2 *International Responses to Youth Crime*

Due to these developmental features relating to juveniles, states have adopted different measures to adapt their official reactions. One of the first measures triggered by Art. 40 of the United Nations Convention on the Rights of the Child

(1989) was the establishment of the minimum age of criminal responsibility. As we outline above, this minimum age varies quite widely between 7 and 10 years to 18 or 21 years. From a criminal justice point of view, the age of criminal responsibility is important because only after that age can the person be prosecuted. Before that age, the juvenile is considered to be *doli incapax*—that is, not to be held fully responsible for any wrongdoing.

The second important measure promoted by the same article (inter alia with Article 3), was the adoption of the principle of the need to act in the “best interest of the child”. According to this principle the state response to a criminal infringement committed by a young offender takes the interest of the child as the first priority. The second priority of any criminal justice system is to “do justice”. Most of the criminal justice systems for juvenile or young offenders can be placed on this continuum between the best interest of the child and the delivery of justice (Yates 2007). Some states are very committed to the principle of the best interests of the child (see, for instance, the Nordic states—Hesbaek 2011). Some other states are dominated by neoliberal ideologies and tend to be more punitive towards children who come in conflict with the law. A simple analysis of the juvenile prison rates will help the reader identify which these countries are (see for example: <http://www.t2a.org.uk/wp-content/uploads/2011/09/T2A-International-Norms-and-Practices.pdf>).

Anticipating these principles and based on various psychological and sociological studies, the United Nations General Assembly, adopted in 1985 “The United Nations Minimum Rules for the Administration of Juvenile Justice” (the Beijing Rules, UN doc. A/RES/45/113). Directly related to probation and community sanctions (or alternatives to custody in UN language), this document is important because it recommends that member states:

1. use custody as the last resort;
2. emphasize the “well-being” of young people (provide education, vocational training, employment and other rehabilitative measures);
3. ensure that sentences are proportionate to the circumstances of both offenders and the offence;
4. use social inquiry reports (pre-sentence reports) to identify the services needed by the juveniles;
5. use as much as possible measures such as counseling, probation, and community service;
6. use diversion as much as possible;
7. use restorative justice measures;
8. extend the rules which apply to juveniles also to young adults;
9. use conditional release as much as possible.

Later, in 1990, the United Nations adopted another set of rules dealing mostly with the prevention of juvenile offending—The UN Guidelines for Prevention of Juvenile Delinquency (The Riyadh Guidelines, UN. doc. A/RES/45/112). Apart from emphasizing again the principles of child-oriented justice mentioned also in the Beijing Rules, the Riyadh Guidelines make concrete recommendations

regarding both general and special prevention. As for the correctional segment of justice which makes the object of the present chapter, this document is relevant because it stresses the importance of a non-stigmatizing treatment of juveniles, suggests special training for correctional staff and also urges states to consider the establishment of an office of ombudsman or similar independent organ which would ensure that the status and the interests of juveniles are upheld. With the adoption of the Convention of the Rights of the Child (1989) and the establishment of the Committee on the Rights of the Child the United Nations set a very high standard for youth justice.

These principles are adopted and enhanced in Council of Europe recommendations such as the Council of Europe Rec. (1997) 20 on social reactions to juvenile delinquency, Rec. (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice and Rec. (2008) 11 on the European rules for juvenile offenders subject to sanctions and measures.

More recently, the European Union has become very active in regard to the juvenile justice sector. The Year of 2010 was declared by the European Parliament and the member states of EU to be “the European year for combating poverty and social exclusion”.⁴ Pan-European or international Non-Government Organizations (NGOs) such as the International Juvenile Justice Observatory and the European Council for Juvenile Justice are very active in setting up standards and recommendations for a child-friendly justice system. The Observatory published a Green Paper on the social reintegration of young offenders as a key factor to prevent recidivism (Jacomy-Vite 2014). Moreover, the 23rd session of the Commission on Crime Prevention and Criminal Justice (Vienna, Austria, 2014) has recommended through the Economic and Social Council to the General Assembly a new set of Guidelines (UN doc E/2014/30). It is expected that these new Guidelines will be adopted in due course. Certainly, there is strong encouragement that those states that have not yet integrated crime prevention and children’s issues into their overall rule of law increased efforts to do so and

...to develop and implement a comprehensive crime prevention and justice system policy, with a view to preventing the involvement of children in criminal activities, promoting the use of alternative measures to detention, such as diversion and restorative justice, adopting reintegration strategies for former child offenders and complying with the principle that deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pre-trial detention for children. . . (E/2014/30. E/CN.15.2104/20. Para. 7)

⁴ Documents available at: http://ec.europa.eu/employment_social/2010againstpoverty/ (Accessed at 20th of July 2014).

2.3 Probation and Parole for Juvenile Offenders

Based on these international documents (including the recommendations above) and on some recent studies, a number of good principles can be identified in the area of probation and parole for juveniles. In this section we describe some of these principles in the context of probation and parole services. Each principle will be exemplified with one or two examples of best practice.

2.3.1 Special Legislation Dedicated to Juveniles and Young Adults

As suggested in the international and European standards, custody should be the last resort when responding to the juvenile offending. Furthermore, the penal response should be concerned more with the child's well being rather than retribution or deterrence. Therefore, most of the interventions relating to juvenile offenders should be informal, community based and focused on education, training, employment and other rehabilitative activities.

Special emphasis is dedicated to restorative justice in juvenile justice. Indeed, a high number of jurisdictions have developed victim-offender mediation services dedicated especially to juveniles. These are predominantly diversionary procedures and they take different forms: diversion from the entire criminal justice process, diversion from prosecution, diversion from custody and so on. In most of the countries where this diversionary option exists, it is regulated in such a way that the child's best interest, age, and physical and mental development are taken into consideration. One of the advantages of this alternative procedure is that it puts into practice the principle of minimum intervention that is very important for juveniles. Indeed, as evidence suggests (see Farrington et al. 2006; Bowles and Pradiptyo 2005) most juvenile offenders tend to desist around the age of 18. The age-desistance curve declines afterwards steadily up to the age of 30. By diverting juveniles from the criminal justice process or from custody a whole range of side effects are avoided (e.g. stigmatization, socialization into crime, reduced access to high quality education and training, family relationship fragmentation, etc.).

There are lots of examples of how diversion can be organized at the police, prosecution, court- and even at the prison level. Overall, research based on experimental design shows that diverted juveniles are more likely to desist than those dealt with via the ordinary routes of conventional justice systems (see, for instance, Davidson et al. 1990; Gilbert 1977; Wilson and Hoge 2013).

Previous studies and experience show also that diversionary schemes are more effective if they are combined with intensive and comprehensive services (e.g. education, health, accommodation and so on) in a holistic fashion where not only the victim and the offender are involved, but the school, family, friends, workplace and neighborhoods, there are more positive and enduring effects.

A good example of work in this direction is the Adolescent Diversion Project run by the Michigan State University. The project is a strengths-based program that

diverts arrested youth from formal processing and provides them with community-based services. The project aims at preventing future delinquency by strengthening youths' attachment to family and other pro-social people, increasing access to resources in the community and keeping youth far away from the stigmatizing social contexts. Apart from mediation, the program involves a caseworker (student volunteer) who spends 6–8 h per week with the juveniles in order to provide them with tailored services. The project emphasises the importance of a well-trained and enthusiastic staff in delivering diversion services to young people. The project has been evaluated by more than one study and consistently found effective.⁵

Regarding the existence and the use of community sanctions for juveniles, Dünkkel and Pruin (2012) make a very useful observation:

...many community sanctions are available all over Europe although their use varies a lot sometimes due to the lack of financial and organisational infrastructure at the local level.
(p. 20)

Indeed, when it comes to juvenile offenders, courts have a wide range of options of which to choose. Most of these forms of social control are of an educational nature—schooling, vocational training, leisure time, social skills etc. Some other sanctions aim at changing the anti-social behaviour—behavioural change programs, anti-drug programs, health program, supervisory measures etc. Other sanctions carry a more punitive weight—community service, detention, electronic monitoring.

In some jurisdictions, these sanctions and measures are also available to young adults under certain circumstances (e.g. Croatia, The Netherlands, Portugal, Russia). In Germany, for instance, juvenile criminal law can be applied to young adults up to the age of 21 if the court considers that at the time of committing the crime, the moral and psychological development of the young adult was like that of a juvenile. Furthermore, juvenile law can be applied also if the motives and the circumstances of the offence are similar to those typical for a juvenile crime (Dünkkel and Pruin 2012). A useful example of how the educative measures and the community sanctions can be used creatively and in a flexible way comes from the Scandinavian countries. Here, the court can mix different measures to fit the juvenile offender's needs (Kyvsgaard 2004).

2.3.2 Special Institutions and Specialized Staff

When it comes to the implementation of the community sanctions and measures the picture is very diverse (van Kalmthout and Durnescu 2008). In some countries, the probation service is in charge of probation activities for both juveniles and adults (e.g. Austria, Bulgaria, Czech Republic, Estonia, Finland). In other states, the probation service deals only with adults (e.g. England and Wales (UK), The

⁵ For more information, see: <http://www.crimesolutions.gov/ProgramDetails.aspx?ID=332>.

Netherlands, Sweden). In some areas, the Probation Service takes on young offenders when they are 16 (such as in England and Wales). Even in cases where the probation service deals with both juveniles and adult offenders, there is usually a structural or at least functional distinction between these two. Sometimes, there is a department within the probation service that deals with juveniles. Some other times probation officers themselves are specialized to work only with juveniles. Either way, usually staff working with juveniles or young adults tends to be different from those working with adults.

2.3.3 Dedicated Programs

Extensive systematic reviews and meta-analyses have been conducted to evaluate what works with juvenile and young adult offenders (see Lipsey and Cullen 2007; Lipsey 2009; Lösel 2012). Almost all researchers agree that there are some interventions that make an impact on the future reoffending rates among juvenile and young adult offenders.

Based on this evidence, it seems that cognitive behavioural programs, structured therapeutic communities, multisystemic therapy approaches and other multi-modal interventions make the most significant impact on reoffending. Furthermore, it seems that restorative justice programs, face-to-face meetings between the offenders and the victim in particular, are very effective when they are organized by specialized mediators (Strang et al. 2013). Shapland et al. (2008) have also demonstrated that restorative justice interventions lead to less reoffending overall and reduce the frequency of reoffending. Evidence from the desistance and Good Lives Model literature suggests that issues such as the quality of the relationship between the supervisor and offender, readiness to change, and building on strengths can be also effective in achieving the desirable results (Ward and Fortune 2013).

By way of exemplifying good practices in this area, it is worth mentioning that Lipsey (in Lipsey et al. 2010) has developed a tool called the Standardized Program Evaluation Protocol (SPEP) that compares juvenile justice programs to what has been found to be effective in previous research. The tool is configured to have a maximum overall score of 100 points and includes sections such as: type of programme, amount of treatment, quality of treatment and so on. Although this tool might be too prescriptive and inhibit creativity, it can be used to develop a more evidence-based practice in the area of juvenile justice.

2.3.4 Working with Juvenile Offenders. Conclusion

Although the research literature is now replete with evidence regarding two types of offenders: adolescent limited offenders and life-course persistent offenders (Moffitt 1993; Ezell and Cohen 2005), it is not yet clear enough how the prison or probation services can speed up the process of desistance for the first group and how they can make desistance possible for the second. Minimum intervention, a “whole person”

approach, good assessment and so on are all very good principles, but only if they are implemented by sensitive organizations and well trained staff. The importance of the social structures and also of the family and the surrounding community has been also emphasized in the research. However, more should be done in order to understand how correctional agencies might engage with all these significant factors in the desistance process.

3 Women

3.1 *Introduction*

One immediate question has to be answered: why is there a need for a special focus on women and supervision. Interest in the female offender has ebbed and flowed over the past 100 years, but at the turn of the millennium women have very much been back in the limelight, whether because of increasing awareness of worldwide increases in the use of custody (Snider 2003) or because of concerns about “girl gangs”, the “mean girl” or “ladettes” (girls and young women who behave in a boisterously assertive or crude manner and engage in heavy drinking sessions (Alder and Worrall 2004). There has also been discovery of the female sex abuser (women who commit sexual offences) (Matravers 1997) as well as more general attention to the need for gender informed criminal justice system practices and to the neglect of women as victims of domestic (spousal), violent and sexual abuse, and the criminal justice system’s limited attempts to address these problems (Silvestri and Crowther-Dowey 2008). Thus a specific focus on women and criminal justice arises because much criminological theorizing and research has revolved around men, and what is known about men (their pathways into crime) and justice (what is “just” and what works for men) and has simply been presumed to be relevant to women too, when this is not necessarily the case. Indeed, women have been described as “correctional afterthoughts” (Ross and Fabiano 1986). This is not just about filling a gap in knowledge, but it is about extending our knowledge so that we can understand more clearly how gender—as a social construction—impacts on the conception, delivery and impact of “justice” through supervision.

Article 7 of the United Nations (UN) Universal Declaration of Human Rights states that: “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

However, the notion that all are equal before the law is problematic. Criminal justice practices often affect people in different ways in relation to gender (Ethnicity, age, social class and sexual identity are also factors which can, of course, impact on the operation and impact of the law).

One of the issues here is that dominant definitions of masculinity have affected both men and women in the criminal justice system because it is a system which has been “shaped” and designed according to understandings of men, male offenders

and victims, and men's needs (Smart 1976; Heidensohn and Silvestri 2012). This is sometimes justified on the basis that criminology and criminal justice should be "crime led". Indeed, it is certainly the case that men predominate in criminal justice systems across the world. The vast majority of "known offenders" are men, with women making up fewer than one in five arrests in some jurisdictions (Brown and Heidensohn 2000). Moreover, many of the people who administer the criminal justice system are men, whether this be the police, judges, prosecutors, defence lawyers, prison officers or probation officers. This situation is replicated internationally and historically (Martin and Jurik 1996).

The consequences of a gender imbalance in gender distribution across criminal justice systems affects women in two main ways. First, responses to women as offenders are often thought not to be equal in relation to men. Second, they are treated differently as victims; specifically when victims of male violence. These differences broadly reflect cultural and ideological assumptions which operate with regard to women. Indeed, feminist writers such as Carol Smart (1976) and Adrian Howe (1994) have noted that it is important to examine the sites of criminal justice enactment (police services, prosecution services, legal defence services, the courts, probation and prisons) and to consider how gender is constructed in these institutional settings.

Thus the experience of women within the criminal justice system is arguably "gendered". To understand this we perhaps need to look outside the criminal justice system. Indeed, the context of the regulation and control of women (as offenders or victims) has to be located within an examination of "patriarchy" and "patriarchal relations", for it is argued that it is these concepts which determine women's social, political and economic status—alongside other relevant factors such as ethnicity, social class, age and sexual identity—and ultimately shape their experiences as offenders and victims, and how they might experience the criminal justice system, including supervision.

In this vein, we should note that there are many different forms of moral and social regulation over women. In some ways, the study of "deviant" or "delinquent" women and "women law breakers" cannot be separated from the study of how all women are defined and controlled in different societies. Ideas and stereotypes about women abound in regard to sexuality, motherhood, prostitution, abortion, alcoholism, and retirement, for instance, in all societies. Women and girls are disciplined, managed, corrected and punished as probationers, prisoners, partners, patients, mothers, and victims, through imprisonment, medicalization, secure care, and cultural stereotypes (Balfour and Comack 2006).

3.2 Women Offenders and Their Crime related Activities and Needs

In all countries where statistics are collected in routine fashion the majority of convicted offenders and the majority of those given court sentences are men. Broadly speaking, offending by women differs in a number of important ways from offending by men: it is less common, less frequent, and generally less serious. In western countries, including the USA, Australia, Canada and New Zealand, women who offend largely commit property-related offences (bearing in mind different legal terms and definitions in an international context).

As indicated in the introduction, historically, the study of crime has been male-centred and the criminal justice system's treatment of women has been imbued with assumptions about men. When the female offender has not been ignored she has been pathologised and treated as abnormal. It is only recently that we have begun to recognize more nuanced accounts of women's pathways into crime, acknowledging that women do not offend as much as men and that their offending behaviour is largely of a less serious nature. There have been periodic moral panics about women's criminality, particularly in relation to increases in violent crime. There have been indeed concerns about an increase in women's violence (Lauritsen et al. 2009) and "girl gangs" (Alder and Worrall 2004), but we would need an analysis of long term trends in this direction to be certain of major changes in patterns of crime as opposed to changes in responses to women (Steffensmeier et al. 2005). It might be added that we also know very little about the relatively few women who do persist in committing crimes or who are prolific in terms of their patterns of behaviour (see, for instance, Brennan et al. 2012).

One consistent feature in the lives of women who offend relates to experiences of poverty. Moreover, there have been consistent messages from the research literature on women offenders and from experienced service providers and service users that women offenders tend to have a history of unmet needs in relation to sexual and violent victimization, physical and mental health, housing and income, and training and employment. Substance misuse and child-care responsibilities often compound these problems. Desistance studies serve to highlight the complexity of factors relating to women's pathways into crime and in terms of pathways out of crime point to the need for broadly-based provision that can be individually tailored. Service providers in prisons and in probation/community corrections as well as researchers support claims that there may well be indirect relationships between abuse and mental health, labour market participation, and substance abuse, all of which are associated with the risk of reoffending. In other words, "victimization" creates psychological sequelae (long term consequences and difficulties), which can lead to offending behaviour (Hollin and Palmer 2006).

3.3 *Risk/Needs Confusions*

One particular concern relates to risk/needs confusions in dealing with women offenders. Correctional authorities have become increasingly concerned with assessing the risks and needs of offenders in recent years. This move towards risk/needs assessment can be seen as a contemporary manifestation of two residual concerns: predicting future offending and determining “what works”. However, as Canadian researchers Hannah-Moffat and Shaw (2003) have highlighted—with international reverberations⁶—the research behind these assessment tools rarely considers the gendered, racialized, or otherwise stratified characteristics of risk and need. Moreover, women offenders are typically characterized as scoring high on “needs” and low on “risk” but that in practice, sentencers sometimes confuse the two with consequential up-tariffing of women in the sentencing system or in terms of “risk” coming to dominate overall approaches to women offenders. One such example concerns the 1990 Task Force on Federally Sentenced Women in Canada, entitled *Creating Choices*. The Task Force recommended the closure of the only women’s penitentiary and replacement with regional facilities, which would recognize the low risk, specific needs and experiences of women, but alongside new initiatives there has been a growth in high security arrangements, and the use of assessment tools based on men (Hannah-Moffat and Shaw 2003; see Blanchette and Brown 2006).

3.4 *Women, Community Sanctions and Supervision*

There are huge gaps in data relating to women and community based sanctions across Europe (Council of Europe 2012) and elsewhere, and so it is perhaps hard to indicate anything very meaningful. But this said, we might point to relatively well-developed probation systems in Northern and Western Europe and smaller but emerging systems in South and Eastern Europe, and to well developed conceptions of supervision in Australia, Canada, New Zealand, and the USA, but not necessarily elsewhere.

Various studies have suggested that the focus and content of probation practice with women is different from that with men. For example, Stewart et al.’s (1994) analysis of probation revealed that women’s offending was often explained as “self-expressive” or “coping behaviour” and probation officers responses typically involved supportive counseling aimed at improving self-esteem or self-image, or work on problems arising from poverty and its associated stresses. In Scotland, McIvor and Barry (1998) found that the supervision of women offenders was more on a traditional welfare model (dealing with practical problems and offering

⁶ See, for example, the edited international collections of Sheehan et al. (2007) *What Works with Women Offenders* and Malloch and McIvor (2013) *Women, Punishment and Social Justice*.

emotional support) while the supervision of male offenders was more directly focused upon offending behaviour and related issues.

Notwithstanding the sophistication of probation services in some countries, the struggle to make the provision of services and programs “gender-sensitive” is indisputable, although there have been some advances (Carlen 2002; Sheehan et al. 2007; Sheehan 2011). Therefore it is important to examine to what extent a provision is gender sensitive (Chesney-Lind and Pasco 2013). For example, are women sentenced to community sentences in the same way as men? Do sentencers take into consideration the existence of children and mono parental families when they are thinking about the supervision needs of a woman? Are risk measurement tools sensitive to gender differences? And what kind of rehabilitative or training programs do women receive whilst on supervision?

To illustrate some of these issues, across the UK for instance, women have traditionally been under-represented on community service orders or what is now called “unpaid work” in the community, and over-represented on probation (supervision) (Gelsthorpe and McIvor 2007), arguably reflecting a perception of unpaid work as less suited to women who are regarded as more likely to benefit from more welfare-focused supervision. Such differences have now been reduced to some extent, as local Probation Services have tried to find suitable unpaid work for women and in some cases adapt the “working hours” so that women can undertake the work *and* deliver and pick up their children from school at the same time, rather than the one precluding the other.

Further, in the UK (England and Wales), Patel and Stanley (2008) found that women were more likely than men to have supervision and drug treatment requirements attached to Community Orders⁷ and Suspended Sentence Orders,⁸ while women were less likely than men to receive requirements involving unpaid work and participation in accredited programs.⁹ As indicated, there is some evidence that women may be given community sentences as an alternative to a lesser sentence

⁷ The Community Order is a generic community sentence (created in the Criminal Justice Act 2003). It is designed to give sentencers flexibility in choosing “requirements” which are commensurate with the seriousness of the offence in terms of punishment, and suitable for the offender (in terms of what might help). There are 12 different requirements which can be attached to an order (although on average sentencers attach about two). The requirements are: supervision, unpaid work (or what is sometimes described as community payback), curfew, accredited programs, specified activities (for example improving basic skills), prohibition, exclusion (from an activity or geographical area), residence (a requirement to live in a particular place), alcohol treatment, drug rehabilitation, attendance centre (this condition requires offenders under the age of 25 to attend a particular centre during their sentence) or mental health treatment.

⁸ A Suspended Sentence means that a prison sentence has been imposed, but the execution has been suspended. In cases where a court imposes a Suspended Sentence Order, then most of the above conditions are also available to the court to impose on the offender as part of his/her suspended sentence.

⁹ Accredited Programs are recognized programs designed to address behavioural issues such as general offending, violence, sex offending, drug or alcohol abuse, domestic violence, drink driving and acquisitive crime. There is only one “accredited programme” for women: acquisitive crime.

such as a fine; a long-standing concern is that this might indirectly contribute to the imprisonment of women, in the sense that if they reoffend whilst on a community order, or otherwise indicate non-compliance, they might be (Dowds and Hedderman 1997). Certainly, there is no evidence to suggest that the efforts to create suitable community sentences for women (suitable unpaid work that is) have had any impact on the rate of imprisonment for women (Patel and Stanley 2008).

We should add here that although a relatively high number of women offenders in England and Wales are on probation supervision, relatively few women receive prison sentences of over a year; for this reason not very many women have experienced post prison release supervision, since, to date, only those people serving custodial sentences of over a year are supervised in this way.¹⁰

Of course, as well as knowing what women offenders receive as community sentences, it is important to learn whether they complete the programs. Might there be any obstacles to the completion of community-based programs such as *community service or unpaid work* because of child care commitments or other demands? Might completion and compliance rates be higher if the programs and activities had been designed with women in mind? These are pressing questions. In a strident critique of parole and supervision in the USA, Morash (2010) thinks that such questions have been neglected.

They are difficult questions to unravel of course because a lower rate of successful completion of a supervision order in the community or a community programme in one area (or country) would not necessarily be a result of higher re-offending, rather than that enforcement procedures in the area or country may be more robust (and clients more quickly returned to court or otherwise penalized if they do not comply with the supervision requirements). As Robinson and McNeill (2008) put it, using blunt measures of “success” can mask underlying difficulties that are experienced by the offender, leading them to feel a loss of legitimacy in the process. This can have the effect of encouraging them to go through the motions, rather than actively engage. Robinson and McNeill (2008) identify two principal types of short-term compliance: *formal* and *substantive*. Formal compliance is characterized by an offender who ensures that his or her behaviour meets the requirement of the conditions, while not necessarily actively engaging. Substantive compliance is characterized by the active engagement of offenders who not only meet the requirements of all conditions of supervision but also seek to address their issues. Thus the aim is normative compliance, that is, changing hearts and minds, behaviour and attitudes.

¹⁰ The law on this is changing with the advent of the Offender Rehabilitation Act 2014 (England and Wales) which introduces 12 months supervision for everyone sentenced to more than a day in custody. Arguably this could bring benefits for the many women who receive short custodial sentences, although the need for the custodial sentences is questionable (Hedderman 2012) and it is not clear whether people need statutory supervision or informal mentoring. The former could be seen as intrusive and punitive if not framed in relational and supportive fashion.

Before turning to questions of what we know might work with women then, it is important to address some general points about the quality of supervision and how best to achieve normative compliance.

3.5 What Do We Know About Work with Involuntary Clients?

Chris Trotter and Tony Ward (2012), writing on the basis of research in Australia and New Zealand, go further and suggest very strongly that in regard to work with involuntary clients (a good way to describe offenders) criminal justice workers (including supervisors) consciously or unconsciously influence their clients in both positive and negative ways, depending on the way in which they model and reinforce particular values. As Trotter and Ward put it: “Particular concerns are the degree to which practitioners demonstrate appropriate care and empathy for clients and the degree to which they actively scaffold their agency abilities” (2012, p. 1). Such a stance is acknowledged in an earlier work by Held (2006) in regard to the *ethics of care*. Held suggests that five core features shared by the majority of care theories can be identified. First, there is an explicit analytic focus on relationships and more specifically: “on the compelling moral salience of attending to and meeting the needs of the particular others for whom we take responsibility” (Held, 2006, p. 10). Secondly, persons are viewed in relational terms. Third, acts of caring are most reliably motivated by social or moral emotions such as empathic concern, sympathy and compassion. Fourth, the focus of an ethics of care is on the concrete specific relationships people are in. Fifth, there is a rejection of the distinction between public and private spheres of functioning. All of this points to the need to not only engage in pro-social modeling (offering praise for and reinforcement of pro-social actions or expressions on the part of clients) and to work with offenders *through the relationship* formed, but to do so in a way that *engages offenders*. The next step is to suggest that recognition of and respect for individuality (with due respect for social differences whether these be age, gender, ethnicity, culture or whatever) may serve to maximize effectiveness (Gelsthorpe 2001) because such respect is relational and may enhance the legitimacy of the whole process of being under supervision.¹¹

3.6 What Works with Women?

The history of work with offenders is not replete with success, but the research base (particularly the meta-analyses) developed since the early 1990s in the UK and

¹¹ See Shapland et al. (2012) for a literature review on the quality of probation supervision.

other parts of Europe (drawing especially on work in Canada) now strongly supports the position that effective work with offenders is possible. But there has been hardly any attention to “what works with women offenders” amongst policy-makers in different countries, leading to the claim—as stated in the introduction—that women are “correctional afterthoughts” (Ross and Fabiano 1986). Whilst the focus of campaigns has commonly been on the high numbers of women in prison, the lack of gender sensitivity in prisons, and lack of attention to women’s specific needs, in the western world in particular there have been recent attempts to focus more directly on what we know about women offenders and their needs, and based on this, to divert them from crime in general and prison in particular.

3.7 Gender Responsiveness: Some General Issues

Notwithstanding various developments in programs designed to address offending behaviour in the 1990s, there are controversies regarding their suitability for all offenders (women, black and ethnic minorities, young offenders, offenders with mental health problems, and very high risk and psychopathic offenders). Offender treatment programs are typically designed for white, male, adult offenders, with only minor adaptations for other groups of offenders. Indeed, the criminogenic needs that have emerged from research on men have typically been applied to women offenders. There have been claims that what works for men will work for women too. But this is not so, and even promoters of the popular cognitive skills programs now acknowledge that there may be an issue around the responsiveness of female offenders to cognitive skills programs (see, for example, Cann 2006).

One recent study in England and Wales has tried to take things forward by exploring women’s lower rate of completion on the community-based General Offending Behaviour Programme (Martin et al. 2009). Compliance is of course an important step on the way to (but not synonymous with) non-offending, and its promotion is clearly important for everyone. The study indicates that despite some similarities, the predictors of programme completion not only vary for men and women, but also operate differently between them. The findings support the “gender-responsiveness” position that men and women should be approached differently, and suggest, moreover, that men are more likely to engage in instrumental compliance and women more likely to achieve normative compliance (relating to compliance achieved through self-interested calculation and compliance based on values and the legitimacy of interventions respectively) (Martin et al. 2009).¹²

¹² See also consideration of how situational, practical and gender-specific factors may affect how women comply in L. Gelsthorpe (2013) “Working with Women in Probation: Will You, Won’t You, Will You, Won’t You, Won’t You Join the Dance?” in P. Ugwudike and P. Raynor (eds) *What works in offender compliance* (Basingstoke: Palgrave Macmillan).

Attempts to facilitate gender-responsiveness in programs and interventions have been limited because the state of research and programme development for women generally lags behind that for men, but we are able to deduce what is likely to work with women from educational and other areas of research as well as from emerging research findings. From educational research we learn most women prefer to learn in collaborative, rather than competitive, settings (Belenky et al. 1986). If we put this alongside evidence, which suggests that women-only (or women-focused) environments facilitate growth and development (Zaplin 1998), we can see that the evidence adds up to a need to work with women in non-authoritarian co-operative settings, where women are empowered to engage in social and personal change. In addition, “women-specific” factors such as health care, child care and mental health together with factors relating to race and gender combined need to be addressed (see Gelsthorpe 2010). If these things are in place then this will maximize the potential for effectiveness in terms of reducing re-offending, although there are perennial problems in gathering data on re-offending.

3.8 *New Initiatives*

On the basis of their analysis of work in Canada, Taylor and Blanchette (2009) take us further in advocating the integration of a number of gender-informed theories and methodologies in responses to women offenders. Specifically, they recommend gendered pathways, the use of relational theory, strengths-based approaches, and the use of positive psychology, all of which are critical frameworks for intervention with women. We might add to this the need for such interventions to be sensitive to ‘trauma’. In other words, supervision provision for women in the community should reflect these aspects.

There have been some important new initiatives, which reflect this kind of thinking. In Scotland we can turn to Centre 218, which has its origins in reviews following a series of suicides in Scotland’s only prison for women. The Centre is based on the idea that female offenders should be able to get “time out” of their normal (and perhaps chaotic and stressful) environment without resorting to “time in” custody. The Centre thus serves as a diversion from prosecution and as an alternative to custody, and more generally it offers particular support—for detoxification, support and outreach to health, social work or housing services. The ethos is therapeutic in intention and there is much emphasis on providing a safe environment for the women (Beglan 2013).

There have been some interesting developments in relation to women and criminal justice in England and Wales too, including major funding and effort to divert women from both crime and custody (Hedderman 2010; Gelsthorpe 2010). A major review of the criminal justice system for women commissioned by the government in 2007 fuelled the changes (Corston 2007). A number of new community centres for women have been set up in the community providing holistic services in order to support women and there is now a national network of such

centres (Women's Breakout: <http://www.womensbreakout.org.uk/>). These centres are increasingly used as settings in which "community supervision" can take place either in terms of using the centres for "specified activities" which might be required as an attachment to a Community (Supervision) Order, or as place where offender and probation officer or offender management might meet. Of course, there are questions to ask: do the developments reflect a new sense of responsibility towards disadvantaged women or might they be interpreted as an extension in the network of control and regulation. What is perhaps at issue now is how the centres can be sustained in a market economy of justice and how they can provide hard evidence of positive impact beyond clients' views (Gelsthorpe and Hedderman 2012).

This said, consumer feedback has been very positive. As Hedderman et al. (2011) indicate in their evaluation of *Together Women* the Government's pilot scheme for such centres, one client returned to a centre after not attending for some time and found:

It's nice to know that somebody thinks about you and that, you know, there is somebody there to turn to. . . I thought it'd be like another authority. I thought it'd be like . . . police, probation, social services kind of. . . making these rules, setting down I must do this, and I must do that, and it's not been anything like that. . . obviously, they're not gonna put up with my bloomin' nonsense, and all that sort of thing – but they just tell me what I should be doing, really, and then leave it to me whether I take it on board, or 'phone me and try to encourage me. . . (Hedderman et al. 2011, p. 11).

Such claims have been repeated in evaluations of women's community centres. In the *Turnaround* Project in Wales, the clients were unanimously positive about their experiences (Holloway and Brookman 2008). Issues that were highlighted as being particularly positive included: the range of support that was offered, the flexible pace of working, the confidential nature of discussions, the non-judgemental nature of the staff and the ability of staff to uplift them and instil them with confidence and self-esteem.

As Hedderman et al. (2011) note, the key themes which emerge are that what matters to women as service users is experience of key workers (and supervisors) who see service users "as people, not cases", "being accepted and respected", "being in a women only environment" and "being in a quality environment" (by which is meant a good physical environment where colour schemes were bright and furniture modern and comfortable). In many ways this takes us back to the important principles or ethics of care.

What developments have there been elsewhere? In the USA, the National Institute of Corrections (NIC) in cooperation with the University of Cincinnati (UC) (University of Cincinnati, 2013) has created a series of new gender specific risk/need assessments for adult women offenders. The assessments include: (1) a full instrument, the Women's Risk/Needs Assessment, which assesses both gender-neutral and gender-responsive factors and affords separate forms for probation, prison, and pre-release; and (2) the Women's Supplemental Risk/Needs Assessment which is designed to supplement existing risk/needs assessments such as the Level of Supervision Inventory—Revised (LSI-R) (Andrews and Bonta 1995).

The Women's Supplemental Risk/Needs Assessment is also available in separate forms for probation, prison, and pre-release populations.

The NIC/UC project was developed from two perspectives on offender rehabilitation: (1) research by Canadian scholars which stresses the importance of treating dynamic risk factors; and (2) work by feminist criminologists stressing the importance of women's unique "pathways to crime". Both paradigms stress the importance of programming for dynamic risk factors. However, the pathways model asserts that women's unique needs are not adequately tapped by currently used risk/needs assessments. In response, the new women's assessments identify such needs as: trauma and abuse; unhealthy relationships; parental stress; depression; self-efficacy, and current mental health symptoms.

Elsewhere in the USA there are developments relating to gender responsive programming in prisons and in the community (Lawston 2013), and in Victoria, Australia, developments regarding diversion from prison and better community provision in relation to drug and alcohol support, family reunification, debt management and independent living skills for example (Sheehan 2013).

Altogether, whilst it is obviously impossible to provide illustration of all the new developments across different jurisdictions, there is emerging evidence that provision for women offenders in the community should be women-only to foster safety and a sense of community and to enable staff to develop expertise in work with women; integrate offenders with non-offenders so as to normalise women offenders' experiences and facilitate a supportive environment for learning; foster women's empowerment so they gain sufficient self-esteem to directly engage in problem-solving themselves, and feel motivated to seek appropriate employment. Thus what is required is the utilization of what is known about effective learning styles with women; a holistic and practical stance to helping women to address social problems which may be linked to their offending; links with mainstream agencies, especially health, debt advice and counselling; capacity and flexibility to allow women to return to a community centre or supportive relationship for "top ups" or continued support and development where required; and arrangements for women to have a supportive milieu or mentor to whom they can turn when they have completed any offender-related programs, since personal care is likely to be as important as any direct input addressing offending behaviour. In addition it is important to provide women with practical help with transport and childcare so that they can maintain their involvement in the centre or programme (Gelsthorpe 2010).

Whilst the position of a number of countries is very unclear, the US Department of Justice National Institute of Corrections (Sydney 2005) has certainly acknowledged the need for gender-responsiveness in community corrections (including supervision). As indicated in a strategy paper (Sydney 2005) in addition to examining community corrections policies, procedures, philosophies, and attitudes to determine whether they promote successful outcomes for women offenders, gender-responsiveness requires intervention processes that "acknowledge and accommodate differences between men and women, assess women's risk levels, needs, and strengths and construct supervision case plans accordingly,

acknowledge the different pathways through which women enter the community corrections system, recognize the likelihood that women offenders have a significant history of victimization, build on women's strengths and values, including recognizing that relationships are important to women, and acknowledge and accommodate the likelihood that women are primary caregivers to a child or other dependent." Various re-entry coaching programs (involving supervision in the community) reflect similar principles (see, for instance, Modley and Giguere 2010). In Connecticut, USA, the *Women Offender Case Management Model* is used throughout the system, built on relational theory, strengths-based, trauma-informed, holistic and culturally sensitive approaches. In Canada, Women's Supervision Units employ a gender-sensitive, multi-disciplinary team approach to the case management of women offenders. Indeed, the Correctional Service of Canada provides women-centred training alongside refresher courses for parole staff working in the women's supervision units. This is a way of ensuring that front-line staff receive adequate gender-specific training, alongside continued opportunities for learning while working (Correctional Service of Canada 2002).

In New Zealand, a holistic model of case management means that women offenders are supervised in a gender-informed way at every step of their involvement with the criminal justice system. Turner et al (2010) outline a similar gender informed approach in Australia. In 2009 Corrections Victoria developed the Dedicated Women's Case Management Model which resulted from the *Better Pathways* report (Corrections Victoria 2006). These are just examples of initiatives of course. And whilst we may wish to assume widespread adoption of good practice, there is a need for further primary research to ensure that good ideas and policies have been well-implemented and sustained.

3.9 Conclusion: Gender Informed Supervision

By unanimously voting in 2010 for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("The Bangkok Rules", A/RES/65/229, Annex), all countries who were members of the United Nations at the time acknowledged that women in the criminal justice system do have gender-specific characteristics and needs, and agreed both to respect and meet them. Rule 60 reads:

"Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial penalties with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counseling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programs to improve employment prospects. Such programs shall take account of the need to provide care for children and women-only services." (United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 2010, Rule 60).

Certainly there has been an increased awareness of and concern about the direct applicability of research findings from studies conducted predominantly with men

to the development and implementation of supervision approaches and community programs for women in the criminal justice system.

In sum, there has been substantial debate about the requirement for and efficacy of gender-responsive approaches in addressing the needs of women offenders (Andrews and Dowden 1999; Bloom et al. 2002). Countries vary as to how far they address gender-specific needs in supervision, but there is certainly a good range of possibilities and encouraging signs of change. At the same time, there are huge gaps in knowledge; we know very little indeed about gender issues in supervision beyond the western hemisphere, and more generally we need more empirical evidence to measure the impact of policy aspirations.

Five Questions

1. Why should probation or parole practice pay attention to the age or the gender of the offenders?
2. What is the evidence to suggest that these two factors are important when designing or implementing a correctional intervention?
3. In what ways do the needs of males and females differ in relation to supervision?
4. What research questions remain in relation to the supervision of young offenders and young adults?
5. What research questions remain in relation to the supervision of women?

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Release Management for Female and Juvenile Prisoners. How Important Is Release Management in Prison for Crime Prevention?

Ineke Pruin

Abstract This chapter focuses on release preparation structures for juvenile and female prisoners that have been found to be an important part of effective resettlement strategies. Research results and international standards call for a holistic approach to resettlement that regards pre-release preparation and post-release aftercare as a uniform challenge that should be governed by the same overall strategic plan. Research often concentrates more on the post-release phase of resettlement, leaving out what has to be done on the inside to support new approaches and ideas, probably oftentimes under the assumption that enough has already been written about what happens in terms of preparation on the inside. Nonetheless, it is worthwhile taking a closer look at the recommendations and results from the prisoner resettlement debate that pertain to pre-release preparation. Regrettably, the literature on this topic is limited. The chapter starts with an overview of the special needs and requirements of female and juvenile offenders with respect to their release preparation. This is followed by a snapshot of the international recommendations relevant to the field of release from prison. The next section focuses on what research has found out about the effectiveness of prison release programmes. Finally, we look at how these findings have been put into practice, and whether we can identify good or promising practices in the literature.

1 Introduction

The issue of prisoner resettlement¹ has gained a lot of attention worldwide in recent years.² Debate has been invigorated by developments in the USA. There, a policy of “mass imprisonment” (Garland 2001) has resulted in the highest prisoner rates in

¹ In the US, the term “prisoner reentry” is more common. Terminology is discussed further in section 2 below).

² For an overview with a focus on England, see Hedderman (2007).

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the world.³ Since the beginning of the new millennium, the USA has been confronted with one consequence of their policy in particular: since most prisoners serve determinate sentences, there has been a continuous flow of people being released; people who need to be reintegrated into society, often after having served lengthy stints in prison. The USA have thus been in search of new concepts and strategies for effectively managing this flow,⁴ and it so appears that Canada, Australia and all of Europe have joined in on the conversation.⁵

Criticism of the existing release structures has been rooted primarily in the very high rates of recidivism among persons released from prison. Recent German recidivism studies have found that approximately one in two adults and two in three young persons released from prison re-offend.⁶ The risk of recidivism is at its highest in the time immediately following release, as the majority of re-offending occurs within 1 year of leaving custody.⁷ These results show that reintegration is not being achieved for a large proportion of offenders released from prisons. Rather, some authors state that re-offending has dynamics of its own (“Eigendynamik der Rückfallkriminalität”)⁸ due to a very low degree of social integration in freshly released ex-offenders, that shows itself for instance when the label that is attached to “ex-prisoners” makes the search for employment arduous, and a resulting lack of structured routines and economic security make a return to offending much more likely.⁹ These findings are particularly concerning in light of the relevant international human rights standards concerning release from prison.

It is obvious that, in many cases, the task of integrating ex-prisoners into society is a difficult one. To prevent new criminality, it is important to minimize possible risk factors that had already existed prior to incarceration. Additionally, imprisonment itself might have produced new risk factors such as homelessness, unemployment or broken social bonds. Prisons therefore face the challenge of preparing prisoners for life on the outside. Depending on the concrete issues or spheres of reintegration (housing, labour, health, debt, documentation, family ties etc.) the

³ The USA regularly lead the table of countries with high prisoner rates. For an up-to-date overview see the respective data from Kings College London and EUROSTAT.

⁴ Bumiller (2013), p. 15.

⁵ Articles that seek to provide a comparative international overview of a subject are often limited by the terminological and linguistic limitations of their authors. Thus, this chapter covers literature on release preparation that has been published in English or German.

⁶ Most recent German recidivism analyses measured a recidivism rate of 48 % for persons who have served unconditional prison sentences, and 69 % for young people who have served a youth prison sentence, see Jehle et al. (2010), p. 60. Similar figures have been measured for England, see Bateman et al. (2013), p. 11. For recidivism studies from Austria, see Bundesministerium für Justiz (2009). For insight into the high methodological standards and requirements for reliable recidivism research, see Jehle (2007).

⁷ For Germany, see Jehle (2007), p. 237. In England and Wales in the year 2009, 71.9% of juvenile offenders below the age of 18 years were reconvicted within 1 year of their release, see Gray (2011), p. 239.

⁸ Kerner and Janssen (1983), Hermann and Kerner (1988).

⁹ See e.g. Wirth (2006) or Matt and Hentschel (2009), each with further references.

time that this preparation needs can be more or less. Research and practice have found that certain conditions are associated with good release preparation, such as providing/supporting vocational training, the (partial) opening of custodial settings or the provision of personal support throughout the whole release process, including cooperation between services inside and outside prisons. Many of these conditions (or factors) have been laid out in international recommendations on imprisonment and/or release. Female and juvenile offenders can be regarded as particularly vulnerable groups in this regard. They have special needs that stem from special, often highly individualized contexts, and release structures have to be adapted to reflect their specific situations. Since women can be seen as “the fastest-growing segment of the U.S. prison population” postulations on “gender responsive” prison programmes have gained more weight.¹⁰

This chapter focuses on release preparation structures for juvenile and female prisoners that have been found to be an important part of effective resettlement strategies. Research results and international standards call for a holistic approach to resettlement that regards pre-release preparation and post-release aftercare as a uniform challenge that should be governed by the same overall strategic plan. However, the phase and influence of post-release aftercare have been omitted from this chapter for the most part—aftercare, with a special focus on women and juveniles, is covered in detail in another chapter of this handbook (see *Hagemann* in this volume). Focusing on release preparation in the context of resettlement seems justified. Research often focuses more on the post-release phase of resettlement, leaving out what has to be done on the inside to support new approaches and ideas, probably oftentimes under the assumption that enough has already been written about what happens in terms of preparation on the inside. Nonetheless, it is worthwhile taking a closer look at the recommendations and results from the prisoner resettlement debate that pertain to pre-release preparation. It cannot be assumed that there is a deep or wide reservoir of literature that focusses particularly on women and juveniles in this context. Therefore, this chapter starts with an overview of the special needs and requirements of female and juvenile offenders with respect to their release preparation. This is followed by a snapshot of the international recommendations relevant to the field of release from prison. Chapter “Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules” then focuses on what research has found out about the effectiveness of prison release programmes. In the fourth chapter we look at how these findings have been put into practice, and whether we can identify good or promising practices in the literature.

¹⁰Thompson (2008), p. 45, see also Bumiller (2013), p. 13.

2 Special Needs and Requirements of Juvenile and Female Prisoners with Respect to Their Release

Looking at empirical knowledge about juvenile and female prisoners, the discussion about adequate terminology for describing the aims of the release process becomes especially relevant. The terms commonly used to describe them are “resettlement”, “re-entry” or “rehabilitation”. This terminology has already been discussed in relation to male adult offenders,¹¹ with prominent reference to the fact that many adult prisoners had not been “settled” prior to imprisonment, and rarely have adequate social structures to “re-enter”. These findings are particularly valid for juvenile and female prisoners, who appear to experience a high degree of social exclusion.¹²

According to empirical research,¹³ it is safe to assume that imprisoned women in general have received less schooling and less vocational training¹⁴ compared to non-imprisoned women, and that they had often been unemployed and lacked economic security prior to their imprisonment.¹⁵ Accordingly, vocational training and/or education are particularly important elements of successful release preparation strategies.¹⁶ Due to their (usually) comparatively small number, female prisoners are often placed in small units or small institutions for women, which in turn cannot provide adequate training and educational infrastructures. Ultimately, this results in significant shortcomings in the provision of adequate, targeted and individualized training for imprisoned women.

Furthermore, imprisoned women have oftentimes themselves been victims of violence. A small sample study from Germany¹⁷ revealed almost disturbing results: 91 % of interviewed women had experienced physical violence. 57 % reported to have been victims of sexual violence, of them 72.3 % had been raped.¹⁸ In the majority of cases the aggressor was a partner or ex-partner.¹⁹ These data are similar to findings from other countries,²⁰ and demonstrate that providing access to

¹¹ For Europe: Raynor (2004), Bateman et al. (2013), p. 9. For the U.S.: Bumiller (2013), p. 16. A commonly used definition for resettlement is “the process of reintegration back into the community in a positive and managed way” (Mead 2007, p. 268) after serving a prison sentence, see Durnescu (2011), p. 4.

¹² According to Toth (2005), p. 140.

¹³ See for an overview, Opsal and Foley (2013), Holtfreter and Wattanaporn (2014), p. 42.

¹⁴ For example for Germany: Schröttle and Müller (2004), p. 17 f.

¹⁵ Cruells and Igareda (2006), p. 5.

¹⁶ See also Gelsthorpe and Sharpe (2007), p. 200 with further references.

¹⁷ Based on a research project conducted by the Ministry of Family, Women and Youth, see BMFSFJ (2004).

¹⁸ See Schröttle and Müller (2004), p. 27 f.

¹⁹ See Schröttle and Müller (2004), p. 33.

²⁰ See for example for the U.S.: Bumiller (2013), p. 18 and some data for Europe in Cruells and Igareda (2006), p. 12.

qualified psychological treatment is an important element of an individual's preparation for release and successful (re-)integration. In general, imprisoned women seem to have more health problems than the average of women outside prison.²¹ Special attention is given in the literature to the "alarming number of women who have hepatitis C and human immunodeficiency virus (HIV)".²² Different international analyses have revealed that female prisoners are very likely to have drug problems.²³

It is common to observe that treatment programmes in prisons are designed for men who constitute the absolute majority of prisoners. US American-research however has revealed that some judges have sent female offenders to prison because they regarded prison as the best place for the treatment of women with addiction problems, while community-based programmes have been seen as too difficult for women to comply with.²⁴ According to a European research project on six countries,²⁵ only a minority of women prisoners receive adequate psychological treatment.²⁶ In some countries, there is the somewhat special situation that women are often only sent to prison because alternative sanctions in the community are not available, or are not implemented or designed for women.²⁷ At the same time, research on recidivism reveals that women are less likely to re-offend regardless of sentence,²⁸ which would theoretically make them even more suitable for community sentencing.

The literature furthermore makes frequent reference to the significance of family responsibilities as a relevant gender factor for women in prison.²⁹ Care has to be organized for the children of imprisoned mothers, and prisons face the challenge of allowing imprisoned mothers to adequately maintain family ties while inside, or to recover them during release preparation.³⁰ Especially when children have been taken into care and after long stays in prison, the reestablishment of relationships between children and their released mothers seems to be particularly difficult.³¹ It is

²¹ See data from Germany in Schröttle and Müller 2004, p. 43, where the interviewed women were younger than the comparison group and were therefore supposed to have had less health-related problems.

²² Bumiller (2013), p. 18 with further references, Haverkamp (2011), p. 191 with further references.

²³ Thompson (2008) p. 45 with further references, Gelsthorpe and Sharpe (2007), p. 200 with further references.

²⁴ Bumiller (2013), p. 19 with further references.

²⁵ Spain, Germany, England and Wales, Italy, France and Hungary, see Toth (2005).

²⁶ Haverkamp (2011), p. 186 with references to Toth (2005), pp. 26 f., 32 ff.

²⁷ In this context see Kendall (2013), p. 35 with a citation of the Chief Inspector of Prisons in England and Wales from the year 2012: "There are too many women in prison who simply do not need to be there".

²⁸ Worrall and Gelsthorpe (2009), p. 335.

²⁹ Cruells and Igareda (2006), p. 8 ff.; Gelsthorpe and Sharpe (2007), p. 201.

³⁰ Cruells and Igareda (2006), p. 9.

³¹ Gelsthorpe and Sharpe (2007), p. 206.

especially challenging in this respect that women, due to their small numbers, are often in prisons far away from their families and friends.³² Housing and accommodation seem to pose particular problems for those women who can or should not return to their old places of residence.³³

The situation for juvenile prisoners seems to be comparably difficult. In general, juvenile offenders in custodial institutions have experienced multiple forms of social exclusion.³⁴ They often come from families with low socio-economic status, have frequently been excluded from school for deviant behaviour, often exhibit a low level of academic attainment or are school dropouts, and have oftentimes experienced placements in out-of-home care.³⁵ They may well lack adequate, stable social bonds to which they can return, and are likely to face even more difficult economic circumstances than their adult counterparts as they frequently lack vocational training.

Many juvenile prisoners have experienced social exclusion long before they wind up in prison. This sense of disadvantage might be likely to undermine their motivation to successfully resettle to the community upon release.³⁶ According to research from England and Wales, “half of young people in custody lived in deprived households” and “nearly 40 % had been on the child protection register and/or had experienced abuse or neglect”.³⁷ Research results show that juveniles often cannot return to their original family after their release from prison.³⁸ Therefore, housing issues are of particular relevance for preparing those juveniles for release who had lacked adequate accommodation and living circumstances prior to their imprisonment.³⁹ Education and training are vital factors in preparing juveniles for release. It should be known that there are special funding bodies for education/training programmes in prisons and detention centres, for example linked to the educational system or the youth welfare or family law system, so the justice system need not bear the entire financial burden for providing such programmes (e.g. Germany, Sweden, Denmark).

To conclude, the research findings about women and juveniles in prison show in particular that the resettlement of these groups and their preparation for release should even less than in the case of male adults concentrate on the question of how to reconnect them to their old lives. In many cases, release preparation can imply

³² Gelsthorpe and Sharpe (2007), p. 206.

³³ Maguire and Nolan (2007), p. 159 with further references.

³⁴ Jacomy-Vité (2011), p. 9; Bateman et al. (2013), p. 11.

³⁵ For the case of England, the Barrow Cadbury Trust (2005) found that almost half of the young prisoners (18–21) had previously been in local authority care.

³⁶ Gray (2011), p. 236. All internationally compared justice systems worldwide allow juvenile offenders to be sent to at least one form of custody, be it a youth prison (organized by the justice system) or a closed institution (organized by the welfare system). See Dünkel and Stańdo-Kawecka (2011).

³⁷ Gray (2011), p. 237.

³⁸ For England, see for example Bateman et al. (2013), p. 15.

³⁹ Maguire and Nolan (2007), pp. 160 ff.

that existing structures need to be reassessed and new perspectives need to be fostered so as to build an adequate social environment. It is highly likely that reflecting on the past of juveniles and women in prison will bring many problems and risk factors to light that can and should be addressed so as to maximize prospects for successful reintegration.

3 International Recommendations

At the international level, several recommendations are devoted to the treatment of prisoners. The Standard Minimum Rules for the Treatment of Prisoners, elaborated by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955), and subsequently adopted, and amended by the Economic and Social Council (1957 and 1977), are the most prominent in this regard.⁴⁰ The most important regulations with respect to release preparation postulate that prisoners have to be prepared for their return to society, either via a pre-release regime or by release on trial (art. 60). “From the beginning of a prisoner’s sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation” (art. 80). “Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release (art. 81 (1)).”

The UN Basic Principles for the Treatment of Prisoners from 1990 (A/RES/45/111 (1990)) add that “conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s labour market and permit them to contribute to their own financial support and to that of their families” (no. 8). “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation” (no. 9). “With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions” (no. 10).

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) of 2011 focus especially on women in the criminal justice system. With respect to release issues, they highlight that “prison authorities shall encourage and, where possible,

⁴⁰ All UN-recommendations can be found under <http://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuaside>.

also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration” (rule 43). The Rules furthermore highlight options like home leave, open prisons, halfway houses and community-based programmes and services, which should be utilized “to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage” (rule 45). “Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women” (rule 46).

Focusing on child and juvenile offenders, there are several other international standards. The UN Convention on the Rights of the Child (CRC) is the most prominent in this regard.⁴¹ In Art. 40 it sets reintegration as the ultimate goal of juvenile justice.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (The Beijing Rules)⁴² do not include special rules for the preparation of prisoners for release, but do refer to the UN Basic Principles for the Treatment of Prisoners (rule 27). They furthermore manifest that “young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured” (Rule 26.4) and that “conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time” (Rule 28.1).

The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (The Havana Rules, A/RES/45/113 (1990))⁴³ highlight the juvenile’s right to education, especially in rule 38: “Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.” Other recommendations concerning vocational training and work can be found in rules 39–46. Rule 45 emphasizes the relevance of job preparation in the process of release preparation: “Wherever possible, juveniles should be provided with the opportunity to perform remunerated

⁴¹ 1577 UNTS 3, adopted by General Assembly resolution 44/25 of 20 November 1989.

⁴² A/RES/40/33, adopted by General Assembly resolution 40/33 of 29 November 1985.

⁴³ A/RES/45/113.

labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.”

The relevance of contact to the outside world is laid down in rule 59: “Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.” A special paragraph of the Rules is dedicated to the “return to the community” in rules 79 and 80: “All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end” (rule 79). “Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community” (rule 80).

There are also numerous significant European guidelines and recommendations that in part also make reference to release preparation. The Council of Europe’s Recommendation Rec(2006)2 on the European Prison Rules⁴⁴ contains a special section on female prisoners (nr. 34.1–34.3), but also statements about release preparation in general, for instance its emphasis on regime relaxations as an element of prison life and sentence planning.⁴⁵

Both Council of Europe Recommendation Rec (2003)22 on conditional release (parole)⁴⁶ and Recommendation CM/Rec(2010)1 on the European Probation Rules⁴⁷ address issues of release management. The ERJOSSM make detailed

⁴⁴ Adopted by the Committee of Ministers on 11 January 2006.

⁴⁵ Haverkamp (2011) has empirically researched the situation of female prisoners in Germany against the backdrop of the European Prison Rules.

⁴⁶ Adopted by the Committee of Ministers on 24 September 2003.

⁴⁷ Adopted by the Committee of Ministers on 20 January 2010.

recommendations for the management of the release of juvenile prisoners that are highlighted in the further course of this chapter.

4 The Importance of Release Preparation According to Criminological Research Results

Although the body of evidence still seems to be far from complete,⁴⁸ we can nonetheless speak of validated criminological research results on the effectiveness of offender treatment programmes, which do indeed allow some statements and assumptions to be made about the effectiveness of resettlement strategies. If we concentrate on the question of what this body of research allows us to say about release preparation, we find the following results:

4.1 “What Works”: Results with Respect to Release Preparation

After *Martinson’s* (1974) results on successful rehabilitation programmes were interpreted as implying that “nothing works”, in the US in particular but also in other places, policies were inspired by the “tough on crime” philosophy with its focus on punishment and deterrence instead of treatment.

Ever since, criminological research has felt even more compelled to prove that offender treatment works. The focus on so called “evidence-based” practices in criminal justice organizations started with the work of *Sherman* and his colleagues and their *Maryland Scale of Scientific Methods* (Sherman et al. 1997). This influential research line is very much connected to the terminology of “what works”. *Sherman* and his colleagues conducted a meta-analysis on crime prevention programmes in institutional settings, among them criminal justice settings, but also schools, families or labour markets. They looked at the results from prior research studies on crime prevention programmes, and they rated these studies on a scientific methods score of one through five. Level five studies used the “golden standard” of random assignment and large samples, while level one studies show correlation between a type or level of programme and an outcome at a single point in time. The idea was that the scores should help to reflect the level of confidence one can place in the evaluation’s conclusions about cause and effect (Petersilia 2004, p. 6). “What works” was defined by at least two level-three evaluations (level three means that the study employed some kind of control or comparison group) and these evaluations had to state that the intervention was effective. What does not

⁴⁸ The challenges of research on resettlement have been summarized by Wincup and Huckleby (2007).

work was defined by at least two level-three evaluations drawing that conclusion, while “what is promising” was identified as findings with low level of certainty but marked by some empirical basis. Everything not fitting into these categories was labelled as “unknown”. The idea behind this research was to help policy and practice to focus on programmes or interventions that have been proven as effective in reaching the desired results, and not to make decisions based only on “having a good feeling”.⁴⁹

MacKenzie⁵⁰ used *Sherman’s* methodology and the “what works”-approach for the corrections system. She and her colleagues identified 184 correctional evaluations (conducted between 1978 and 1998) that employed a methodology that could be rated at a level of 3 or higher (which means that the study employed some kind of control or comparison group). She identified some types of programmes for prisoners as “working” to reduce offender recidivism. With respect to the release preparation of prisoners, she highlighted therapeutic programmes in prison using the concept of therapeutic communities and combining it with follow-up treatment in the community as being effective with respect to reductions in recidivism rates. Another important finding with respect to release preparation was that programmes that focussed on finding employment in the community after release were proven to be effective. Preparation through programmes that offer adult basic education and transitional programmes providing individualized employment preparation and services for high risk offenders was categorized as promising.

The research team of *Seiter* and *Kadela* (2003) used a similar approach for the review of evaluations of special re-entry programmes. They looked at re-entry programmes that specifically focus on the transition from prison to the community or initiate treatment in a prison setting and link with a community programme to provide continuity of care. Within this broad definition, they only included programmes that had an outcome evaluation. They found 28 programme evaluations that fit their re-entry definition. 19 of those programme evaluations included a control or comparison group (i.e. they met level 3 criteria as defined by the Maryland Scale). Out of these 19 evaluations, 10 were drug treatment programme evaluations. These numbers show what it means if we limit the “what works” debate to programmes with outcome evaluations using strict criteria—in the same time period, hundreds of work release programmes, halfway houses or pre-release classes must have been implemented in the US that could not come into the focus of that piece of re-entry research because they had not been evaluated at all, or were not evaluated according to the standards.⁵¹

Seiter and *Kadela*⁵² identified vocational training and work release programmes as being effective in reducing recidivism. Another finding with respect to release preparation was that halfway houses that prepare ex-prisoners to a life outside in an

⁴⁹ MacKenzie (2014), p. 1472.

⁵⁰ See MacKenzie (2006).

⁵¹ Petersilia (2004).

⁵² Seiter and Kadela (2003).

open institutional setting and some drug treatment programs combined with intensive aftercare were effective in reducing recidivism. However, the small number of projects within the scope of this evaluation forces the conclusion (made by the researchers themselves) that more evaluations of current programmes are needed for a better analysis.⁵³

We can conclude that the “what works” approach provides us with some results in relation to prisoner resettlement that are based on a small percentage of all programmes, but which nonetheless indicate that release preparation works, or is at least promising for reducing recidivism after release.

4.2 Release Preparation in the RNR Model

Another line of criminological research is based on different disciplinary traditions and methodologies and does not focus on programmes as such, but more on the individuals within the programmes and looks at questions like why the programme is more effective for some individuals than for others.⁵⁴

This approach does not restrict its scope to programmes that have been formally evaluated with a high-level evaluation, but looks at the results of evaluations that used different techniques, such as interviews or insights from clinical experience. Researchers following this approach usually do not use the “what works” terminology, and speak instead about “principles” or “guidelines”. One conclusion within this line of research is that the effectiveness of treatment programmes is dependent on a variety of so called “moderators” of programme effects that include offender factors (such as risk level or motivation), the treatment context (like staff skills, the continuity of support or the institutional climate) and evaluation methods. This makes it very unlikely that specific programmes or interventions will “work” in any context and in any place.

A very influential piece of research in this context is the well-known risk-need-responsivity approach of *Andrews and Bonta (2010)*.⁵⁵ The RNR-approach is based on three main principles for successful offender treatment: The Risk principle states that the intensity of interventions should match the offenders risk level. Research has found that treatment (especially cognitive behavioural programmes) can have a positive impact on higher-risk offenders, and lower-risk offenders may actually do worse if exposed to treatment with higher-risk offenders. Therefore, low-risk

⁵³ Petersilia (2004), p. 6.

⁵⁴ Geographically, this line of research started in Canada, but is nowadays also strong in Australia and the UK, whereas the “what works” debate is rather influenced and led by researchers from the United States.

⁵⁵ According to Lloyd and Serin (2014), p. 3303, the RNR-approach is “the guiding principle worldwide”. Meta-analyses have found support for the efficacy of RNR-based treatment programmes in reducing recidivism among general and sexual offenders (e.g. Lösel and Schmucker 2005).

offenders should receive less intense intervention, whereas high-risk offenders should be subjected to intensive treatment. The Needs principle says that interventions should target criminogenic needs, also known as dynamic risk factors. Those factors are causally related to offending and are changeable. They include, for example, negative emotion, pro-offending attitudes, inconsistent employment or substance misuse. The Responsivity principle involves matching the style and mode of interventions to the offender's learning style and abilities. The offender's cognitive abilities, learning styles, and other characteristics have to be considered and treatment has to be delivered accordingly. *Andrews* and *Bonta* confirmed their results both in the context of female⁵⁶ and juvenile⁵⁷ offenders.

They also conducted a meta-analysis of treatment studies and tried to "translate" the results and the risk-need-responsivity model to the practice of prison and probation work. The "evidence based" principles that have been formulated in this context (*Andrews* and *Bonta* 2010, *Lowenkamp et al.* 2006) have been summarized for the context of reentry by *Petersilia*⁵⁸ and allow us to conclude that release preparation as such plays an important role for the successful resettlement of prisoners. The research results demonstrate that programme strategies and the professional approach are an important factor for the effectiveness of those programmes. They clearly state that intensive prison treatment interventions should be used primarily with higher-risk offenders, treatment services should then be behavioural in nature, reinforcements in the programme should be largely positive, not negative, and services should be intensive, lasting 3–12 months (depending on need) and occupying 40–70 % of the offender's time during the course of the programme.

Interventions should, whenever possible, be conducted in the community, because the effects of rehabilitation programmes in the community are higher compared to those inside prison.⁵⁹ However, certain aspects of release preparation inside prison are likely to increase the effectiveness of prison programmes: In terms of staffing, there is a need to match styles and modes of treatment service to the learning styles of the offender that in turn are connected with his/her characteristics, for instance his/her intelligence. The specific officer-offender interaction is of great value. The use of empathy, problem-solving strategies and a pro-social approach can reduce recidivism: *Taxman*⁶⁰ outlined a special strategy for release preparation and found that recidivism rates of offenders supervised by staff using such methods were about 30 % lower than offenders supervised by staff not trained in this strategy.⁶¹

⁵⁶ Dowden and Andrews (1999a), Andrews and Dowden (1999).

⁵⁷ Dowden and Andrews (1999b).

⁵⁸ See Petersilia (2004, 2014).

⁵⁹ Selection bias has to be observed because community treatment programmes are in general more likely to be offered to offenders with a lower risk of reoffending.

⁶⁰ Taxman (2004).

⁶¹ Alexander et al. (2014), p. 3975.

In the context of this research approach, the results of the evaluation of the “Serious and Violent Offender Reentry Initiative (SVORI)” in the USA is of particular interest. SVORI established 89 programmes to improve criminal justice, employment, education, health and housing outcomes for exiting prisoners.⁶² The funded projects had to have a three-phase continuum of services that began during the period of incarceration, intensified just before release and during the early months after release and continued for several years after release.

One focus of the evaluation was the question whether the released offenders received the preparation and the services they needed. The results revealed a discrepancy in service delivery between what was intended and what was actually provided at the programme level, and what was needed and what was actually received at the individual level, so that the researchers came to the result that the programmes were not fully implemented (Visser and Travis 2012, p. 698).

With respect to programme outcomes, the evaluations revealed that SVORI participants did better than non-SVORI control groups on self-reported criminal behaviour, employment, substance use and housing. But recidivism outcomes based on official measures were not significantly improved for adult male SVORI participants in the evaluation.

4.3 Release Preparation and Desistance Research

A third line of research that provides some insight into effective release preparation strategies comes from the traditional sociological perspective of attributing crime to social conditions.

Based on desistance research,⁶³ this research focuses on the conditions for an inner change of an individual. Social bonds or ties to social institutions are assumed to be keys to successful desistance from crime and therefore it is expected that giving people opportunities to form these bonds can reduce their criminal activity. According to Maruna’s research on desistance, a person must first be cognitively ready to use these social ties and bonds, and in many cases this requires a change in cognitive reasoning and attitudes. According to Sampson and Laub, human agency plays a major role in the desistance process, because men who desisted played an active role in their desistance process through making explicit choices to disengage from crime.

The so-called “strength based” approaches to working with offenders aim to create competencies in offenders rather than looking for risk factors and criminogenic needs (and aim at reducing risk more indirectly, Ward et al. 2014, p. 1967) and integrate the aim of motivating and engaging offenders in the

⁶² Visser and Travis (2012), p. 697.

⁶³ E.g. Laub and Sampson (2003), Maruna (2001), Giordano et al. (2002), McNeill (2006), Paternoster and Bushway (2009).

rehabilitation process. They furthermore highlight the importance of the relationship between the offender and the person who is working with him, as well as the attitudes the probation officer or the person responsible for the project is offering.

Release preparation should therefore not only focus on criminogenic risks, but should instead provide individual support in achieving personal goals. Supporting the released prisoner with good social structures outside (such as housing, satisfying employment, or drug treatment) is seen as essential for successful resettlement. Likewise, it is vital that the community outside supports and reinforces the desistance process of the released offender (Ward et al. 2014, p. 1970).

As this approach is not really a theory and more a rehabilitation framework, it cannot be evaluated as such. Nonetheless, there have been some evaluations that give support to the notion that inner change is a significant factor for the effectiveness of rehabilitation programmes, and that good social structures have a major impact on recidivism:

For example, research has found that programmes focusing on the formulation of positive goals came to better results than programmes targeting risk-avoidance. A study by *Marshal* and his colleagues showed that a confrontative therapeutic approach had a negative impact on the motivation of offenders to change. In comparison, empathy, warmth, support and a certain degree of directness lead to more positive developments. *Lipsey* (1995) conducted a meta-analysis on treatment programmes for juvenile offenders and concluded that the most effective factor in reducing re-offending rates was employment.⁶⁴ In general, many interventions providing increased social opportunities have not been found to have a direct impact on recidivism.⁶⁵ But research results raise questions as to whether those results might be attributed to the poor practical implementation of many programmes.

Lewis et al. (2006) concluded the results of seven resettlement projects for short term prisoners in England and Wales (where women are highly represented, see Gelsthorpe and Sharpe 2007, p. 199). The main aim of these projects was to facilitate a successful transition from custody back into the community, for example by assisting them with practical problems (such as lack of accommodation). The study showed that the continuity of services “through the gate” is important to follow up work begun in custody, and that release preparation by professionals trained to address thinking skills and practical problems might be central to an effective resettlement strategy.

⁶⁴ See Petersilia (2014), p. 1472.

⁶⁵ MacKenzie (2014), p. 1475. According to desistance literature, it is questionable whether a new offence is a sign of ineffectiveness of a strategy, because failures can be regarded as a normal development within the process of desistance.

4.4 Conclusions for the Release Preparation of Women and Juvenile Offenders

If we look at the research results, we find that all different research approaches highlight the importance of release preparation for the effective resettlement of prisoners. We cannot identify release preparation strategies that work universally in all circumstances with all prisoners in all settings. We can, however, formulate factors that, according to today's state of research, make it more likely that release preparation can affect the successful reintegration of offenders in a positive way.⁶⁶ Release preparation programmes should be oriented as much as possible towards the life in the community and (as opposed to institutional settings) involve community services and institutions. Intensive in-prison treatment with cognitive-behavioural treatment techniques should be reserved for those prisoners with high risk levels (determined via assessment instruments).

Release preparation programmes should focus on behavioural outcomes, target criminogenic needs and use positive reinforcement. They should match therapist and programme to the specific learning styles and characteristics of individual offenders, begin treatment in prison and provide continuity in the community.⁶⁷ "Case management" is regarded as being of particular relevance in this context: sentence planning processes shall identify resettlement needs, and during imprisonment, treatment programmes, including work and training programmes, should be oriented towards those needs.⁶⁸ With the involvement of the communities, they should support cognitive transformation and offer environmental opportunities. Institutional relaxations play an important role. The possibilities of prison leave and open prisons should be used from the beginning of the prison sentence onwards, and their use should be intensified in the 6–9 months immediately preceding release, in order to adequately prepare for life on the outside. The selection of staff also seems to be very important. Staff have to be committed to the programmes' aims and have to be able to motivate and to express empathy, warmth and support. Special emphasis should be given to the implementation phase of prison release programmes and strategies.

4.4.1 Specific Conclusions for Women

Gelsthorpe and Sharpe (2007) have combined these general results on release preparation with the special risks and criminogenic needs of female prisoners, and analysed further research results on women and their release from prison.

⁶⁶ See also UNODOC (2012), especially chapters 4,7 and 8.

⁶⁷ Wincup and Hucklesby (2007) describe, as a consensus, that "the ideal model for the provision of resettlement services is that they are provided "through the prison gate", meaning both in prison and in the community" (p. 44, with further references).

⁶⁸ Wincup and Hucklesby 2007, p. 44.

They point out that many released women have accommodation and housing problems, and that state or non-governmental institutions oftentimes focus their programmes on men. Substance misuse problems, inappropriate social networks and a lack of emotional support in particular have to be targeted in the planning and implementation of prison release programmes for women. They also highlighted the importance of training and employment in the release preparation of female prisoners.⁶⁹ Their key message is that the specific situation of women offenders needs a coordinated multi-agency response which has to be “gender-informed” or “gender-sensitive”⁷⁰ and adapted to women’s learning styles.⁷¹

UNODOC 2008⁷² tries to “translate” this theoretical background and the international recommendations concerning work in women’s prisons and postulates for prison release preparation programmes that they require “close liaison between social agencies and services, as well as relevant community organizations and prison administrations during sentence. In addition, there needs to be a programme of assistance to prepare for release close to the date of release (often starting 1–2 months prior to the release date), to ensure that the social, psychological and medical support needs of the prisoner are met and continue uninterrupted after prison. Activities undertaken in prison need to be linked to services outside to ensure continuum of care and monitoring of released prisoners. (...) Due to the particular gender related difficulties women are likely to face following imprisonment, prison authorities should cooperate with probation services, social welfare departments and NGOs to design comprehensive pre- and post-release reintegration programmes for women. Assistance provided should cover housing and employment needs, taking into account the parental status and caring responsibilities of the women, parenting skills, psychological support and continued treatment for any substance addiction and other health problems. Efforts to support and strengthen relationships between the released prisoner and her family members (as well as others who may have been caring for her children) are also important to minimize the difficulties likely to be encountered following release, due to the different expectations of both sides. Prison authorities should utilize options such as open prisons and half-way houses, to the maximum possible extent for female prisoners, to ease their transition from prison to liberty and to re-establish contact between female prisoners and their families at the earliest possible stage” (UNODOC 2008, p. 64).

⁶⁹ Gelsthorpe and Sharpe (2007), pp. 200 ff. with further references.

⁷⁰ Gelsthorpe and Sharpe (2007), p. 200.

⁷¹ Gelsthorpe and Sharpe (2007), p. 208.

⁷² See also UNODOC (2012), chapter 8.

4.4.2 Specific Conclusions for Juveniles

The conclusions for juvenile prisoners are comparable to those for women. For this specific group of prisoners, efforts should be devoted in particular to education and vocational training. Providing respective programmes and strategies could in fact be easier for young offenders than for adult offenders, because in many countries, besides the justice system, the youth welfare system is often also responsible, which in turn provides an additional (and in many cases better) source of funding. Since juveniles require support in dealing with public agencies and institutions, the importance of providing them with continuous care and assistance before, during and after release is strongly emphasized. Furthermore, there have been calls for close cooperation between the justice system and the youth welfare system in the context of release and release preparation, and for a holistic approach to sentence and release planning that focusses on adequate future prospects and perspectives for juvenile offenders.⁷³

The aforementioned European Rules for Juvenile Offenders Subject to Sanctions and Measures⁷⁴ summarize international findings on what constitutes successful release preparation quite well. In the recommendation, preparation for release is regarded as a vital cornerstone of successful reintegration into society. Therefore, a detailed framework of regulations focusses on the principle of “continuous care” (see Basic Principle No. 15) and the continuation upon release of educational and vocational programmes that the juvenile has begun in the institution. The rules stipulate:

100.1 All juveniles deprived of their liberty shall be assisted in making the transition to life in the community.

101.1 Steps shall be taken to ensure a gradual return of the juvenile to life in free society.

101.2 Such steps should include additional leave, and partial or conditional release combined with effective social support.

102.1 From the beginning of the deprivation of liberty the institutional authorities and the services and agencies that supervise and assist released juveniles shall work closely together to enable them to re-establish themselves in the community, for example by:

- a. assisting in returning to their family or finding a foster family and helping them develop other social relationships,
- b. finding accommodation,
- c. continuing their education and training,
- d. finding employment,
- e. referring them to appropriate social and health-care agencies, and
- f. providing monetary assistance.

102.2. Representatives of such services and agencies shall be given access to juveniles in institutions to assist them with preparation for release.

102.3. These services and agencies shall be obliged to provide effective and timely pre-release assistance before the envisaged dates of release.

⁷³ See for example Matt (2012), pp. 31 ff.

⁷⁴ See Dünkel and Stańdo-Kawecka (2011).

5 “Good” Practice for Women and Juveniles?

Some international comparisons on women and juveniles in prison have been conducted that provide some insight into release preparation practices for these groups.

5.1 *Release Preparation for Women: Good Practice?*

European research results do little to spread any optimism when it comes to the degree to which release preparation reflects good practices in the field:

According to a research project that analysed the living conditions of incarcerated women in five European countries, the theoretical approaches that underpin what would constitute good release preparation have been implemented only poorly (if at all) in practice. The results show that the institutions under investigation failed to sufficiently and adequately provide educational training, schooling and work as means of release preparation and improving employability. Often there was simply not enough work to go around, and short sentences, addiction problems and low numbers of working hours proved to be obstacles to the re-integrative measures. Women in mother-child-institutions almost always had only limited access to work or training courses.⁷⁵ Furthermore, where work was available, it was, almost without exception, oriented towards outdated traditional roles of women, and did little to provide women with the skills they need in order to access the labour market.⁷⁶ Psychological support was described as being “insufficient” in the majority of countries covered in the study, characterized for instance by a lack of assistance for victims of domestic violence and/or psychological counselling.⁷⁷ Regarding preparation for release, numerous inmates stated that no such preparation took place.⁷⁸ Overall, prisons and detention centres in the countries covered in the study felt that release preparation was not their responsibility, and that their task was merely to help offenders establish contacts with support groups. Special staff dedicated specifically to release preparation appear to be sparse.⁷⁹ Expert opinions have stated that the most central reasons for this lack of release preparation lay in

⁷⁵ Toth (2005), p. 46.

⁷⁶ The German report makes a much more promising assessment of the state of affairs in Germany regarding education and vocational training, for instance courses to improve IT-skills, vocational training for call centre agents and desktop-publishers, see *Van den Boogaart et al.* in Cruells and Igareda (2006), p. 221. It needs to be borne in mind, however, that the German respondents were held in comparably large institutions like Vechta and Lübeck. Thus, it cannot be assumed that this positive image also applies to the numerous smaller prison units for women in Germany.

⁷⁷ See Toth (2005), p. 41.

⁷⁸ By contrast, the majority of interviewed prisoners in Germany appeared to be satisfied with their preparation for release.

⁷⁹ See Toth (2005), p. 50, 52, 53, 49.

the fact that: there is no contact to respective organisations; women are often released to a local community other than the one of which the institution is a part, and to which they have not been able to establish any ties or contacts; the time of release is often uncertain and short prison sentences often leave insufficient time to take preparatory action.⁸⁰

Women released from prison had rather varying trajectories and paths following release. Interestingly, women who, via work release, prison leave and/or placement in open institutions, had been able to establish contact with support agencies and organisations prior to their release were more likely to have an easier transition to freedom.⁸¹ Numerous women, however, reported to have been entirely without bearing upon release, and that they had lacked any kind of plan or agenda. What stood out prominently was that the burden of having to find accommodation, secure an income and re-establish family ties, all simultaneously, appeared to be too much for many of the women to carry. Finding employment while bearing the “ex-prisoner” stigma proved virtually impossible, and many women had thus been quickly confronted with an unstable and difficult economic situation. Consequently, there is a clear and present need to design release preparation strategies in a fashion that provides continuous care and support to female prisoners beyond their release.⁸²

Another study into the living conditions of female prisoners in 8 European countries⁸³ revealed that, in practice, prison leaves are not nearly granted as often as they should be in the context of release preparation. In some countries, according to the study, actually leaving the institution prior to being released is a rare exception.⁸⁴

Some positive, regional experiences with release preparation programmes for women can be found in the literature. For example, *Holtfreter* and *Wattanaporn* (2014) report on a programme in the USA, “The Transition from Prison to Community Initiative” (TPCI). While the programme as such is gender-neutral, *Holtfreter/Wattanaporn* nonetheless regard it as appropriate for addressing gender-specific issues during release preparation (and after release). *Cole et al.*⁸⁵ describe an approach in England called “PS Plus work with women”, a holistic prison-based programme that aims to increase the employability and employment of women at the time of their release. Research has revealed positive effects for this strategy.⁸⁶

⁸⁰ See Toth (2005), p. 54.

⁸¹ See Toth (2005), p. 54, 59.

⁸² See Toth (2005), p. 59. *Einsele* already recognized this problem at the end of the 1970s and founded the ‘centre for women who have offended’ (“Anlaufstelle für straffällig gewordene Frauen”) in Frankfurt a. M., see also Geiger and Steinert (1993), p. 97, 98.

⁸³ Zolondek (2007).

⁸⁴ Zolondek (2007), p. 263.

⁸⁵ Cole et al. (2007), p. 132.

⁸⁶ Cole et al. (2007), p. 134. For developments in Australia, including some employability programmes, see Bartels and Gaffney (2011).

Experiences of cooperation between prisons and authorities, agencies, services and institutions on the outside are summarized by *Hucklesby/Wincup*.⁸⁷ Because prisoners are rarely priorities for these services, they face considerable barriers to accessing them. *Gelsthorpe and Sharpe*⁸⁸ have reported on the “Women’s Offending Reduction Programme” in England and Wales. It was launched 2004, focuses on coordinating departments and sensitizing them to women’s needs and implementing a continued service from the point of arrest to release from prison (based on the success of the Scottish “one stop shop project”). The programme does not focus only on release preparation, but on the whole resettlement process. The interesting findings of *Gelsthorpe and Sharpe* seem to be valid in general for the context of new strategies in the field of release preparation: the authors criticize that such programmes and initiatives often fail to surpass the status of “demonstration projects”—that show how practice *could be*, but are not continued after the first phase. However, the initiative has led to special accommodation for female ex-offenders or ex-prisoners.

5.2 Release Preparation for Juveniles: Good Practice?

A look at the current state of research shows that education and training are given serious consideration in juvenile prisons at least in Europe, North and South America, Australia and New Zealand. In most of Europe, schooling and/or vocational training constitute important elements of sentence programming for juveniles, and in all 36 countries that were covered by a European juvenile justice research project, juvenile inmates were obliged to participate in schooling and vocational training, often also to work.⁸⁹ In terms of release preparation, there appears to be the interesting tendency to delay and externalize training schemes to outside services and institutions. According to *Düinkel and Stańdo-Kawecka*,⁹⁰ in “countries such as the *Netherlands, Denmark, Norway or Sweden*, where prison sentences tend to be relatively short, the provision of training for detainees has largely been taken out of the detention facilities, and instead local communities are more heavily involved in the task of reintegrating offenders.”⁹¹ This concept helps to avoid the problem that can arise with shorter prison sentences, namely that prisoners often do not spend enough time in the institution to finish any educational or vocational training programmes they have taken up there. They are thus often released without qualifications, and have difficulties in organising a seamless transition from prison to education in the community themselves. With a view on

⁸⁷ Wincup and Hucklesby (2007), p. 45.

⁸⁸ Gelsthorpe and Sharpe (2007).

⁸⁹ Düinkel and Stańdo-Kawecka (2011), p. 1817.

⁹⁰ Düinkel and Stańdo-Kawecka (2011).

⁹¹ Düinkel and Stańdo-Kawecka (2011), p. 1830.

the research results and recommendations for resettlement, these strategies can indeed be regarded as promising.

Data that give some insight into whether release preparation is community-oriented are much less satisfying. According to German analyses “only 10 % of all young prisoners were involved in preparatory release measures like day leaves or prison furloughs of several days that may help adapt to social life outside prison. About 9 % of the young prisoners were accommodated in the two open prisons or one of the (usually small) open units within 17 closed prisons.”⁹² Young prisoners who are placed in open facilities benefit from comparably superior release preparation: In these open facilities between two thirds and three quarters of the juveniles were granted day leaves, more than 40 % participated in work release, leaving the prison every day for work and coming back for the night.⁹³ With a view on the results for effective release preparation strategies these practices could therefore be described as promising.

Jacomy-Vité,⁹⁴ by contrast, does not agree that opening prisons is a widely used practice in European juvenile penal policy and a confirmed and agreed strategy for release preparation. Instead, gradual or temporary release “serve the purpose of ‘deserving’ juveniles rather than being a right attached to structured and systematic rehabilitation policy”.⁹⁵

Many countries provide strategies, projects and programmes for the preparation of juveniles for their release from prison or detention. Across Europe, the degree of geographical coverage varies from country to country—in some, such programmes are available nationwide, while in others they are limited to certain regions or institutions. The *Work-Wise* methodology in the *Netherlands*, for example, is used in all Dutch youth prisons, and is described as an integrated approach that aims to involve juveniles from custodial institutions in labour, training or day programmes with the support of an adequate social network and a good place to live.⁹⁶ “Network and routing consultants” in the Dutch juvenile prisons collect all information relevant for devising, together with the Child Protection Board and the Probation Service, a release plan right from the first weeks in prison onward. Such initiatives can be seen as promising from the perspective of resettlement research. In *Germany* new strategies for release preparation oftentimes concentrate on finding employment or access to vocational training that can begin immediately after release. Some projects have been found to be effective in doing so.⁹⁷ In *Denmark*, mentors from outside prison are involved in the release preparation process, an approach that has been described as promising.⁹⁸ In *England*, the Youth Justice Board’s

⁹² Dünkler (2011), p. 607.

⁹³ Dünkler (2011), p. 607 with further references.

⁹⁴ Jacomy-Vité (2011).

⁹⁵ Jacomy-Vité (2011), p. 27.

⁹⁶ Jacomy-Vité (2011), p. 31.

⁹⁷ E.g. Wirth (2009), Pruin (2013).

⁹⁸ Decarpes and Durnescu (2012), p. 15.

“Resettlement and Aftercare Provision” (RAP) initiative has produced positive results in preparing juvenile prisoners for their life after release and coordinates different responsible services.⁹⁹ On the other hand, research results for England have revealed “poor staffing levels, inadequate funding and shortfalls in both the quality and amount of resources”.¹⁰⁰

6 Conclusions

In the context of ongoing discussions about the resettlement of (ex-)prisoners, release preparation inside prison prior to release has a vital role to play. International research results, compiled in the form of international recommendations, emphasise the need for a community-oriented approach to release preparation that involves open institutions and different forms of temporary release. In particular, improving offenders’ employability and thus better preparing them for the labour market is accorded particular emphasis. Prisons should cooperate with institutions, agencies and organisations “on the outside” by releasing prisoners into aftercare that as seamlessly as possible latches onto the preparatory steps that have been taken “on the inside”. Another particularly important factor is prison staff and their (positive) attitude and ability to motivate prisoners.

Both the research literature and the international standards and recommendations address the special situations of both female and juvenile prisoners. Women and young people face a comparably higher degree of social marginalization—due to their poorer employability, making a smooth transition and successfully resettling in the community is more difficult to achieve than it is for male adult prisoners. Since numbers of female offenders are generally rather low, institutions only rarely provide individualised release preparation programmes tailored specifically to women and their needs. Research and international recommendations call for special efforts to be devoted to devising special release preparation strategies for women and juveniles that should always be “gender-sensitive”, regardless of age.

The conclusions that can be drawn from an analysis of the degree to which these demands have been put into practice are not particularly satisfying. The results from international research into release preparation for juveniles and women are admittedly unlikely to be entirely up to date, as the results from more recent legislative or policy change in this field will not yet have entered into the literature. Against this backdrop, the picture that has been painted is not a particularly pretty one. The use in practice of open institutions and of strategies that allow women and juveniles to leave the prison temporarily has yet to reach satisfactory levels. Furthermore, the provision of gender-specific education, vocational training and work opportunities is greatly lacking in Europe. Where available, training and employment reduce

⁹⁹ Bateman et al. (2013), p. 19 ff.

¹⁰⁰ Gray (2011), p. 239 ff.

women to activities that cannot provide a basis on which they can build economic security and independence upon release. Individual projects in certain regions, cities or institutions have been evaluated positively. However, putting them into practice has reportedly been associated with difficult obstacles and constraints.

The chapter at hand shows that there is indeed debate about reforming release preparation policy, and that the results from research have in fact been sufficiently “translated” into corresponding practice recommendations. Even though research does not paint a particularly satisfying or positive picture for women and juveniles as special populations in this context, it nonetheless highlights that there is indeed development in this field that needs to be upheld, fostered and furthered. Future research endeavours into women and juveniles in prison should definitely devote increased attention to aspects relating to preparation for release, and will thus hopefully be able to shed some positive light on the outcomes of the most recent reform developments in law and practice.

Five Questions

1. Why has the discussion about release preparation been intensified in recent years?
2. Why is it discussable to use the terminology of “prisoner resettlement” for the process of prisoner’s return to society?
3. What are the special requirements of women with respect to their release from prison?
4. What are the special requirements of juveniles with respect to their release from prison?
5. How should an optimal release preparation for women look like?

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The Impact of Sanctions on Child and Female Offenders

Charles Robert Allen

Abstract Criminal sanctions do not have a beneficial effect on many of the young people and women made subject to them. Deprivation of liberty may have a particularly negative impact and evidence suggests that keeping both groups out of the formal criminal justice system and away from prison may offer the best chance of addressing the problems, which lead to offending behaviour. For those working with young people and with women lessons from research in the past decade suggest that models based around three elements are most likely to produce positive effects and encourage desistance from crime: motivational and other work prior to release, post-release mentoring, and facilitating access to agencies and organisations that can provide appropriate services. Meeting basic practical needs in prisons remains crucial, in many high-income countries let alone poorer ones. Research on young offenders has found that supervisors in whatever setting are effective if they are clear about their role, show positive social values and behaviour themselves and are prepared to challenge the young persons consistently and fairly about their delinquency. Effectiveness is also enhanced if offenders are helped with problems, which they themselves identify, particularly if these are related to their offending. Tackling substance misuse, lack of employment and damaging relationships with family and peers may be particularly important. Similar factors are likely to be significant for women too. The inappropriateness of custody is increasingly recognised for young people and for women but developing the law, policy and practice, which can reduce and ultimately eliminate its use has proved difficult in a climate of opinion which places a greater value on punishment than is justified by evidence.

1 Introduction

It is widely agreed that the systems for responding both to children and women in conflict with the law are in need of reform in many countries. There are strong international norms governing the treatment of both groups. The United Nations

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Committee on the Rights of the Child has said that there is “abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate”¹ and “that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.”² The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) say that “alternative ways of managing women who commit offences, such as diversionary measures and pre-trial and sentencing alternatives, shall be implemented wherever appropriate and possible.”³

Evidence submitted to UN treaty bodies, academic research and monitoring by civil society organisations shows that the reality of the response to these groups falls way short of meeting these norms. For example, between 2006 and 2012 the UN Committee on the Rights of the Child made concluding observations about juvenile justice in 14 EU member states. In seven of these, recommendations were made to review the legislation with the aim of eliminating the possibility that children can be tried as adults and/or detained with adults and to use detention only as a measure of last resort and for the shortest possible period of time. Six countries were asked to develop a comprehensive policy of alternative sanctions for juvenile offenders; and two to ensure that children deprived of liberty have access to education and to take the necessary measures to provide juvenile detainees with prospects for their future, including their full reintegration into the society.⁴ In other parts of the world the need for reform is even greater.

As for women, a recent study of their imprisonment in five countries found that “gender-sensitive international standards on detained women are little known, distributed or implemented among officials, prison administrators, and NGOs working in prison communities”.⁵

In order to provide a sound basis for reform efforts, the aim of this chapter is to summarise and discuss what is known about the impact of sanctions on children and on women in conflict with the law. The chapter opens with a general introduction to the topic, which looks first at the purposes which sanctions are designed to achieve and second at some common features of how sanctions impact on these two groups of offenders. The chapter then provides more detailed information first about children and young persons and second about women.

¹ UNCRC 2007, para. 85.

² UNCRC 2007 Art 10 <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

³ UNGA (2010) Rule 58.

⁴ ChildONEurope (2014), pp. 157–8.

⁵ Dignity (2014), p. 9.

1.1 The Purpose of Sanctions

In seeking to identify and assess the effect of sanctions on offenders of all kinds, it is important to consider what it is that those sanctions are intended to achieve. By sanctions, we include the whole range of measures that are taken in response to people who have broken the criminal law. These include measures taken by the police, prosecutors and courts and implemented by a range of organisations including prisons, probation, local authorities and non-governmental organisations.

Many discussions about sanctions, particularly in high-income countries, tend to focus on the question of recidivism; that is on the reduction of re-offending. Sanctions are seen to be effective to the extent that the people made subject to them do not commit offences afterwards. This is of course an important question, particularly perhaps in the case of child offenders where the prevention of further offending should be one of the key objectives of the youth justice system. What is known about the way particular sanctions and measures affect recidivism is a central part of this chapter.

It is however worth bearing in mind that the imposition of sanctions serves purposes other than the reduction of re-offending. This is particularly true of sentences imposed by the courts. Indeed, given the often high rates at which people released from prison commit further crimes, it seems unlikely that imprisonment would be imposed as a sanction to the extent that it is, if reducing recidivism were the main aim.

In Uganda for example, where sentencing guidelines have recently been adopted, the courts' overall aim is to promote respect for the law in order to maintain a just, peaceful and safe society and to promote initiatives to prevent crime.⁶ Sentences imposed by courts should be aimed at six objectives in all. Two of these objectives—"detering a person from committing an offence" and "assisting in rehabilitating and re-integrating an offender into society"—are undoubtedly about reducing re-offending. A third objective,—“promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community”—is also about producing an attitude, which may be essential if an offender is to stay away from crime. The remaining three objectives are of a different nature. “Providing reparation for harm done to a victim or to the community” may help an offender to desist from crime but it is not the main aim. “Separating an offender from society where necessary” invites the courts to take dangerous and highly persistent offenders out of circulation. “Denouncing unlawful conduct” can be seen to contain elements of deserved punishment for the offender and sending a message to the wider public about what is not acceptable behaviour.

Many jurisdictions have a similar range of sentencing purposes for adult offenders which comprise, alongside the reduction of re-offending, punishment, the protection of the public and reparation to victims. For adult women the framework of sentencing is usually the same as for men. In England and Wales

⁶ JLOS (2013).

(UK), a major inquiry into the treatment of women in the criminal justice system did not recommend a separate sentencing framework for women.⁷ Sentencing guidelines do however say that “sentencers must be made aware of the differential impact sentencing decisions have on women and men including caring responsibilities for children or elders; the impact of imprisonment on mental and emotional well-being; and the disproportionate impact that incarceration has on offenders who have caring responsibilities if they are imprisoned a long distance from home.”⁸ Despite this it remains the case that for the most part decisions about the application of sanctions are made on the same basis for women as for men.

For child offenders, usually but not always defined as those under the age of 18, the purposes of sanctions, are often somewhat different, tending to include a greater focus on rehabilitation and reform and a desire to limit the use of incarceration. Many countries, in line with international standards operate a separate juvenile justice system. Canada’s youth justice law defines the purpose of youth sentences as being “to hold young people accountable by imposing sanctions that have meaningful consequences for them and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.”⁹ It goes on to emphasise the need for timely sanctions that reinforce the link between the offending behaviour and its consequences, for promptness and speed in their implementation given young persons’ perception of time, and the desirability of involving the parents, the extended family, the community and social or other agencies in the young person’s rehabilitation and reintegration.

These requirements leave little room for general deterrence as does South Africa’s Child Justice law which requires sentences “to encourage the child to understand the implications of their actions and be accountable for the harm caused; to promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society; to promote the reintegration of the child into the family and community; to ensure that any supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration and; to use imprisonment only as a measure of last resort and only for the shortest appropriate period of time”.¹⁰

In England and Wales (UK), when sentencing an offender aged under 18, a court must have regard to the principal aim of the youth justice system which is to prevent offending by children and young persons and to the welfare of the young offender. Sentencing guidelines say that “the emphasis should be on approaches that seem most likely to be effective with young people”.¹¹ This has not prevented courts

⁷ Corston (2007) <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>.

⁸ Judicial College (2013), p. 224.

⁹ Youth Criminal Justice Act 2002 Section 3.

¹⁰ Child Justice Act S69 (1).

¹¹ Sentencing Guidelines (2009) 2.11 http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf 2.11.

from imposing sentences that seek to deter young people in general from committing crime rather than rehabilitating the particular young person before them.

Thus while sanctions can provide opportunities for women and, even more so, juveniles in conflict with the law to address the specific problems that cause them to commit crime, these often sit within, or alongside, measures which have other purposes. While repairing the harm to victims may be an important component of taking responsibility which is in turn a pre-requisite for successful rehabilitation, punishment, incapacitation and general deterrence all fit less comfortably with the aim of reducing recidivism.

1.2 Common Considerations in Respect of Children and Women

In thinking about how sanctions impact on young people and on women, it is worth reflecting on a number of special considerations which apply to these two groups of “minorities”. They are both categories of offenders that represent a relatively small proportion of people appearing before the courts.

Other chapters in this handbook have catalogued the fact that on the whole offending by both young people and by women is of a less serious nature than the crime committed by adult males—notwithstanding the fact that the peak age for offending in many countries comes during the teenage years.

It is also the case that a high proportion of cases of serious offending by these groups is related to their own experiences of victimisation. In the case of young people we know that abuse and neglect are predictors of criminality—children who became prolific young offenders typically suffered from harsh or neglectful parenting and developed behaviour difficulties at an early age. Many women in prison have themselves been subject to physical and sexual violence. In a UK survey, more than half of female prisoners, compared with a quarter of male prisoners, reported having suffered from violence at home. Furthermore, around one third of women prisoners reported suffering sexual abuse compared to fewer than one in ten men.¹²

As far as sanctions are concerned, there are three common characteristics worth mentioning. First, both young people and women can find themselves subject to sanctions for behaviour, which would not bring adult males before the courts. In jurisdictions of different kinds, children are punished by the courts for so-called “status offences”. These are matters such as running away from home, failing to attend school, being incorrigible or consuming alcohol prohibited only because of the age of the child. In the USA in 2008, some 156,000 cases were reported with 13,000 involving a period of secure confinement.¹³ In lower income countries,

¹² Williams et al. (2012).

¹³ Coalition for Juvenile Justice n.d.

living homeless and on the streets can lead to an appearance in court and punishment.

In a similar way, women in some countries can find themselves made subject to criminal sanctions for behaviour that is not normally prohibited. This includes so called moral crimes such as adultery. Statistics from Afghanistan's Interior Ministry show that the number of women and girls imprisoned for such crimes rose from 400 in October 2011 to 600 in May 2013—a 50 % increase in a year and a half.¹⁴ Such crimes are estimated to account for 95 % of the cases of girls in prison and 50 % of adult women. The Afghan government has rejected calls by the UN to abolish prosecutions of this kind.¹⁵ A range of so-called crimes against patriarchy, which carry no liability in the case of men, can lead to imprisonment, corporal punishment or even death in a number of other countries. Even in jurisdictions with more formal equality, it has been argued that the criminal justice response to women is often coloured by perceptions that women have breached social and cultural expectations about their role as well as the criminal law.

The second issue which affects both juvenile and women offenders is the way in which sanctions can impact on their wider families as well as on them. Of course there is often an impact on families when an offender of any kind is sentenced: paying a fine puts pressure on family budgets and, imprisonment often removes a breadwinner. But when children and women offend, families can be implicated much more directly. In many legal systems, parents can be held responsible for their children's offending by being required to pay fines or made subject to other court orders. Failure to comply can result in imprisonment, usually of the mother. In one tragic case in 2014, a mother of seven died in prison in the USA having been committed there for two days for failing to pay fines imposed in response to her children's truancy. The judge that sent her there complained about a broken system that punishes impoverished parents.¹⁶

A complementary process arises when women with dependent children are sentenced for offences they themselves have committed. The demands of looking after children can impact on the eligibility of mothers for community based sentences, which involve unpaid work. When a prison sentence is imposed on a woman with an infant child, in almost all countries infants can remain with their mother until they reach a specified age.

Finally and most significantly for the concerns of this chapter, the immediate impact of sanctions, particularly imprisonment, may be harsher for young people and for women than it is for adult males. This is partly because many young offenders and women offenders have needs and vulnerabilities, which make the impact of sanctions more severe than in the case of other types of offenders. The negative impact of removing young people from home may have a particularly

¹⁴ Human Rights Watch (2013).

¹⁵ RAWA News 2014 <http://www.rawa.org/temp/runews/2014/06/24/afghanistan-end-moral-crimes-prosecutions.html>.

¹⁶ Guardian (2014).

adverse impact on their developing physical and psychological maturity; and separating mothers from their children and families can be considered an additional punishment in the case of women causing additional pain to that which is inherent in imprisonment. The generally higher rates of suicide and particularly of self-harm among women prisoners in many western countries suggest that this is the case.¹⁷

It is also the case that the way in which sanctions are implemented may impose additional hardships or challenges on these two particular groups. In countries where those serving prison sentences are placed in specialist establishments, these may be a long way from where they live. A study in the UK found that the key variable in determining whether prisons worked effectively to ensure reintegration for released prisoners was distance from home. This was found to be “of particular relevance to women and young offenders, where there are fewer prisons.”¹⁸

Wherever they are located, prisons can have a particularly damaging effect on these groups. US research has found that spending time in prison or jail can have profound effects on a young person’s future.¹⁹ High rates of recidivism mean that many youth, once in the prison system, will stay there for significant portions of their lives. In some jurisdictions, criminal records obtained while a juvenile can remain with a person well into their adult lives.

The UN Special Rapporteur on Violence against Women has concluded that “the effects of incarceration on women are often longer lasting due to the more dire conditions and deprivations they experience. The consequences of incarceration take a toll on several aspects of women prisoners’ lives, including negative outcomes with respect to health, substance abuse, medical insurance, housing, employment, social stability and familial connections. These negative consequences also contribute to recidivism among former female prisoners, even though their recidivism rates, in general, are much lower than those of men.”²⁰

In the context of these broad similarities, we now turn to some of the specific findings about the effects of sanctions on children and in women.

2 How Sanctions Impact on Child Offenders

Making generalisations about responses to young offenders is very difficult because of the enormous variation in the ways that jurisdictions respond to youth crime. This variation occurs in respect of matters such as the minimum age of criminal responsibility, the upper age limit of the youth justice system, the existence or not

¹⁷ Hawton et al. (2014).

¹⁸ HM Chief Inspector of Prisons (2009), p. 5 The Prison Characteristics That Predict Prisons Being Assessed As Performing. “Well”: A Thematic Review January 2009, pp. 5–17.

¹⁹ e.g. Geller et al. (2006).

²⁰ UN doc. A/68/340 (2013), para. 66.

of specialist youth courts and the range of measures available for dealing with young people. The variation arises too in relation to the underlying philosophy of the system, which according UN is “diverse, building from the classical typology of the so-called ‘welfare model’ and the ‘justice model’ to more recent typologies including the ‘participatory model’, the ‘modified justice model’, the ‘crime control model’, the ‘corporatist model’, the ‘minimum intervention model’, the ‘restorative justice model’ and the ‘neo-correctionalist model’.”²¹

There are methodological as well as conceptual difficulties. An American study found “clear communication of program outcomes and system performance in juvenile justice is often hampered by the lack of standard definitions and inconsistent measurement, especially in relation to recidivism”.²² This is even more the case if one seeks to adopt a global perspective on the question. The new Moldova Criminal Code of 2002 distinguishes three forms of recidivism: simple, if a person previously sentenced for an intentional crime repeatedly committed a crime with intent; dangerous, if: (a) a person previously sentenced twice to imprisonment for intentional crimes repeatedly committed an intentional crime; or (b) a person previously convicted of a serious or extremely serious intentional crime repeatedly committed a serious or an extremely serious intentional crime; extremely dangerous, if: (a) a person previously sentenced to imprisonment three or more times for intentional crimes repeatedly committed an intentional crime; or (b) a person previously convicted of an exceptionally serious intentional crime repeatedly committed an extremely serious intentional crime or an exceptionally serious crime.²³

Whatever their underlying principles, in most systems sanctions range from warnings and admonitions, through fines, community based supervision measures, to institutional placements in welfare, educational or penal establishments.²⁴ Given the widespread prevalence of minor delinquency among adolescents, in many parts of the world first time offenders can expect to be given a reprimand, warning or caution by the police or prosecutors, with the option of an apology or other restorative disposal increasingly available.

²¹ UNODC (2013), pp. vi–vii.

²² Harris et al. (2009) Measuring Recidivism in Juvenile Corrections <http://www.journalofjuvjustice.org/joj0101/article01.htm>.

²³ OSF (2010).

²⁴ The UN Standard Minimum Rules for the Administration of Juvenile Justice require that “a large variety of disposition measures . . . be made available . . . , allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures include: (a) Care, guidance and supervision orders; (b) Probation; (c) Community service orders; (d) Financial penalties, compensation and restitution; (e) intermediate treatment and other treatment orders; (f) Orders to participate in group counselling and similar activities; (g) Orders concerning foster care, living communities or other educational settings; and (h) Other relevant orders. <http://www.un.org/documents/ga/res/40/a40r033.htm>.

More serious or repeat offenders are likely to receive a period of supervision or a placement in care or custody. The gravest offences can lead to very long custodial sentences.

In 2005, the United States Supreme Court ruled that the death penalty for those who had committed their crimes at under 18 years of age was cruel and unusual punishment and hence barred by the Constitution.²⁵ Some countries retain the death penalty for juveniles including Saudi Arabia and Iran.²⁶ In 2012, the US Supreme Court ruled in *Miller v Alabama* that mandatory life without parole for juveniles was a violation of the eighth amendment that forbids cruel and unusual punishment. Yet since then only 13 of the 28 states that carry the sentence have amended their laws and about 2000 people sentenced for offences committed while under the age 18 face spending their whole life in prison as a result of mandatory sanctions.²⁷ A further 8000 people are serving life sentences for offences committed as juveniles; although they have the possibility of parole convicted juveniles are generally “at the back of the parole line” according to a recent study and must wait years for a review.²⁸

While most of the available statistics and research needed to draw lessons about the effect of sanctions are from higher income countries, a number of consistent findings have been made.

Perhaps the most important is that the common characteristic of intervention programmes that do not work is an emphasis on punishment and deterrence alone where no attempt is made to resolve the social life problems of young people. On average, sanctions alone are associated with increased offending.²⁹

This is because punishment works best with well-socialised, non-impulsive young people with average and above IQs who are cautious and have low arousal thresholds. Most young offenders do not share these characteristics. A report for the Scottish Government’s review of the Children’s Hearing System concluded that “legal sanctions consistently fail to address criminogenic needs/risks and are insufficient, in themselves to offset the immediacy, frequency and magnitude of rewards from criminal activity which have to be replaced with pro-social alternatives”.³⁰

²⁵ *Roper v Simmons* No. 03-633 see [Death Penalty Information Centre n.d.](#)

²⁶ [Amnesty International n.d.](#)

²⁷ Sentencing Project (2014) (more detailed reference, please).

²⁸ Sentencing Project (2013).

²⁹ Lipsey (1992).

³⁰ Scottish Government (2004), 7.5.

2.1 *Diversion*

Given this finding it is not surprising that diverting most children and young people away from the formal court system may produce better results than imposing penalties. Findings from a large scale longitudinal study in Scotland indicate that the deeper a youth is carried into the formal processing system, the less likely he or she is to stop offending. The authors argue that the most significant factor in reducing offending is minimal formal intervention and maximum diversion to programming that does not have the trappings of criminal processing.³¹

A systematic review of 29 experiments found that young people with a prior criminal record who were diverted from the criminal justice system to social work were less likely to reoffend compared to those who went to court. Diversion to social work help produced bigger reductions in reoffending compared to simple release that was not combined with some form of intervention.³² In another meta-analysis, 45 diversion evaluation studies reporting on 73 programs were included in the meta-analysis. The results indicated that diversion is more effective in reducing recidivism than conventional judicial interventions.³³ Unlike the first study, in this one there was no statistical difference between the effectiveness of the 50 programmes that provided positive help or treatment and the 23 that did not.

There are a number of mechanisms that can explain these findings. Keeping people away from formal criminal justice processes may avoid the negative labeling that inevitably attaches to prosecution and conviction whatever the nature of the sanction that may follow. Diversion may allow a speedy, problem solving response which may enable a young person to apologise or make amends for their behaviour or provide the chance to engage them in activities or programmes of work which can help them stay out of further trouble. It may be perceived as a fairer and more legitimate response than court—and one in which young people can participate more actively than in court based processes.

An example of a diversionary programme is the Teen court, which is used in more than 1200 locations across the USA.³⁴ Using a courtroom setting, a mix of adults and teenagers deal with cases of first time non-violent offenders as an alternative to formal juvenile court processing. They can impose mild sanctions and measures for the teenagers. Research has found Teen courts more effective in terms of recidivism than the juvenile court in three sites but slightly less effective than a police diversion programme in another.³⁵ In addition to the mechanisms noted above, the Teen Court provides a forum for peer justice through which pro-social influences can take effect on young people. The process also provides

³¹ McCara and McVie (2007).

³² Petrosino et al. (2010).

³³ Wilson and Hoge (2013).

³⁴ Butts and Ortiz (2011).

³⁵ Butts et al. (2002).

education about the law and the opportunity to learn new skills, both of which may be important in leaving crime behind.³⁶

A slightly different philosophy—less elaborate in form though more extensive in application—underpins South Africa’s Child Justice Act which aims to divert child offenders from the formal criminal justice system whenever possible. Diversion means that an accused person is not put through formal criminal proceedings but is subjected to an alternative process that does not involve a formal trial, conviction and a criminal record. No sentence is imposed, although the alternative process—which involves an assessment of the child’s needs and a plan of action may require the person to perform services or tasks, or to submit to training or other regimes, some of which might be of a punitive nature.

A third example are restorative measures which are used in a variety of formats in the USA, Canada, New Zealand, Northern Ireland and England and Wales (UK). A study of Family Group Conferences³⁷ in Indianapolis found that participating youths survived longer before being rearrested over a 24-month period and had significantly lower incidence rates.³⁸

While evidence about the effectiveness of South Africa’s approach is limited, such an approach works well in longer established systems. In the Netherlands, for example, public prosecutors divert the majority of young offenders from court proceedings to a community based reparation project called HALT. The system works well; about 60 % either commit less crime or cease offending altogether.³⁹

While diversion is widely accepted as the best first response to youthful offending, there are conflicting views about the most effective types of intervention or if any intervention is needed at all.

For those young people who continue to offend, or whose offences are more serious, continued diversion is not likely to be effective or desirable. More intensive sanctions are likely to be needed and consideration may be given to the use of institutional measures, including the use of custody.

2.2 Custodial Measures

Increasingly in the USA and other jurisdictions, interventions with serious child juvenile offenders can involve purely punitive sanctions, with incarceration in a correctional institution as the most common response. Research clearly shows that

³⁶ *ibid.*

³⁷ In a family group conference, after admission of responsibility by the offender, they, the victim, and the supporters of both the offender and victim are brought together. They are brought together with a trained facilitator to discuss the incident and the harm brought to the victim. The FGC provides an opportunity for the victim to explain how they have been harmed and ask questions of the offender.

³⁸ McGarrell and Hipple (2007).

³⁹ Graham (2011).

punitive sanctions are generally ineffective in reducing criminal activities.⁴⁰ There is no evidence that simply being kept in a locked institution will reduce offending. Studies have compared community based versus institutional approaches, in particular locked or incapacitation facilities. 103 published studies involving 267,804 subjects compared the outcomes of these two approaches and showed an average 7 % increase in re-offending associated with institutional approaches.⁴¹

This is not surprising when one considers the reality of custodial sanctions for young people in most of the world. The suffering and misery experienced by young people goes well beyond the punishment that the institution is intended to provide. International standards, for example, require children to be held separately from adults in custodial establishments. The UN Committee on the Rights of the Child has drawn attention to the “abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate.”⁴² But this most straightforward of requirements is not met in a large number of countries.

In Brazil, the law stipulates that juveniles should not be held together with adults in jails, but according to the US State Department Human Rights report for 2013 this was not always respected. “Multiple sources reported adolescents jailed with adults in poor and crowded conditions. Insufficient capacity in juvenile detention centres was widespread.”⁴³ The State Department report shows that juveniles are kept with adults not only in the poorest countries such as Yemen (where local NGOs reported that children were held with adults and that segregation between adults and juveniles was inconsistent)⁴⁴ or in Cambodia, where in most prisons there was no separation of adult and juvenile prisoners (nor indeed of male and female prisoners). In higher income countries too, juveniles were sometimes held with adults; in South Africa (its Child Justice Act notwithstanding) and Serbia where youth and adult populations lacked proper separation at the correctional facility in Valjevo, and there were sporadic reports of mixing youth and adults elsewhere.⁴⁵ In India the law requires juveniles to be detained in rehabilitative facilities, although at times they were detained in prisons, especially in rural areas. In China, although the law requires juveniles be held separately from adults, unless facilities are insufficient, children were sometimes held with adult prisoners and required to work.

Even in countries where young people are held separately from adults their experience can be woeful. At best, it might be hoped that secure establishments could provide a safe, structured and caring environment, which might help address the years of neglect, abuse and educational failure that characterise the upbringing

⁴⁰ Andrews and Bonta (2006); Lipsey and Wilson (1998).

⁴¹ Andrews et al. (2000).

⁴² UN (2007), para. 85t.

⁴³ US State Department (2013).

⁴⁴ Ibid.

⁴⁵ *ibid.*

of many of the most serious and persistent young offenders. This would require an approach that genuinely meets the needs of individual children in small-scale living units, with intensive preparation for release and continuing care once back in the community. When services aimed at meeting individual needs are included in institutional or community-based approaches, the outcomes are more likely to be positive. One review showed modest effects, on average 9 % reduction in re-offending for institutional provision and 14 % for community based provision.⁴⁶

At worst, however institutions can be a frightening interlude in young lives already impoverished by neglect and punishment. Even smaller closed institutions struggle to overcome the hostility and alienation felt by many of the children detained against their will. After all, closed institutions of whatever kind represent an abnormal living experience, which can impair the normal course of adolescent development. As recently as 2004, visitors to Poland found children in small dormitory cells, with no personal items, wearing pyjamas and slippers throughout the day; with no medical screening and no visits for a month.⁴⁷

Whatever the intentions of the law, policymakers and staff, concentrating highly delinquent young people in a closed environment risks reinforcing rather than weakening the attitudes that the justice system is seeking to challenge. The common use of physical restraint in many custodial establishments may further contribute to an 'us and them' attitude towards authority.

The disadvantages of custodial sanctions are reflected in high rates of recidivism. In England and Wales (UK) about seven out of ten juveniles released from custodial establishments are reconvicted within a year.⁴⁸ In the USA, re-offending rates are lower among those leaving state incarceration. According to the latest data 55 % were rearrested within a year. 33 % reconvicted and 24 % sent back to custody.⁴⁹ This does not necessarily mean that US facilities are more effective. It is more likely to reflect America's greater use of custody which brings into the custodial sector lower risk juveniles than in the UK where more of such offenders would be given community based sanctions.

When considering what can be done to ensure that any custodial experience for a juvenile makes it less rather than more likely that they will reoffend, it is all too easy to overlook the significance of addressing some of the basic quality of life issues with which many custodial establishments struggle. England and Wales's UK's Youth Justice Board (YJB) has recognised, 'reoffending can only be addressed in a safe, secure environment. Effective safeguarding (a term used to refer to the protection of children from abuse and neglect) is therefore important not only in its own right, but also because it is critical to reducing reoffending'.⁵⁰

⁴⁶ Dowden and Andrews (1999).

⁴⁷ Council of Europe (2004), para 38.

⁴⁸ MoJ (2014).

⁴⁹ OJJDP (2006).

⁵⁰ MoJ/YJB (2012).

England and Wales provides an interesting if depressing case study about the realities of custodial treatment in a high-income country. Troublingly, recent independent inspection reports from the UK show that custodial institutions have problems in meeting some of the very basic needs of juveniles, let alone producing more positive outcomes for them.

The Chief Inspector of Prisons reported in 2010/11: "In three establishments, external nutritionists had been consulted but young men said they frequently felt hungry".⁵¹ At one establishment, Feltham, in 2013, residential areas were shabby, graffiti was everywhere, and some areas needed a deep clean.⁵² At another, Wetherby, there was inadequate access to showers with the lack of daily showers particularly affecting those who worked in dirty areas.⁵³

Annual surveys conducted by prison inspectors have found just under a third of young men and just over a fifth of young women in Young Offender Institutions (YOI's) in England and Wales report that they have felt unsafe at some point while in prison. In 2013, inspectors found that shouting abuse from windows was widespread and saw opportunities for bullying in many areas.⁵⁴ They had particularly serious concerns about the safety of young people held at Feltham, in London. Many young people said they were frightened and had little confidence in staff to keep them safe. "There was an average of almost two fights or assaults every day. Some of these were very serious and involved groups of young people in very violent, pre-meditated attacks on a single individual with a risk of very serious injury resulting."⁵⁵

Some of the practices undertaken in custody such as routine strip-searching are seen by some observers to raise questions of decency,⁵⁶ and by the Chief Inspector of Prisons to mar efforts by reception staff to reassure new arrivals for whom arriving in custody is a daunting experience. While the inspectors found that most young people said that staff treated them with respect (69 % of young men and 81 % of young women), young men from black and minority ethnic groups reported less favourably: only 57 % said they were treated respectfully. The Chief Inspector noted: "Some young people were very negative about the way they were treated."⁵⁷

It should go without saying that efforts to influence young people to stay out of trouble in the future are likely to be ineffective in institutional environments where some young people do not have enough to eat, cannot keep themselves clean, do not feel safe and are not treated with respect.

But more direct attempts to bring about changes in attitudes and behaviour by young people in custody have also been disappointing. Inspectors found that

⁵¹ HMI (2011a), p. 63.

⁵² HMI (2013a), p. 6.

⁵³ HMI (2012), p. 15.

⁵⁴ HMI (2013b).

⁵⁵ HMI (2013a), p. 5.

⁵⁶ National Council for Independent Monitoring Boards (2011).

⁵⁷ HMI (2011a).

“support from personal officers or key workers (members of staff given responsibility for a particular group of young people) was generally not rated highly by young people. Sixty-seven per cent of young women said that a member of staff had checked on them within the previous week to see how they were getting on, but for young men this dropped to 39 %.”⁵⁸ Few personal officers attended important meetings relating to the care of the young people for whom they were responsible. While the overall care of the most vulnerable and troublesome young people, including those who self-harmed or were segregated, had improved and most establishments had a multi-agency forum in which they discussed individual young people and shared information, the co-ordination of a wide range of assessments and care plans for different purposes was poor, resulting in a disjointed approach to caring for the most challenging young people.

The England and Wales experience suggests that particular groups of young people suffer more than others. Without social work expertise to help them interpret relevant legislation and guidance, YOIs have experienced difficulties in identifying, assessing and managing the needs of looked after children—those who are in the care of the local authority because they cannot live with their parents. The provision for foreign nationals (almost a quarter of those in some establishments) is often poor. Further work was also needed in relation to young people with disabilities. There was a failure to identify which young people had learning difficulties or disabilities, yet this could have a significant impact on their experience of custody.

It seems likely that many of the problems identified by Inspectors arise in custodial institutions the world over. The UN Committee for the Rights of the Child reported in 2007 that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pre-trial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty.⁵⁹

The most important lesson about custodial care relates to the need to meet these basic and specific needs —keeping children and people safe, healthy and occupied—before seeking to apply more ambitious programme interventions that aim to produce changes in behaviour and attitude.

Given the strongly negative effects of custodial institutions, there is much to be said for seeking to keep young people out of them as far as possible. The model juvenile law produced by the UN states that detention is a measure of last resort and must not be imposed unless all available sentences other than a custodial sentence have been considered and adjudged inappropriate to meet the needs of the child and provide for the protection of society.⁶⁰

There has been some success in recent years in England and Wales (UK) where the numbers in custody fell from 3000 in April 2008 to 1100 in 2014. This has been brought about by a combination of measures including greater use of diversion,

⁵⁸ HMI (2011a).

⁵⁹ UN doc. CRC/C/GC/10 (2007) para 13.

⁶⁰ UNODC (2013).

more restrictive sentencing criteria, improved communication between social work agencies and the courts and a greater focus on the costs of custodial places.⁶¹ In other countries efforts have been made to reduce the use of custody. In Russia there has been an increase in the use of reconciliation (from 1.4 % of juvenile sentences in 2001 to 25 % in 2005),⁶² and in New York State (USA) a number of training schools have been closed.⁶³ Yet there are counter examples: in Japan juveniles who commit crimes that would earn them life sentences if they had been adults currently face a limit of 15 years in prison. Less severe offences are capped at 10 years. A new law extends these two upper limits to 20 years and 15 years, respectively.

Experience suggests that efforts to reduce the use of custody are not always successful. Introducing demanding alternatives can save young people from the front door of a custodial sentence only to lead them to prison via the back door of breach. Even suspended sentences can have unintended consequences. It has been reported in Russia that because conditional terms of imprisonment are not accompanied by rehabilitation measures such as job or education opportunities, juveniles have few real opportunities to change their way of life. Consequently many, if not most, conditional sentences turn into real terms.

More encouraging are efforts at so-called Justice Reinvestment in which local education, social work and probation agencies are given financial incentives to develop alternatives to prison. While there has been some disappointment that the idea has not lived up to its early promise in the USA, in a number of states a virtuous cycle has been created in which savings from reduced custodial costs are invested in community based prevention and supervision programmes. There are encouraging results from the UK too.⁶⁴

Reducing the use of custodial sanctions requires sentencing reform as well. Uganda's sentencing guidelines require courts to consider, *inter alia*, the best interests of the child, the rehabilitation of the child, the effect of a custodial sentence on the child, and ensure that the appropriate sentence is the least damaging to the interests of the child. Such criteria should encourage courts to look much more seriously at alternatives. But yet more radical measures may be required. A recent study of Training schools in the US argued "There is nothing—neither investigation, litigation, monitoring, nor oversight; not public censure, court order, or the mandates of the U.S. Constitution—powerful enough to stem the brutality that is part of daily life inside our nation's juvenile prisons, short of the courage to close the places down."⁶⁵

⁶¹ Allen (2011).

⁶² Hakvag (2009).

⁶³ Solomon and Allen (2009).

⁶⁴ Allen (2014).

⁶⁵ Bernstein (2014).

2.3 *Treatment*

Given the growing acceptance that custodial measures are for the most part ineffective and damaging, recent years have seen a growing interest in devising alternative measures which might prove better at curbing teenage offending. The Washington State Institute for Public Policy analysed a range of measures which might reduce the need to build more prisons in the state.⁶⁶ Their work identified a number of programmes for young people which evidence showed would work to reduce re-offending. As well as diversion programmes, restorative justice and Teen Courts for lower risk offenders, these included more intensive programmes such as family and multi systemic therapy for young people who can remain at home, treatment foster care for those placed with other families, specialist programmes for sexual and aggressive offenders and those with chemical dependency and mental illness problems.

These are the kind of programmes which psychological research has shown to be effective in a range of studies over the last 20 years. Effective interventions match the intensity of the intervention to the level of risk posed by the young person and address their specific needs. Weak impulse control, attention deficits, high levels of anger, antisocial attitudes, and poor information-processing are among the factors that treatment programmes commonly try to change in order to reduce the likelihood of re-offending. Although there is a range of programmes that have been shown to produce good results, it has been estimated that only about 15,000 youth in the American juvenile justice system are treated with such evidence-based treatment each year. Since 160,000 youth are placed away from home each year, and an equal number are at high risk of placement, this means that fewer than 5 % of eligible high-risk juvenile offenders in the US are treated with an evidence-based treatment.⁶⁷

There are a number of programmes that have been shown not to work very well; in the Washington study these include some common measures including counselling, education and intensive probation supervision and parole. These are likely to be used much more widely than are evidence based approaches. Other less common yet popular approaches such as Scared Straight (in which juvenile offenders are taken to visit a prison to meet hardened criminals) and Wilderness Challenge have also been found not to work—and in the case of Scared Straight programmes to increase re-offending. Boot camps—explicitly punitive regimes based on military drill and discipline—have also been found not to work well although in many US states they are used in order to shorten the length of sentences. Although they may have value as a short term cost cutting mechanism, they have no benefit in terms of recidivism.

Recent research has focussed less on specific programmes and more on how they are implemented. In a recent analysis only three factors emerged as major correlates

⁶⁶ Aos (2006).

⁶⁷ Henggeler and Schoenwald (2011).

of program effectiveness: a “therapeutic” intervention philosophy, serving high-risk offenders, and quality of implementation. With other variables statistically controlled, relatively few differences were found in the effectiveness of different types of therapeutic interventions.⁶⁸

High quality implementation of interventions in both custody and the community requires adequate numbers of well-trained and motivated staff. A review of research suggested that a range of skills on the part of the workers are related to reduced offending and increased compliance by those under supervision.⁶⁹ Supervisors in whatever setting are effective if they are clear about their role, show pro social values and behaviour themselves and are prepared to challenge the young person consistently and fairly about their delinquency. Effectiveness is also enhanced if they help offenders with problems that are identified by the client rather than the worker, particularly if these are related to the person’s offending, e.g. drugs, peers, employment, family issues. “In other words, they work in a collaborative, friendly, optimistic way so that the client develops trust in the worker as someone who can genuinely help them with their problems.”⁷⁰

Emphasising the role of staff in implementing sanctions is consistent with the most recent criminological evidence which suggests that treatment must take into account the human processes and social contexts through which change happens, and the meaning offenders attach to the efforts being made to reintegrate them. While it is tempting to want to identify interventions which succeed in stopping offenders from committing crime, it has been argued that the “what works” approach should be replaced by a new “desistance paradigm”. This aims to focus on offering opportunities and motivations, and to help ex-offenders discover their capacity to make and enact choices in order to resist and overcome pressures that may lead them back to offending behaviour. This approach seems highly relevant to work with young offenders, including those in custody.⁷¹ The paradigm suggests that a casework approach should be applied in work with young people and attaches priority to the need to engage effectively with young offenders’ families, to enlist their support where possible in helping offenders to change their ways.

Thus one important finding from research is to emphasise processes of change rather than simply identify modes of intervention. A second is that interventions should not necessarily be concerned solely with preventing further offending. Encouraging offenders to make amends to victims and to communities through restorative processes and community service can play a part in convincing them that they are managing to become a different person—an essential component of sustained desistance from crime.

Alongside this desistance paradigm, it is important to consider elements of compliance or procedural justice theory, which argue that justice agencies will

⁶⁸ Lipsey (2009).

⁶⁹ Trotter (2006).

⁷⁰ Ibid p. 2.

⁷¹ McNeill (2006).

only command compliance from offenders if they treat them in a way that is transparently fair. Negotiating a shared agenda for change is likely to produce better results than imposing one.

The principle of so called “responsivity”—that different offenders have different learning styles and that work should be tailored to these—is also important. This may be particularly significant in relation to any role played by the police in community based supervision programmes. Evidence from multi agency programmes for persistent offenders in the UK suggests that there can be dissonance between the approach of the police and other partners, underpinned by confusion about the overall aims of the project. From the point of view of some offenders, it is possible that police involvement may be a disincentive to participate in any programme. For others, the key factor will be whether reliable and relevant help is provided, whoever is providing it.

While there is limited evidence about effectiveness, many offenders say that they would prefer to receive help from people who have been through the criminal justice and prison system themselves.

Lessons from research in the past decade suggest that models based around three elements are most likely to produce positive effects: motivational and other work prior to release, post-release mentoring, and facilitating access to agencies and organisations.⁷² Meeting basic practical needs remains crucial. The Prison Inspectorate has reported that “barriers such as not having a suitable address, a lack of appropriate courses and not being able to start courses immediately after release meant that many young people did not have an education or training placement to attend and of those that did, few were able to sustain it”. A large number of young people had concerns about finding somewhere to live. Resettlement teams identified accommodation problems early, but often accommodation for young people not returning to their families was only confirmed very late in their sentence.⁷³ A Prison Inspectorate review of training plans for children and young people noted that arrangements for reviewing their progress while in custody were hampered by inadequate targets, infrequent meetings, variable attendance by key contributors and even a lack of appropriate locations for the discussions.⁷⁴ In a survey conducted for a thematic inspection report on resettlement provision for children and young people, only a third of young men had an education training or employment place arranged on release, only half were still attending a month later, and only a fifth of those who had not got a placement on release had one confirmed month later: “Overall the outcomes for our sample were very disappointing.”⁷⁵

⁷² Lewis and Vennard (2003).

⁷³ HMI (2011a).

⁷⁴ HMI (2011a).

⁷⁵ HMI (2011b).

3 Women

In 1986 Ross and Fabiano published their book titled “Female Offenders Correctional Afterthoughts.”⁷⁶ Following a period in which the use of imprisonment for women in the US and UK grew more sharply even than it did for men, a UK Supreme Court Judge said in 2005 that “it is now well recognised that a misplaced conception of equality has resulted in some very unequal treatment for the women and girls who appear before the criminal justice system. Simply put, a male ordered world has applied to them its perception of the appropriate treatment for male offenders.”⁷⁷ Whether or not it is well recognised, in many countries, despite efforts to introduce more appropriate treatment for women, it is still the case that many of the sanctions applied to women are damaging, ineffective and counterproductive.

Two examples help to illustrate this. In October 2007, 19 year old Ashley Smith died by self-strangulation at Grand Valley Prison in Canada. In 2013, an inquest reached a verdict of homicide rather than suicide after their investigation into how it came to pass that a vulnerable young woman on high suicide watch died with a ligature around her neck while guards—who were ordered not to enter her cell if she was breathing—watched and videotaped. “Publicly released surveillance footage gave Canadians a rare window into the way prison staff, at times in full riot gear, wrestled with how to manage a young woman first imprisoned in 2003 after breaching probation for throwing crab apples at a postal worker.”⁷⁸

In June 2014, a 19 year old woman from Lancashire in the north of England was sentenced to prison for a violent assault. Natalie Harvey, who was 31 weeks pregnant was herself reportedly taken into care at the age of three. The judge said it was deeply troubling to see what had happened to her and her family in recent years and it may explain why somebody of just 19 had committed 21 offences, a lot of them for violence and it may explain her random, haphazard and chaotic life, not just in the past, but even more recently.

The judge told Natalie that “What’s vitally important, it seems to me, in the next two or three months, in your interests, in your child’s interests, but more particularly in society’s interests, is that there is some stability, some proper medical help and some assistance. Prison provides punishment and it provides a deterrent and these are the main reasons people go to prison. But, prison also has benefits. It can work towards rehabilitation, it can work towards improving somebody’s health and it can work towards stabilisation and it seems to me in these circumstances, despite your best endeavours, that stabilisation, at least for a short period of time, ought to be put in place.”⁷⁹

These two cases show how prison sanctions have come to fill a gap in society’s response to troubled women. We know that female prisoners in many countries

⁷⁶ Ross and Fabiano (1986).

⁷⁷ Hale (2005).

⁷⁸ Globe and Mail (2013).

⁷⁹ Lancashire Telegraph (2014).

report higher levels of mental health needs compared with male prisoners. In England and Wales, a quarter revealed symptoms in a recent survey questionnaire that indicated psychotic illness, and 26 % reported having been treated or counselled for a mental health or emotional problem in the year before custody, compared with 16 % of men.⁸⁰ Female prisoners are more likely to attempt suicide and self-harm compared to male prisoners. The survey found that a fifth (19 %) of women reported having attempted suicide during the year before custody, nearly three times the rate of men. It was reported in 2014 that two thirds of the women prisoners at Cornton Vale in Scotland were subject to suicide watch.⁸¹

An earlier survey found histories of childhood abuse, repeated traumatic experiences, ongoing trauma symptoms combined with higher rates of self-harm, mental disorders and substance dependence amongst the sample.⁸² A study of women prisons in eight countries carried out by the International Centre for Prison Studies (ICPS) found that “there are similarities in the type of women imprisoned in each country. . . . in all countries they are a very disadvantaged group even amongst the disadvantaged and many come from backgrounds of abuse and violence, and have problems of addiction. A higher proportion of physical and mental health problems is noted amongst women prisoners.”⁸³

It is the case however that the recidivism rates among women leaving prison are lower than those for men. In the USA for example within 3 years of release from prison in 2005, 69.0 % of male and 58.5 % of female inmates had been arrested at least once. Five years after release from prison, more than three-quarters (77.6 %) of males and two-thirds (68.1 %) of females had been arrested. At the end of the first year, the male recidivism rate (44.5 %) was about 10 percentage points higher than the female rate (34.4 %), a difference that remained relatively stable over the following 4 years.⁸⁴

3.1 Sentencing of Women

This very different profile of women offenders, which is found in many countries has led to many proposals for reform and some modifications to the system of sanctions.

In the UK a major review of women with vulnerabilities in the criminal justice system, the Corston review,⁸⁵ recommended a distinct approach to tackling

⁸⁰ Light et al. (2013).

⁸¹ Scotland (2014).

⁸² Borrill et al. (2003).

⁸³ ICPS (2008).

⁸⁴ Bureau of Justice Statistics (2014).

⁸⁵ Corston (2007).

women's offending which acknowledges that female offenders may have different problems compared to male offenders.

In practical terms, courts can and do reduce sentences by applying mitigating factors. These may relate to the circumstances relating to the offending—for example by taking into account experience of domestic abuse or violence, and or personal mitigation relating to the mental health care or other needs.

As a result perhaps of such mitigation, sentencing of women can be milder than that of men. In 2011, the latest year for which data is available, in England and Wales (UK), proportionally more females than males were discharged (21 % of females and 11 % of males) or given a community sentence (34 and 29 %, respectively). A greater proportion of males received immediate custodial sentences (27 % compared to 15 % of females) or a fine (17 % compared to 14 % of females).⁸⁶ More detailed comparison of the offences would be needed to establish whether these differences reflect different levels of seriousness.

Efforts have also been made to reduce sentence lengths for certain offences, which disproportionately involve women. In England and Wales the Sentencing Council reduced sentence lengths for so called “drug mules”—women who import drugs into the country at the behest of organised criminals. From 2012 the offence has had a starting point of 6 years imprisonment. Interviews with 12 imprisoned “drug mules” carried out as part of the preparation of the guideline demonstrated that a range of different women, with different backgrounds and circumstances, can become involved in operations as “drug mules”. Some of these women admit to knowingly transporting drugs in this way, whilst others report travelling with no knowledge of the drugs. What is common amongst most of the women is the involvement of a trusted person in making arrangements or paying for their trips—either a family member, a friend or a friend of a friend. As a result the impact of the offence and sentence on the women was significant, with many reporting family betrayals, relationship breakdowns, health, housing or employment problems.⁸⁷

Many female offenders are of course exclusively, or mainly, responsible for childcare. The Corston Report in the UK recognised that “in trying to break the inter-generational transmission of offending, related at least in part to inconsistent parenting and family breakdown it is recognised as important to divert women who do not present a risk to the public away from custody.”⁸⁸ In a number of countries specific consideration is given to the impact of sentences on dependent children.

In 2007 South Africa's Constitutional court overturned a 4-year prison sentence imposed on a single mother of three young boys, suspending the sentence and substituting a correctional supervision order. The Court ruled that “the best interests of the child must be a paramount consideration in all proceedings affecting them, and it is clearly in the best interests of the minor children that they continue to

⁸⁶ MoJ (2012).

⁸⁷ Sentencing Council (2011).

⁸⁸ Corston (2007).

receive primary care from their mother. If M. were to be sent to jail, the children would suffer loss of maternal and emotional support, loss of home and community, disruption in school routines and transportation, and potential separation from their siblings, all of which could negatively impact their developmental process.”⁸⁹ The limitations of the ruling were shown in a subsequent case where the Constitutional Court upheld a 5-year sentence for fraud in the case of a married mother of two. The Court found that although *S v M* had revolutionised the sentencing process by re-asserting the central role of the interests of young children of someone being sentenced as an independent consideration, where satisfactory alternative care arrangements could be made, there was no reason not to sentence a mother to prison.⁹⁰ In Russia, a more systematic approach is adopted: Article 177 of the Code of Criminal Procedure of the Russian Federation (CCPRF) provides the possibility for pregnant women and mothers with young children to defer serving their sentences until the child reaches the age of eight. In Ecuador, there was a one off programme of pardons (*indultos*) for which two categories of prisoner have been able to apply—those with terminal illnesses and also first time offenders convicted of drug trafficking of quantities less than two kilos. Many women benefitted from this. In California (USA), certain women have been allowed to spend the last period of their sentence in house arrest, drug facility or transitional care facility.

3.2 *Implementation of Sanctions*

Little is known about how different sanctions and measures are used with women across different jurisdictions and how these impact upon aspects of women’s lives. Elsewhere this handbook describes some of the ways in which prison sentences can be unsuitable for women. International norms require separation but this is not always achieved. In Denmark which prides itself on a philosophy of normalisation in prisons, women and men are held in mixed establishments but sadly, a rising number of sexual harassment cases in Danish prisons has prompted the Justice Ministry to look into whether there is a need for a prison for women only.

Even where women are held separately, they can face the risk of abuse by staff. A recent report alleged that security officials “routinely” rape women in prisons in DR Congo as punishment for their political activities, but this kind of abuse is the tip of an iceberg.

The underlying issue is that almost always prisons are designed and run by men for men. Many have design features and procedures such as security categorisation, which provide unnecessary levels of restriction given the low risks posed by most women in prison. Routine strip searches and constant surveillance may not only be unnecessary but can exacerbate trauma.

⁸⁹ Constitutional court of South Africa (2007).

⁹⁰ Constitutional Court of South Africa (2011).

The ICPS study⁹¹ found the size of the units differs widely across the eight countries studied; the average size of unit in Western European countries has space for 60 women prisoners. The US States studied had the largest unit, with capacity for 2302 prisoners, closely followed by Russia with space for 2000 women.

The countries studied by ICPS found a wide range of approaches to prison design; in New Zealand the “standard” prison design is used even for its at-risk unit for suicidal women. In Canada there are a range of shared houses, in Germany one prison provides flats with balconies whilst Halle prison has a pay-laundry, a piano room and a large garden. In Western Australia at Boronia prison there are “pleasant gardens and well maintained houses that more closely resembled a well-kept suburban landscape than institutional setting.”

While it is therefore possible to adapt the physical infrastructure, efforts at gender specific programming have been more controversial, with critics arguing that activities such as dog training in some American prisons are based on a perceived desire to nurture and vulnerability to men. California’s proposed Female Rehabilitative Community Correctional Centers were criticised as prisons in all but name and not built. It has been suggested that “there is very little evidence that gender responsive programmes can have a positive impact on meeting women’s (rehabilitative) needs and reduce the fast growing population of women in prison. On the contrary, all too often it is precisely this belief in the magic of programming that feeds the rapid growth in women’s prison.”⁹²

As for community based orders, UK evidence suggests that women are slightly more likely to complete probation type orders than men although those women that do not are more likely to have failed to comply with the conditions than men who are more likely to have committed a further offence. It has been suggested that community based sentences are imposed on female offenders who are less serious or persistent than their male counterparts. There is a risk that in the event of further offending, women may be considered by courts to have exhausted these options more quickly than men.

There is some evidence that child care and travel can make it more difficult for women to keep appointments but it may also be that failing to meet some of the other practical, financial and relationship issues that may impact on women’s lives increase the risk of non-compliance. There is controversy over whether some of the accredited programmes—particularly those based on cognitive behavioural theory—are as suitable for or as effective with women as men.⁹³ It has also been suggested that actuarial risk assessment tools are gender blind, and for example “are totally insensitive to South Africa’s particular socio- economic and cultural characteristics. They do not take into account economic marginality and structural inequality in the way that it features here.”⁹⁴

⁹¹ ICPS (2008).

⁹² Bosworth and Fili (2013).

⁹³ Martin et al. (2009).

⁹⁴ OSF (2010).

It has been proposed that community based treatment approaches need to be organised in non-authoritarian cooperative settings where women can be empowered to change.⁹⁵ Such settings are likely to be for women only and include women who are not offenders. Work should be undertaken to address the full range of a woman's needs and problems—other research has suggested that meeting practical needs for stable accommodation and financial security may be needed before therapeutic help can be successful. Mentoring and the ability to maintain contact with the staff and other women over a period of time are also considered important. Effective relations with staff may be particularly important for women.⁹⁶

The Ministry of Justice in England and Wales has been supporting a network of community based centres for women which apply some of these principles in order to tackle underlying causes of offending and divert those who have not offended, but have a number of risk factors for doing so, away from crime. An outcome evaluation of some of the longer-established centres is under way which will examine their impact on reoffending. This builds on previous research, which found the centres to have been swiftly and efficiently implemented and welcomed by local agencies and sentencers who perceived them to be filling an important gap. Service users who sustained contact valued the support and services offered. A similar project has been operating in Glasgow (Scotland)—the 218 project.

It has been suggested that some sentencers lack knowledge about some of these community services and may be reluctant to send convicted offenders to mixed centres where non-offenders also attend.

4 Conclusion

Sanctions for young people and for women seldom work well and there is a case for a fundamental rethink of the way criminal justice systems deal with both groups. In many cases, diversion away from prosecution and punishment offers a better prospect of reducing recidivism than does formal processing by the courts. The use of imprisonment can have particularly damaging consequences. In the short term poor living conditions and high levels of violence characterise life in institutions the world over. In the longer term, warehousing vulnerable and damaged people without addressing their problems can make it more rather than less likely that they will re-offend. Research has started to identify approaches, which are more effective in encouraging desistance from crime such as support, whether in prison or the community, in tackling substance misuse, employment and relationship problems.

The question remains about whether initiatives such as these are sufficiently widely available to impact on the use of prison. It was recently suggested that “In

⁹⁵ Gelsthorpe et al. (2007).

⁹⁶ Gelsthorpe (2013).

the last 20 years there has been a growing international recognition that prison is an inappropriate response to women in conflict with the law⁹⁷. Much the same could be said about children. Even if this were true, there is long way to go to turn the recognition into a reality. Developing the law, policy and practice, which can reduce and ultimately eliminate the unnecessary use of imprisonment has proved difficult in a climate of opinion which places a greater value on punishment than is justified by evidence.

Five Questions

1. Under what circumstances is it desirable to divert children and women from the formal justice system?
2. In what ways should emerging knowledge about the impact of sanctions be incorporated into law and policy?
3. Should there be a distinct sentencing system for women offenders?
4. What are the key implications of research for the recruitment and training of staff implementing sanctions?
5. What are likely to be the characteristics of effective institutions for a) children and b) women?

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⁹⁷ Malloch and McIvor (2012).

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Children of Prisoners: Their Situation and Role in Long-Term Crime Prevention

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Abstract Studies suggest that maintaining family ties can help reduce the likelihood of reoffending, and that while parental imprisonment can increase a child's likelihood to offend, positive responses to the situation can aid the children's well-being, attitude and attainment. Drawing on findings from the EU-funded COPING Project on the mental health of children of prisoners, this chapter explores the factors that aid a child's ability to cope with parental imprisonment and the actions that different stakeholders can take to support them. It identifies some of the mental health impacts at different stages of parental imprisonment, the roles played by non-imprisoned parents/carers and by schools, and suggests options for further clarifying the factors that help and hinder children of prisoners in the short and long term.

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1 Introduction

Children of prisoners have become increasingly visible in academic and policy circles since 2000, though are still widely ignored compared to other situations¹ and marginalised groups. As research has moved on from small-scale or anecdotal accounts to more robust studies, it has been possible to say with more confidence the ways in which children can be affected, as well as highlighting interventions that may assist them in coping with parental imprisonment.

Children can be affected at all stages of a parent's involvement with the criminal justice process, from the point of arrest to the time of reintegration into the community following release. The ways in which they can be affected are also varied and include emotional, psychological, financial, material, physical and social impacts. For example, the loss of a working parent can mean reduced finances and potentially the need to move to a different home, if the current property can no longer be afforded. The parent-child relationship may come under strain because of greatly reduced and highly controlled opportunities for contact. And the distress caused by the parent's imprisonment and the responses of others to it (especially if they are stigmatising—"your dad's a criminal") can mean that children become isolated, angry and/or scared, and in some cases develop physical or mental health problems. It should also be noted that there can be positive effects for children, for example when a dangerous or chaotic parent is removed from the family home.

It immediately becomes clear, when looking at different countries and world regions, that this is not an issue confined to one part of the globe, or that it particularly affects wealthier or poorer countries. Every country has prisons, and it is virtually certain that at least some of the prisoners have children. The range and extent of impacts will vary depending on the country context and the individual child (even children from the same family may react in very different ways), but it is striking that children from many different countries describe the same feelings, with the most universal being loss.

In recent years, the policy and (particularly) academic research on children of prisoners has become increasingly rigorous, with both longitudinal studies (following a group over many years or decades to see the impact of a particular event, in this case parental imprisonment) and large-scale studies (of hundreds or more participants) verifying what previous studies and practitioners have stated, and in

¹ The United Nations Office on Drugs and Crime and the United Nations Children's Fund are among the key global intergovernmental actors who deal with children in conflict with the law and children as victims and witnesses of crime.

a few cases refuting it.² One consistent finding across anecdotal and scientifically robust research is that having a parent in prison is generally negative for children, both at a population level (most children report it being a negative experience) and an individual level (most children report more negative impacts than positive).

However, there are a number of interventions that research suggests have positive impacts on children's ability to cope with parental imprisonment. A number of these emerged through the research of the EU-funded COPING Project (Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health), whose methodology and results are detailed and discussed below.

Positive interventions may help in maintaining the relationship with the imprisoned parent, or in supporting the children in other parts of their lives. Research suggests that (at least in some countries) having a parent imprisoned can increase the likelihood of boys going on to exhibit antisocial behaviour later in life. While no research known to the authors has yet been completed identifying whether children that cope better with parental imprisonment have a reduced risk of future antisocial behaviour compared to those that do not, many of the behaviours and factors reported by children of prisoners (including anger, truanting and lack of social ties, as well as having a parent with previous convictions) are recognised risk factors predicting antisocial behaviour and offending (Mortimer 2010; Becroft 2006). Therefore, helping children of prisoners now may reap benefits in terms of future crime prevention. (There is also the long-recognised role played by maintenance of family connections in reducing the probability of reoffending by released prisoners; while not the focus of this chapter, it is relevant to bear in mind as an additional benefit.)

2 Literature Review

Parental imprisonment does not necessarily signal the onset of problems for children; for many, it will represent the continuation of an already difficult family situation. Literature consistently reveals that children of prisoners are more likely than their peers to come from families severely disadvantaged by poverty, unemployment, poor educational outcomes, domestic violence, substance misuse and mental health problems (Social Exclusion Unit 2002). Although the imposition of a custodial sentence might present clear benefits for some children, for example, by

² One example is the finding from the COPING study (see below) that children are as affected by a father's imprisonment as by a mother's, which went against previous findings that a mother's imprisonment had more severe effects (due at least in part to the greater likelihood for imprisoned mothers to be raising children on their own, meaning that children would be more likely to change carer and possibly home and school, as well as losing their parent). However, the COPING researchers speculated that this may be due to the cohort of children that participated, almost all of whom were in contact with their imprisoned parent and who were taken to visit by their non-imprisoned parent or carer.

providing a welcome relief from domestic violence and substance misuse, there is considerable evidence to suggest that *most* children suffer following parental imprisonment (Murray 2005). Parental imprisonment has a variety of adverse consequences for children including breakdown of family relationships, disruption to caregiving arrangements, financial hardship, unwelcome adjustments to roles and responsibilities, and stigma and bullying (Smith et al. 2007; Murray 2007).

Children experience a diverse range of negative emotional reactions to parental imprisonment including feelings of rejection, sadness, despair, confusion, depression, withdrawal and symptoms of post-traumatic stress disorder (Hissel et al. 2011; Bocknek et al. 2009; Murray and Farrington 2008). Responses to parental imprisonment are not limited to the aforementioned internalising or 'acting in' problems, but also include externalising or 'acting out' behaviours such as anger, aggression, conduct problems, truancy, sexual promiscuity, and underage smoking and alcohol consumption (Schlafer and Poehlmann 2010; Hanlon et al. 2005; Boswell and Wedge 2002).

3 Criminal and Anti-Social Outcomes

Of particular concern are the numerous studies that indicate a strong association between parental imprisonment and children's involvement in antisocial and criminal behaviour (Barnardos 2014b; see Murray et al. 2009 for a review). For example, USA research identified imprisonment as a powerful determinant of mobility for both former inmates and their children, with children of prisoners suffering reduced educational attainment and lower lifetime income (Pew Charitable Trusts 2010). Although it has been widely recognised that the adverse behavioural outcomes could be attributed to pre-existing disadvantage and might not be a direct result of parental imprisonment, the emergence of more robust methodological approaches provides more convincing evidence that parental imprisonment might actually *cause* criminal behaviour in children. Of particular note is the Cambridge Study of Delinquent Development (UK), which found that children of prisoners are significantly more likely than their peers to engage in criminal and antisocial behaviour both in adolescence and adulthood (Murray and Farrington 2005), suggesting that the effects are both profound and long-lasting.

Adopting similarly robust methodological approaches, the Criminal Career and Life Course Study (Netherlands) found only a weak causal relationship between parental imprisonment and offending behaviour (van de Rakt et al. 2012), and Project Metropolitan (Sweden) found no causal effect (Murray et al. 2007). This is not to suggest that the results are inconclusive, but rather highlight the importance of understanding cross-country differences in the mechanisms underlying the transmission of criminal and antisocial behaviour. The authors suggested that the combination of Scandinavia's more welfare-orientated justice systems, shorter prison sentences, family-friendly prison policies, extensive social support systems,

and more sympathetic attitudes towards crime and punishment might explain why children were less affected by parental imprisonment than in the UK.

4 Risk and Protective Factors

The extent to which an individual child might be affected by parental imprisonment will depend greatly on the existence of a range of risk and protective factors. In order to design effective interventions to reduce the likelihood of criminal and antisocial outcomes, it is crucial that we develop an understanding of factors that might mediate the impact of parental imprisonment.

4.1 Individual Differences

Research indicates that boys who have experienced parental imprisonment are at greater risk of developing criminal and antisocial behaviour than girls (Murray et al. 2009). Indeed, there is supporting evidence that boys tend to display more externalising problems in response to parental imprisonment, whereas girls tend to display more internalising problems (Murray and Farrington 2008). As already noted, the effects of parental imprisonment persist throughout the life-course, but have found to be most pronounced in adolescence suggesting that there might be a “critical period” for intervention (Murray et al. 2009). Nevertheless, children’s responses to parental imprisonment are highly individualised, and there is evidence that certain temperaments and coping styles can promote more successful adjustment (Hagan et al. 2005).

4.2 The Parent-Child Relationship

Research has also demonstrated that custodial sentences (rather than community sentences), imprisonment since birth (rather than before birth), repeat incarceration, and longer periods of imprisonment all increase the risk of the child engaging in criminal or antisocial behaviour (Murray et al. 2009). This suggests that actual separation due to imprisonment (and not just having a criminal parent) is a significant contributory factor. Secure parent-child attachments are known to be important for development, not least positive behavioural outcomes (Bowlby 1973a), yet children of prisoners are less likely to have secure attachments to their imprisoned parent (Poehlmann 2005). Children variously report feelings of alienation from their parent, problems communicating, difficulties coming to terms with the situation, and shame and embarrassment at their parent’s involvement in criminal activity (Tudball 2000; Schlafer and Poehlmann 2010).

There is strong evidence that maintaining frequent contact with the imprisoned parent can act as a significant buffer against the deterioration of the parent-child relationship and adjustment problems on behalf of the child (Lösel et al. 2012; Poehlmann 2005; Murray 2005). Unfortunately there are multiple barriers to sustaining frequent contact, including prison policies governing arrangements for contact, the remaining parent/carer's capacity to facilitate contact, and the distance to prison and associated travel costs (Arditti and Few 2006). Contact that occurs in child-friendly environments or in the context of interventions designed to support positive parent-child interaction also has more positive outcomes for relationships and adjustment (Sharratt 2014; Poehlmann and Schlafter 2010). There is considerable evidence that in the absence of such environments and interventions, many children find the prison environment intimidating and interaction with their parent unsatisfactory (Nesmith and Ruhland 2008; Brown et al. 2001; Tudball 2000).

The maintenance of family relationships also has positive implications for the parent in prison. Enabling prisoners to be actively involved in their child's development is important for their rehabilitation, not least their sense of parental competence and self-esteem (Loper et al. 2009; Clarke et al. 2005). Prisoners who maintain contact also have better resettlement outcomes, for example they are more likely to have accommodation and employment arranged for their release, and are also less likely to reoffend (May et al. 2008; Niven and Stewart 2005).

4.3 Support: Families, Schools and Peers

Research evidence indicates that maternal imprisonment is a greater risk factor for criminal and antisocial outcomes than paternal imprisonment (Murray et al. 2009). Imprisoned mothers tend to be located further from home, presenting greater challenges to visiting and reducing the chances of sustaining parent-child relationships (Robertson 2007; Prison Reform Trust 2013). Maternal imprisonment also causes comparatively more disruption to children's caregiving arrangements, with children being more likely to move in with members of the extended family or to be taken into care (Williams et al. 2012). A change of home might necessitate a change of schools, disrupting children's education and separating them from existing support networks (George and LaLonde 2002). However, positive educational attainment and strong social ties are known to protect against criminal and antisocial outcomes (Social Exclusion Unit 2002).

Research evidence indicates that stable and nurturing caregiving arrangements are critical to ensuring successful adjustment to parental imprisonment, and can protect against the development of behavioural problems (Mackintosh et al. 2006; Poehlmann 2005). The extent to which the non-imprisoned parent/carer successfully copes with parental imprisonment also has a bearing on the child as this can affect their capacity to support the child (Wildeman et al. 2012; Jones and Wainaina-Woźna 2013). Although parents/carers might prefer to provide false explanations or incomplete information regarding the parent's absence with the

best interests of protecting the child from harm, there is unequivocal evidence that honest, sensitive and developmentally appropriate communication about the parent's imprisonment facilitates better adjustment on behalf of the child (Poehlmann 2005; King 2002).

It is not uncommon for parents/carers to insist that the child keeps the imprisonment a secret in order to protect them from negative reactions from peers and the community; this denies them the opportunity to seek social support and has been found to be associated with more severe internalising and externalising problems (Hagan and Myers 2003). Conversely, when children share selectively with their closest and most trusted friends, peers can serve as an invaluable source of support and this is associated with more positive emotional and behavioural outcomes (Jones and Wainaina-Woźna 2013).

Families affected by imprisonment can be reluctant to access support from outside agencies due to stigma, lack of information about available support, and in some cases mistrust of statutory services (Pugh and Lanskey 2011). This concern is not unfounded; teachers for example, have been found to hold less favourable expectations of children with a parent in prison (Trice and Brewster 2004; Dallaire et al. 2010). This is unfortunate, since families have an existing relationship with schools, making them a key site of support. Teachers have been observed to be instrumental in supporting children of prisoners to overcome the emotional challenges associated with parental imprisonment and in providing support to enable them to fulfil their academic potential (Roberts 2012). This underscores the need for training and greater understanding of these issues within schools and communities, who can be an invaluable source of support.

5 Methodology³

The COPING study included four data collection elements to identify issues related to the mental health and well-being of children of prisoners and their imprisoned and non-imprisoned parents/carers, primarily in Germany, Romania, Sweden and the UK. The children of prisoners and their parents/carers were investigated through a self-reporting questionnaire; and in-depth qualitative interviews were held with a subsection of families who took part in the survey. Other stakeholders, such as prison staff, school staff, social services workers and government officials, were consulted using a qualitative questionnaire; and a mapping of available relevant services inside and outside prison was undertaken in the countries.

³ The remainder of this chapter draws on the findings of the EU-funded COPING Project (Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health), which was conducted in 2010–2012 by a combination of academic and NGO researchers based in France, Germany, Romania, Sweden, Switzerland and the UK.

The questionnaire was administered to 737 children aged 7–17 and their parents/carers. It included closed and open-ended questions, and had embedded within it four existing instruments: the Strengths and Difficulties Questionnaire (Goodman 1997), the Rosenberg Self Esteem Scale (Rosenberg 1965), the KIDSCREEN-27 (KIDSCREEN Group Europe 2006) and the World Health Organization Quality of Life assessment (World Health Organization 2004). It was administered following pilots in each participating country. Selection methods varied by country and comprised: prison staff identifying prisoners meeting the selection criteria (Germany, Romania, Sweden and UK); meetings with families as they visited prisoners (Germany, Sweden and UK); NGOs identifying families of prisoners (Germany and Sweden); notices via newspapers, radio or websites (Germany, UK); and support from statutory agencies working with children affected by parental imprisonment (Germany, Romania).

In-depth interviews were held with families that completed the survey questionnaire and agreed to take part. Semi-structured interviews were held individually with the children, their parents/carers and their imprisoned parents. Interview guides were constructed, taking into account analysis of data from the surveys as well as feedback from research assistants and available literature. Across the four countries, interviews took place with 161 children (85 boys and 78 girls), 123 non-imprisoned parents/carers and 65 imprisoned parents/carers. Although the initial idea was to recruit equal numbers of children under normal and combined borderline-abnormal ranges according to scores on the Strength and Difficulties Questionnaire, this was only partially met due to refusals from participants. The mean ages of children were: 10.66 years in Romania, 11.60 in the UK, 11.69 in Germany, and 11.83 in Sweden.

Stakeholder consultations comprised interviews and/or focus groups with children of prisoners, imprisoned parents, caregivers, social workers, prison staff, staff within institutional homes, school-related stakeholders, NGO staff, and government staff involved in policy relating to children/families of prisoners in each country. They aimed to identify stakeholders' perceptions regarding the needs of children of prisoners. 122 stakeholders were consulted through in-person meetings, telephone interviews and completion of an online questionnaire with closed and open-ended questions.

The mapping of interventions for children of prisoners in the participating countries included four categories of services and interventions. These were: prison-based specialised interventions for the families of prisoners; community-based specialised services for the families of prisoners; community-based non-specialised services for the families of prisoners; and mental health services for children and adolescents. Questionnaires used for prison and non-prison-based services were sent via email, links to online versions and through telephone conversations with trained NGO volunteers. 289 prisons were involved in the prison-based research. The number of community-based services varied from country to country, from 0 in Romania to 32 in Germany (the UK had 25 services and Sweden 9).

6 Results

6.1 Context

Europe is a small continent, but the national situation, and the context surrounding children of prisoners, varies significantly among its countries. Economic development in 2010 ranged from per capita income (at purchasing power parity) of \$16,254 in Romania to \$39,569 in Sweden (World Bank 2014). Imprisonment rates (per 100,000 population) also differ greatly, with Romania imprisoning 158 persons per 100,000 of national population, the UK (England & Wales) 148, Germany 77 and Sweden 67 (International Centre for Prison Studies 2014). Precise data on children of prisoners are unavailable: this group is not systematically recorded⁴ and existing figures are extrapolations or estimates. For Sweden, the estimate is 10,500 children per year having a parent in prison (Mulready-Jones 2011, p. 5).⁵ In the UK, 200,000 children were estimated to have had a parent in prison at some point in 2012 (Barnardos 2014a, p. 2)—more than experienced their parents divorcing (Action for Prisoners' Families et al. 2007, p. 1). Mean imprisonment length varies, with Sweden the shortest at 3.2 years.

None of the four COPING countries had a nationwide governmental agency or department focused on children of prisoners. What provision there was tended to be provided by voluntary agencies or statutory services with a wider or different focus (such as social services).

6.2 Results: Emotional and Mental Health Impacts

While children of prisoners are far from a homogeneous group, the extent to which an individual child might be affected by parental imprisonment will depend greatly on the existence of a range of mediating factors, such as the child's age at separation, the sentence length, the strength of the parent/child bond, the availability of support and the number of previous parent-child separations.

Most children in the COPING Project reported being negatively impacted by the imprisonment of a parent. These mirrored reported impacts from other research, including mental and physical health problems (Hissel et al. 2011; Bocknek et al. 2009; Murray and Farrington 2008), difficulties related to education (Trice and Brewster 2004; Dallaire et al. 2010; Roberts 2012) and stigmatisation by others

⁴ This is due both to the widespread non-recognition of this group by authorities and that children and parents may hide their status due to stigma or fears about the actions authorities may take upon discovery.

⁵ The number is significantly higher than the prison population because many parents, like other prisoners, serve less than a year.

Table 1 Does parental imprisonment have good and/or bad effects on children?

Description	Germany (n = 145)	Romania (n = 251)	Sweden (n = 50)	UK (n = 291)	Overall (n = 737)
% bad effects (reported by parent/carer)	75.0	50.8	79.4	53.7	58.6
% bad effects (reported by child)	54.2	38.4	60.0	51.3	48.0
% good effects (reported by parent/carer)	24.1	19.1	33.3	15.6	19.8
% good effects (reported by child)	18.7	<i>Not asked</i>	25.6	9.8	14.3

(Pugh and Lanskey 2011). More children were reported as having negative impacts by parents than self-identified as such (Table 1).

Children reported a range of psychological and mental health impacts. Specific reported impacts included aggressive behaviour, sleeping disorders and nightmares. Emotional support was the issue with which Swedish children of prisoners felt they most needed help. Children in Germany emphasised wanting to live a normal life and were looking forward to their imprisoned parent's return home.

A number of the children in the UK who had been separated from their imprisoned parents for much of their lives appeared to be more vulnerable. Some, mostly boys, had been damaged by their parents' imprisonment, resulting in psychological distress, or displaying anger and disruptive behaviour at school. Children whose parents (fathers in all cases in this study) had been convicted of sexual assaults on other children could also be particularly vulnerable. Of the UK interviewees, four children had been receiving counselling or psychiatric support.

Examining the mental health and well-being (by the SDQ scores⁶) of the children, it is clear that in all countries bar Sweden, children report their well-being more favourably than do their parents (see Tables 2 and 3). In all countries, more children fell within the "normal" range than in the "borderline" or "abnormal" ranges. Additionally, children in all countries scored "reliably higher than the UK norm" (Jones and Wainaina-Woźna 2013, p. 270), meaning they were closer to the 'borderline' or 'abnormal' ranges than UK children generally. The numbers in the abnormal columns indicates that approximately one tenth of the sample (by self-reporting) or one quarter of the sample (by parental report) was at heightened risk of experiencing mental health difficulties.

In all countries bar Germany, older (11+) children had a slightly to moderately higher risk of mental health problems than younger (under 11) children, as

⁶SDQ scores refer to Goodman's (1997) Strengths and Difficulties Questionnaire, which is a behavioural screening instrument eliciting children and young peoples' perceptions of their conduct, concentration, emotions and social relationships. The SDQ incorporates five different subscales (hyperactivity; emotional symptoms; conduct problems; peer problems; and a prosocial scale) which, when summed, provide a total difficulties score (TDS). It is generally agreed that the SDQ instrument provides one means to measure a child's mental health.

Table 2 SDQ categorisation of children by total difficulties score (self-assessment)

Country	Normal (number, %)	Borderline (number, %)	Abnormal (number, %)
Germany	n = 105, 74.5 %	n = 17, 12.0 %	n = 19, 13.5 %
Romania	74.1 %	16.7 %	9.3 %
Sweden	n = 11, 57.9 %	n = 5, 26.3 %	n = 3, 15.8 %
UK	n = 101, 80.8 %	n = 13, 10.4 %	n = 11, 8.8 %

Table 3 SDQ categorisation of children by total difficulties score (parental assessment)

Country	Normal (number, %)	Borderline (number, %)	Abnormal (number, %)
Germany	n = 74, 53.6 %	n = 22, 15.9 %	n = 42, 30.4 %
Romania	49.4 %	15.4 %	35.2 %
Sweden	n = 18, 58.1 %	n = 6, 19.4 %	n = 7, 22.6 %
UK	n = 112, 64.7 %	n = 29, 16.8 %	n = 32, 18.5 %

Table 4 Children scoring high on SDQ total difficulties score, by country

Country	% children aged under 11 scoring high on SDQ total difficulties score	% children aged 11+ scoring high on SDQ total difficulties score
Germany	29	28
Romania	35	47
Sweden	21	27
UK	21	28

measured by parent SDQ ratings (Table 4). (Parent/carer (along with teacher) ratings are considered a more reliable guide to a child's risk of mental health problems than the child's own rating (Goodman et al. 1998)). The children who scored high were doing generally quite poorly.

Furthermore, the SDQ results showed that boys experienced more difficulties than girls, a disparity which was most notable among surveyed children (11+) in the UK and Sweden especially, though children (of both genders) in Romania experienced more difficulties than children in any other country (Table 5).

The self-esteem of children of prisoners varied, with German and Romanian children reporting higher self-esteem than their country norms on the Rosenberg Self Esteem Scale,⁷ and UK children scoring lower than the country norm. The authors have found no country norm for Sweden.

⁷ The Rosenberg Self Esteem Scale (SES) was devised by Morris Rosenberg (1965) and provides an indication of children and young people's perceived levels of self-esteem (self-evaluation). The scale consists of ten items which are summed to produce an overall score ranging from 10 to 40, where higher scores indicate higher levels of self-esteem. Self-esteem is one aspect of a child's well-being and influences aspirations, personal goals and interaction with others.

Table 5 Difficulties of boys and girls from the SDQ total scale and subscales

	UK	Germany	Romania	Sweden
Girls	n = 48	n = 36	n = 49	n = 9
Boys	n = 77	n = 38	n = 73	n = 6
<i>Total difficulties score (sd)</i>				
Girls	10.5 (6.4)	12.0 (7.1)	14.6 (6.7)	9.8 (6.5)
Boys	13.0 (6.4)	12.6 (7.3)	15.7 (8.0)	13.7 (8.9)
Difference (boys/girls)	B +2.5	B +0.6	B +1.1	B +3.9
<i>Emotions subscale (sd)</i>				
Girls	3.1 (2.7)	3.7 (2.9)	4.9 (2.8)	3.0 (2.4)
Boys	2.6 (2.2)	3.1 (2.8)	4.7 (2.8)	2.5 (1.6)
Difference (boys/girls)	G +0.5	G +0.6	G +0.2	G +0.5
<i>Hyperactivity subscale (sd)</i>				
Girls	3.2 (2.6)	3.4 (2.2)	4.0 (2.3)	3.6 (2.8)
Boys	5.0 (2.0)	4.4 (2.6)	4.6 (2.8)	6.0 (3.9)
Difference (boys/girls)	B +1.8	B +1.0	B +0.6	B +2.4
<i>Peer subscale (sd)</i>				
Girls	2.3 (1.8)	2.4 (2.0)	3.1 (2.0)	1.7 (1.5)
Boys	2.3 (1.8)	2.3 (2.1)	2.9 (2.0)	2.7 (1.5)
Difference (boys/girls)	EVEN	G +0.1	G +0.2	B +1.0
<i>Conduct subscale (sd)</i>				
Girls	2.0 (1.7)	2.5 (1.9)	2.6 (2.1)	1.6 (1.9)
Boys	3.0 (2.2)	2.7 (2.0)	3.5 (2.9)	2.5 (3.3)
Difference (boys/girls)	B +1.0	B +0.2	B +0.9	B +0.9
<i>Prosocial subscale (sd)</i>				
Girls	8.6 (2.0)	7.4 (1.7)	8.4 (1.9)	7.4 (1.9)
Boys	7.3 (2.0)	7.6 (1.8)	7.5 (2.4)	7.3 (2.6)
Difference (boys/girls)	G +1.3	B +0.2	G +0.9	G +0.1

Table 6 KIDSCREEN-27 total scores (untransformed)

	Germany	Romania	Sweden	UK	Overall
Parent	N = 139	N = 245	N = 50	N = 216	N = 650
Child	N = 143	N = 243	N = 50	N = 269	N = 705
<i>KS-27 total: original scale</i>					
Parent	91.4 (11.0)	80.2 (13.8)	90.8 (11.0)	93.6 (14.6)	87.8 (14.7)
Child	93.8 (11.8)	83.2 (15.4)	97.5 (11.8)	98.0 (13.4)	92.0 (15.2)

Table 7 WHOQOL-BREF scores across the four countries (0–100 scale)

	Germany (n = 139)	Romania (n = 244)	Sweden (n = 36)	UK (n = 226)	Overall (n = 645)
QoL-overall	54.9	44.6	66.7	62.6	54.3
QoL-health	51.1	48.0	61.1	65.4	55.4
Physical	63.2	56.5	67.6	71.7	63.8
Psychological	54.1	56.8	61.6	61.7	58.2
Social	53.1	51.8	64.1	58.6	55.2
Environmental	60.0	43.6	63.9	68.1	56.8

Well-being, as captured by the KIDSCREEN survey,⁸ varied: while as a whole group, the surveyed children reported lower well-being compared to pan-European norms, with psychological well-being the lowest, the results varied significantly by country and Swedish and UK children scored above the norm in some areas (notably the social support and peers subscale), while Romanian children reported in almost all areas lower well-being than their peers in other countries (Table 6).

Finally, the WHO Quality of Life Scale⁹ found that ‘Swedish and UK parents/carers judged their [children’s] quality of life higher than those in Germany and Romania. Table 7 shows, that on the overall quality of life item, Swedish parents/carers score on average much higher than the others (66.7 on the 0–100 scale) and Romanian parents/carers score much lower than those in other countries (44.6). For the general health item, UK parents/carers score highest and Romanian parents/carers score lowest. Breaking down the total scores into the four specific domains also shows major differences between countries. For the physical domain, German, Swedish and UK parents/carers score quite high, while the Romanian parents/carers score much lower. For the psychological domain, German parents/carers score the lowest, although quite similar to the Romanian parents/carers, with UK and Swedish parents/carers scoring much higher. For the social domain, the Swedish parents/carers score much higher than the others, with the Romanian parents/carers scoring the lowest. For the environmental domain, the UK parents are scoring highest, but not much different from the Swedish and German parents/carers, while the Romanian parents/carers are scoring much lower’ (Jones and Wainaina-Woźna 2013, pp. 287–288).

⁸ The KIDSCREEN instrument elicits children and young peoples’ ratings of their health and well-being. This is a self-report instrument and covers five dimensions (physical well-being; psychological well-being; autonomy and parental relation; support and peers; and school environment) with a higher score indicating more positive health and well-being. The KIDSCREEN-27 is a shorter version (27 items) of the original KIDSCREEN-52 questionnaire (Ravens-Sieberger et al. (2007).

⁹ The WHO Quality of Life-BREF instrument (WHOQOL) was used to ascertain the non-imprisoned parent/carer’s health-related quality of life as well as their aspirations, using a 26-item questionnaire. For more on the WHOQOL-BREF, see Skevington et al. (2004).

Alongside these reports on children's general well-being, quality of life etc. there were also accounts (primarily through in-depth interviews) about times that were particularly difficult for children and could trigger peaks of emotion. These included the arrest and period after arrest, and court appearances at which bail or sentencing were being decided. Arrests were generally sudden and unexpected, and many police operational procedures (such as forced entry into the family home, conducting searches and uprooting belongings, splitting family members and confining children to a room) could be frightening and shocking for children. Children were often not considered at arrest, but "the level of distress could be lessened significantly by sensitive Police practice" (Jones and Wainaina-Woźna 2013, p. 353). One parent in the UK thought their child had been traumatised during their arrest because the parent was unable to explain to them what was happening. Children spoke of their distress at discovering police searching through their personal belongings or becoming emotionally withdrawn since the arrest of the father. In both the UK and Germany, children's rage and helplessness was most intense in the period following arrest: some participants described screaming uncontrollably on discovering the accusations against the parent.

Following arrest, there was often acute uncertainty about whether the arrested parent would be imprisoned while awaiting trial, and the wait for the case to come to court could also leave children and families in a "limbo" state, whether or not the parent was imprisoned while awaiting trial. This could be increasingly difficult as the length of wait increased; the longest example reported was of 3 years for one UK family. Delays in hearings could mean repeated good-byes and reliving the emotional upset these likely caused. When a parent was imprisoned while awaiting trial, the level of contact their children could have with them varied widely between countries, from daily visits for some UK children to no contact at all (in person or by telephone) for some in Sweden, where contact can be denied if it is believed it may result in interference with or may jeopardise the case.

Sentencing following conviction was another particularly difficult period, especially if the child had not been informed about the situation and was not expecting their parent to face a long custodial sentence, or had been unaware of the (alleged) offence. Other difficult times for children would be celebrations such as birthdays and Christmas and other special family occasions where they would often miss the imprisoned parent.

The impact of parental imprisonment on school performance varied significantly among the four countries. School performance declined among half the children in Germany, whereas in Romania the impacts were minimal (except where children had to move home following parental imprisonment). Only in the UK were significant percentages (12 %) suspended or expelled from school; however, this may relate to schools' attitudes more than the extremity of behaviour. School-related issues constituted the second-most important need for Swedish children.

A minority of children in the UK appeared to be more educationally at risk, and this was clearly linked to parental imprisonment in several cases. The interview data also indicated that the school performance of siblings varied considerably, itself influenced by the children's relationship with their imprisoned parent and

their emotional development, as well as their age and sex. For some of these children the transition to secondary school can also be difficult for them to manage, although children who struggled here had more complex family circumstances than those who successfully managed moving to secondary school. Communication about the parent's imprisonment appeared to be handled poorly and may have contributed to the child's difficulties. In Germany, nearly half of the parents interviewed did not inform their children's school about their parent's imprisonment; in Romania, the majority did not (and further advised their children not to tell peers at school about the imprisonment).

A significant issue in Romania, the UK and especially Germany, was stigma. It can often result in children who do know about their parent's imprisonment turning inwards and not sharing the reality of their situation outside the family. While about half of the children in Germany spoke to friends, they feared negative consequences, although none of them reported actually experiencing hostility or prejudice. Fear of stigma led to a focus on secrecy and stress. Romania had the highest proportion of children who lied about or were not told the reality about their parent's situation, with the explanation for a parent's absence often being that they had gone abroad to seek work. Lying about the parent's absence is not universally negative: it is one of the most common strategies of resilience and can be employed to protect the family's image and prevent the children being stigmatised.

The UK had the highest proportion of children reporting victimisation or bullying in school as a direct result of having a parent in prison (15 (22 %) self-reporting, 20 (30 %) according to reports from parents). There were several other cases where it was unclear whether bullying had taken place, so this may still be an underestimate. This contrasted with just two Swedish children or parents (7 %) reporting victimisation or bullying due to parental imprisonment.

As might be expected, the main site for bullying was within the school and conducted by other children. In most cases the bullying was a result of secondary social stigma towards the children; bullying usually took the form of verbal abuse through name calling, sarcastic remarks etc. However, there were several cases in the UK where bullying escalated into physical fights, usually as a result of (verbal) retaliation by the child of a prisoner leading to a physical confrontation. There were several other more serious cases of bullying, where a child had been physically attacked and beaten up by peers because of the parent's offence. More usually, children could experience some degree of ostracism, with family friends and acquaintances no longer associating with their parent, usually by ignoring them in the street. On these occasions it was more likely the case that any animosities were levelled by adults against other adults, rather than directed against the children. This was generally driven by negative local media coverage of the case. This could prompt concern by the child for their parent's welfare, causing the child heightened anxiety and stress. The period following a parent's sentence and the ensuing publicity is often reported as one of heightened stress and concern. Over several weeks or months the loss of status, labelling, ostracism and rejection could peak for families. Children could also lose some school friends and be ostracised by others;

Table 8 Reports of good effects of parental imprisonment

Description	Germany	Romania	Sweden	UK
% good effects (reported by child)	18.7	<i>Not asked</i>	25.6	9.8
% good effects (reported by parent/carer)	24.1	19.1	33.3	15.6

however, friends who were supportive were an important source of resilience. Indeed, being able to confide in a few close friends (and family members) could buffer some of the negative effects of bullying and stigma, and better enable the child to cope in stressful and challenging circumstances: the majority of Swedish children had done so. Not all schools were supportive of bullied children and there was some evidence of additional stigmatisation from some teachers in Romania and the UK, probably due to the failings of individual staff members. Furthermore, a minority of bullied children reported interpersonal expectancy effects taking place within the school, with some teachers showing lowered expectations for pupils' competency or classroom discipline when they knew the child's parent was imprisoned.

Stakeholders felt that there must be a major change in society's view of detainees so that children do not have to endure a stigma for crimes they did not commit.

Financial concerns were an issue in all countries, but much more so in Romania: "it was not unusual for families to have to choose between visiting prison or meeting basic needs (food and clothing) and purchasing school equipment for children" (Jones and Wainaina-Woźna 2013, p. 357). Material and financial support was the area in which Romanian children most wanted assistance. There were also physical health impacts, which in Romania constituted the greatest risk area for children, according to responses to the WHO Quality of Life Scale.

Not all children found parental imprisonment a negative experience: a quarter of children and a third of parents/carers in Sweden reported good effects from the imprisonment. These centred around improved family relations, and for a minority, how they were feeling, especially where the imprisoned parent had been abusive or had addictions (Table 8).

While a substantial number of children seemed to be quite resilient and seemed to be surviving quite well, it should be stressed that all children suffered some degree of distress. It appears that many from this group of children had mainly strong relationships with their parents, maintained positive relationships with the imprisoned parent, and their parent's sentence was short enough that they could reasonably anticipate the opportunity to resume their relationship upon release. For instance six families in this position described themselves as just "normal families" coping with a difficult period, who managed to adjust to a difficult situation with support from wider family and friends. For others there was a more pronounced period of disruption or crisis followed by a gradual improvement where things got back to normal.

6.3 Results: Relationship and Contact with Imprisoned Parent

Maintaining family ties during imprisonment has been found to reduce the likelihood of reoffending; the COPING research found that the reverse was also true, with children having the best chances if they had strong relationships with both their parents. The evidence from the interview data demonstrates the importance of parental relationships and the quality of caregiving in building the child's resilience. This was the case for both paternal and maternal imprisonment. Maintaining contact only works when both parties are willing to stay in touch (although support for children and parents by psychologically trained volunteers or professionals can in some cases overcome this caveat).

Some of the children in Romania and Germany developed an unrealistic and idealised image of the imprisoned parent. This often had knock-on impacts on the relationships with the remaining parent/carer and meant that emotional and behavioural problems were fought out between parents and children at home. In the UK, children's vulnerability could be higher where their parents' relationship appeared strained, or unbalanced (for example, one parent expecting too much of the other).

A key method of maintaining contact is in-person visits. A majority of children in all countries visited their parent in prison: 81.5 % in Germany, 87.9 % in Romania, 75.9 % in Sweden¹⁰ and 92.9 % in the UK.¹¹ Barriers to visiting in all countries included travel distance (especially high in Romania, followed by Sweden, with Germany and the UK having shorter average distances) and the high financial cost of visiting. The quality of visits themselves varied widely, with features such as visit length, privacy and possibility of physical contact dictated by the prison regime in the country and the security classification of individual prisons. As reported in Robertson et al. 2012, p. 104:

However, stakeholders report that relatively small changes, such as hanging pictures on the walls, painting the walls with bright colours and providing toys or magazines, can make a big difference to children's experience of visiting prison, with children being calmer and more at ease, as well as more positive about returning for subsequent visits. Having special visits shortly after imprisonment can help allay children's fears, while allowing children to meet with parents in special family visiting rooms away from other prisoners can make visits more pleasant. Children can also be helped by being accompanied on prison visits by NGO staff or volunteers or, for children living in institutional settings, by institutional staff. All these accompaniers can provide emotional and practical support, particularly in relation to their fears and how to deal with the parent's imprisonment.

¹⁰ In Sweden, a higher proportion of interviewed parents were entitled to temporary release/home leave, so this may account for the lower prison visiting rate.

¹¹ Note that participants in the study were almost exclusively recruited during prison visits and through NGOs working with prisoners' families, which almost certainly affected the sample.

When in prison, the amount of contact parents have varies widely, both in terms of visits and in terms of indirect contact (mainly letters and telephone calls). Children's experiences of prison differed greatly depending on the security levels, with Swedish and UK children "acknowledging that as the security rating of the prison decreased, the environment became less intimidating and they were afforded more freedom. As a result, less secure establishments were found to be more conducive towards quality interaction between children and their imprisoned parent" (Jones and Wainaina-Woźna 2013, p. 361). Within England and Wales (UK) prisoners receive as standard between two 1-hour visits and four 2-hour visits a month. Phone calls are permitted but prisoners have to buy phonecards from their own funds. Germany's criminal justice policies prioritise rehabilitation and prisoners, including those convicted of serious offences, have generous home leave entitlements throughout their sentence. Government policies support prisoners' family ties, although there are significant variations between the 16 German states (Länder). The Romanian prison system allows monthly visits depending on the security level.¹² For example, those in maximum security prisons are permitted two visits per month, with only two people allowed to visit and physical contact prohibited. However, there are no child-friendly facilities or arrangements in Romanian prisons: authorities have stated that prison is a hostile environment and lacks facilities for family meetings. Other countries include in-prison programmes and interventions for children and families: these are covered in the next section.

There is also indirect contact. This was particularly important in the UK, where the overwhelming majority (95.9 %) of surveyed children had maintained some contact with their imprisoned parents, most frequently by phone calls (179 children), email or letters (159 children). However, while 90 % of children in Sweden and the UK have frequent telephone contact with their parents in prison, this is very restricted in Germany. Indeed, the importance of telephone contact came across strongly, especially in the UK: regular contact by telephone was found to promote the child/imprisoned parent's relationship as well as supporting the consistent involvement of the imprisoned parent in the upbringing of their children. Early telephone contact not only helped reassure the child the parent was safe and well, but also helped support the child's adjustment in losing a parent to prison, which was an important factor in their continuing resilience. Overall, the evidence from the interview data demonstrated the importance of parental relationships and the quality of caregiving in building the child's resilience. This was the case for both paternal and maternal imprisonment.

The questionnaires and in-depth interviews identified the critical role played by the non-imprisoned parent, in terms of practical and emotional support for the child, but also their role in facilitating contact between the child and imprisoned parent. The relationship between the imprisoned parent and the non-imprisoned parent/carer is extremely important; when the non-imprisoned parent/carer refuses to visit

¹² Romania has four levels of security in the prison system: maximum security, closed, semi-open and open.

prison, this can mean the children do not go either, as many prisons require children to be accompanied by an adult. Conversely, when the non-imprisoned parent/carer is committed to maintaining the child-imprisoned parent relationship, they can enable it even when the child may be reluctant to visit. More widely, there is a rule of thumb that if the non-imprisoned parent/carer has a good relationship with both the child and the imprisoned parent, the child-imprisoned parent relationship is likely to be maintained.

6.4 Results: Positive Effects and Interventions

The number and effectiveness of interventions varied both between and within countries. Many community-based interventions were small and locally focused, while prison-based ones often operated in a single prison. Services could provide information, advice and practical support for families of prisoners.

COPING found that almost 57 % of prisons surveyed across the four countries had specific interventions for children and families focused on family relations, 47 % on the parent's imprisonment and 34 % on mental health issues. Germany has a broad spectrum of community-based interventions for children of prisoners and their families, including counselling services, youth welfare provision and psychotherapeutic support. These, as well as prison-based father/child groups, were highly regarded by families taking part in the research. However, the study indicated that community and prison-based interventions available in Sweden today are not sufficient to strengthen children's resilience when they have a parent in custody, even though over 80 % of Swedish children had received some kind of help: a third of all Swedish children indicated that they would like (more) help.

A particularly problematic area was the timing of support for children, which is not adapted to the chain of events associated with a parent's imprisonment: the desire for information about having a parent/carer in prison and available support for children was the top desire of German children. In order for the child to better cope with the situation, it may be crucial that the first parent-child visit occur shortly after detention—parents/carers for the children specifically named the periods immediately after arrest and after release as times when they need the most support.

Sources of economic and personal/emotional support were primarily family members (grandmothers/grandparents were especially likely to be mentioned, particularly in Romania). The care provided by mothers, and grandparent and sibling support, was a key protective factor in Germany. The extended family also plays an important role in the resilience process of Romanian children. However, non-imprisoned mothers in Germany did not always have time to support their children emotionally: they were described as 'over challenged and focusing on pragmatic issues'.

After speaking to the family, children were most likely to confide in teachers or other people in school. Moreover, the interview data strongly suggested that the

majority of schools in Germany, Sweden and the UK made an important contribution to reassuring parents and carers, and in maintaining the morale and self-confidence of children while their parent was in prison (Romanian participants reported less school support). This ability to help could be impaired where parents/carers had not openly discussed issues with school staff. Some children did confide in a few trusted teachers (irrespective of the parents informing the school) allowing them to talk through any problems (school or family) they were having and also allowing the school to make adjustments in light of their difficulties.

Interview data from Sweden and the UK showed that the majority of schools were an important source of support and normality for many children and could build their capacity for resilience. This was the case for junior and secondary schools, special schools and private schools, though unsurprisingly only when they knew about the imprisonment. Staff members within schools could work with and complement parents, offering understanding if children were upset as well as dealing firmly with any instances of bullying or inappropriate remarks. A lot of children described particularly valuing support from a staff member whom they trusted and were able to confide in: younger children in Sweden mainly turned to their class teacher, while older children would get support from a school counsellor or school nurse. Girls in the UK tended to talk more openly about their experience of emotional support from school staff, whereas boys tended to say less, but to place an equal value on the support provided. Examples include schools helping children stay calm and to behave properly, as well as providing ongoing emotional support. Schools could also emphasise the importance of academic achievement (doing homework, attending classes and task orientation); the general picture across the four countries was that for most children academic achievement was not strongly adversely affected by imprisonment, and the fact that many children performed well at school itself indicated resilience.

One response that was found to be positive across countries was to have open, honest (and age-appropriate) communication with the child concerning the situation and what was expected to happen. This helped the children to cope when the various stages of the process became a reality. Furthermore, children who chose to tell friends about their imprisoned parent seemed to do well; open discussion helped children to handle their situation; and parents who talked openly with schools received sympathetic responses. Having a trusting and caring relationship between children and school staff when discussing parental imprisonment appeared to function as a protective factor against conduct problems. Indeed, one of the key findings from the COPING research highlights the idea of “community resilience”, the importance of social support systems, especially of school, teachers and peer support for children.

7 Discussion

The general picture from the COPING research is that parental imprisonment can have adverse effects for children in a number of areas, but that these effects can be mitigated by formal or (very often) informal support and interventions. This finding reflects and reinforces much previous research, as well as the experience of NGOs in these and other countries. It brings validation that for many children with imprisoned parents there are measurable health impacts and reinforces the understanding that for children the best chance of being resilient to the experience of parental incarceration arises when they have: strong, emotionally capable parents; support from schools; the possibility of good contact with their imprisoned parent; inclusion in society at large; and their needs considered at all stages of the process.

One especially valuable part of the COPING research is the large number of participants compared to most previous studies of children of prisoners (thereby providing some statistical robustness) and the embedding within the survey of the four existing mental health and well-being questionnaires. This provides a quantitative account of children's well-being (the term being used here broadly to include the mental health, self esteem and quality of life aspects recorded by other embedded studies), as well as allowing comparison with other groups who have completed such studies. Such comparisons give evidence of the impact that parental imprisonment has, separate from other factors, and can mean that risk factors for future mental health and well-being can be identified. For example, while only a few UK children were in the lowest group of scores for the Rosenberg Self Esteem Scale (2.7 %, $n=6$), such low scores are a concern because low self esteem is a non-specific risk factor in mental ill-health and is involved in the development of a range of internalising and externalising problems.

However, it is important when dealing with such risk factors to consider their likelihood as well as the range of possibilities. So when considering the self-esteem example above, we should remember that the majority of the sample showed higher or intermediate levels of self-esteem, which would assist children of prisoners in negotiating and surviving through the experiences of parental imprisonment and allow them to progress more easily in to a fruitful adult life.

One clear finding was the importance to children of strong, emotionally capable parents or carers, both inside and outside the prison. Given the importance of their role in helping the child, it seems that additional support to non-imprisoned parents/carers (including both practical and emotional support) would benefit the children and build their resilience.

Additionally, imprisoned parents should be supported in building or maintaining a relationship with their children, not least to strengthen an attachment that is often weaker than when the parent has not been imprisoned (Poehlmann 2005), but also (from a crime prevention perspective) because of the impact that good family links have on reducing reoffending. Prisoner-parent support groups such as those offered by the NGO *Relais Enfants Parents* in France and parental training sessions in Croatia are examples of schemes that help reduce the alienative effects of prison

(Goffman 1961), loss of personal responsibility and diminished agency that can adversely impact parenting capacities. Assisting and enabling parents to talk to children about the imprisonment empowers them as parents and allows children to better process the incarceration.

However, contact with an imprisoned parent can face systemic hurdles, such as a lack of appropriate visiting facilities. Where such facilities and other child-friendly systems do exist (and prison visits do seem to be the area with the most innovation), they are often only in a single or a few prisons. Often they depend on the continued involvement of a concerned staff member or NGO. This is obviously damaging for their sustainability, as the departure of even one key individual could cause the collapse of positive programmes. One recommendation from stakeholders was that more funding be given to organisations that support children of prisoners. However, there also need to be efforts to share good practice between and within prisons and to educate all staff members. Even when child-friendly facilities are available, staff attitudes (down to such things as whether the staff smile or explain what they are doing) can make the difference about whether children report a positive or negative visiting experience (Robertson 2012, p. 35).

As well as examples described in the COPING countries, positive visiting innovations include private visits in Norway (where the family meets without other visitors or guards present¹³), and opportunities for play and creativity (such as puppet shows and painting) in some Italian and Belgian prisons. A major benefit of all child-friendly settings is that children are often more relaxed and can focus more on their relationship with their parent, rather than on fears of the prison. Recent innovations regarding indirect contact include the use of IT to allow children to immediately inform their imprisoned parent about meaningful events, such as Skype in the Czech Republic and in Oregon (USA), and limited mobile phone use by prisoners in some prisons in England and Slovenia. Given the value that many surveyed/interviewed children placed on being able to have regular contact with parents, and the increasing proportion of their communication that is done digitally, such innovations could be expected to be fruitful.

Outside of the family, the next-most important institution in the lives of the children is the school, which plays multiple roles. It is the site of adults and children who can support or stigmatise children of prisoners, and its formal educational role can have both short-term (in terms of being a focus for children) and long-term (in terms of improved employment opportunities and earnings) benefits. 'Children's school performance provides important evidence about their resilience. Their performance is likely to be closely related to their intellectual ability, their motivation and their commitment to their school work. A sudden and potentially traumatic event such as parental arrest and imprisonment is likely to contribute towards a downturn in children's performance at school. This may be only temporary if children adjust to their changed circumstances and receive support where needed' (Jones and Wainaina-Woźna 2013, p. 341). School teachers sensitised to

¹³ There are guards outside the room, however.

what a child is experiencing are better equipped to provide support. Examples include a programme run by the NGO Families Outside in Scotland, which raises awareness amongst teachers, and activities by FFP Norway, which sensitise both teachers and students. Outside of families, focus on the school experience may be the most fruitful place to concentrate analysis and support for children of prisoners, because of the long parts of their life they spend in school and the fact that teachers are the non-family adults that children spend most time with and (probably consequently) feel closest to.

Beyond these institutions, many others interact with children of prisoners, whether or not they know it. A key problem is the low level of awareness of children of prisoners, particularly among professionals in the criminal justice system, who can too often maintain a narrow focus on the suspect/offender and not think about the wider impacts of their decisions. Making institutions aware of their existence can itself spur change: after being consulted, stakeholders in Sweden had ideas to facilitate contact with the detained parent, beginning with a child-oriented focus during visits to imprisoned parents. In Romania, there were a series of conclusions related to the improvement of procedures for children's visits in prison, an appropriate space for parent-children meetings, and the development of supporting services—not all of them prison-based (counselling activities, personal development, leisure activities, material support etc.)—for children with parents in prison.

More generally, proposals to systemically improve the situation of children of prisoners generally focus on either compelling consideration of the children by all officials through changes to laws or regulations, or giving a particular individual responsibility for advocating for the children, such as a child's ombudsman in court or prison officer with responsibility for child-friendly visits. The predominant example of considering the children is the landmark judgment of *S v M* (2007) in the Constitutional Court of South Africa. There, the Court ruled that the best interests of the child have to be considered when sentencing a parent (regardless of whether custodial or non-custodial sentences are planned). "If the possible imprisonment will be detrimental to the child, then the scales must tip in favour of a non-custodial sentence, unless the case [is] so serious that that would be entirely inappropriate" (Robertson 2012, p. 15). In the judgment, Justice Albie Sachs said:

Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them. [...] The sins and traumas of fathers and mothers should not be visited on their children.

(*S v M* [2007] ZACC 18, at para 18)

Occasionally, though increasingly, laws rather than court judgements include some provision for children of prisoners, whether it is allowing parents who are both sentenced to prison to serve their sentences consecutively to provide continuity of care for children (Egypt and Slovenia) (Robertson 2007), or giving particular importance "to a child's right of access to his or her parents during the execution of

a sanction” and ensuring that visits be ‘carried out in a room designed for this purpose’ (Norway). France is developing national policy for children affected by parental incarceration, and already requires courts to consider alternatives to custody for men and women who are sole carers of children under age 16.

Aside from having adults become more aware of the children, there is also the possibility of involving the children themselves in decision-making. Such an approach was integral to the research design of the COPING study itself. As well as giving the children agency, involving them can also lead to better decisions, as they may be able to identify solutions and potential flaws. In Norway, advisory groups of young people with a parent in prison are consulted to describe their needs, give advice and suggestions, and contribute to UN Convention on the Rights of the Child shadow reports. Relais Enfants Parents Romands in Switzerland works to foster agency in the child during support sessions by letting the child lead the play and the session, rather than forcing them out of their world of imaginary play by imposing adult ideas and realities on them. This interactive approach is characteristic of similar schemes that operate in Luxembourg, Belgium, France and Italy. Swedish children created “10 wishes” of things they wanted done differently (such as being allowed to telephone into prison, not wait for a call from the parent): these were presented at the UN in Geneva in 2010.

It is true that all stakeholders can make changes to support these children, helping them gain an internal sense of what John Bowlby¹⁴ called a ‘secure base’ in the world (Bowlby 1973b). But it is also the case that even where support is available, it is not always provided in the most efficient way. One concern was that interventions were not linked with the times when the children most needed it, such as the period following arrest. Those providing such support should learn from the results of COPING and other studies to align their interventions to when the need is greatest.

On the specific case of arrest, research from the USA reveals that children can experience violence not only during but also before a parent’s arrest. One study found that over 75 % of women imprisoned in South Carolina (USA) said their children had witnessed domestic violence and/or had been victims of physical or sexual violence themselves (DeHart and Altshuler 2009); 20–80 % of these children were likely to have witnessed their parent’s arrest (Phillips and Dettlaff 2009). Given that arrest is often a peak time of stress for children, but can be “lessened significantly by sensitive Police practice” (Jones and Wainaina-Woźna 2013, p. 353), the development of detailed protocols on conducting child-friendly arrests are welcome. These protocols, which exist in places including San Francisco (USA), Poland and Denmark, describe how to consider children during arrest, covering such issues as explaining what is happening, and taking children into another room to avoid witnessing their parent being handcuffed. If and when other

¹⁴ Since 1947 his work has inspired the UN and WHO crime prevention and health programmes for children (Redo and Platzer 2013).

police forces develop similar protocols, they should take into account not just good practice, but also research on the impact of a parent's arrest on children.

The other issue that affects the provision of support is the still incomplete knowledge about who is affected by parental imprisonment. The COPING study highlighted the difficulty of knowing what exact percentage of children of prisoners in each country had been surveyed. Few countries record prisoners' parental status and the actual number of affected children is unknown. Countries that do record data often do not systematise the information, basing it on self-reporting by parents, some of whom are wary that their child may be removed from them and taken into care. Were such data recording made mandatory, it would not only help identify the size of the population of prisoners' children, but it would also mean that those recording the information would be sensitised to the children's existence and potentially to their needs.

It should be noted that the COPING study on which most of this chapter is based did not look at children whose parents had been released from prison, though this is both an important area of need and support in itself, and the period in which the longer-term results of any interventions or responses become more clearly seen. These longer-term impacts of interventions can therefore only be surmised, with a presumption that interventions that have a positive effect on the children during a parent's imprisonment will help their coping and resilience in the longer-term also, or at least not damage it.

8 Conclusion

Children of prisoners are slowly shedding their labels as "invisible" and "forgotten" children. Academic and NGO awareness of them is growing, and children affected by parental incarceration now appear on EU and UNICEF lists of vulnerable children. This growing awareness has in turn led to more understanding of both the risks that parental imprisonment has for children's future well-being, and of the effectiveness of certain responses and interventions.

The COPING study of children of prisoners in Germany, Romania, Sweden and the UK is notable in particular for two reasons. Firstly, the large size of the investigated population meant that the impacts and the efficacy of interventions could be studied with some degree of statistical certainty. Secondly, the focus on mental health and well-being meant that there was less emphasis on outputs from interventions (what they did) and more on their outcomes (how they made children feel). Especially relevant findings include the fact that as a population, children of prisoners are more likely than their peers to be at risk from mental ill-health, the importance of non-imprisoned parents/carers and the major support that can come from schools.

It seems clichéd for academic chapters to call for more research into the issue that has just been described at length, but in this case there is more cause than most. Children of prisoners and their needs are still under-recognised, and if many of the

major issues (maintaining relationships, stigma, schooling etc.) are known, the specifics, details and (especially) national and regional differences are not. Having a better understanding of how children of prisoners in different countries cope with parental imprisonment is not just helpful in knowing better how to respond to those children; it also helps with sharing good practice. This is an issue where the best answers are not always found in expected places: Uganda and Uruguay have practices that others could learn from, as well as the UK.

However, despite the large gaps in knowledge that remain, there is reason to hope. We do now know what some of the immediate impacts are of parental imprisonment and what the negative long-term consequences can be. We also know of some of the interventions and institutions that can provide support and (to a degree) of their effectiveness. What is not known, and needs to be better understood, is whether and to what extent positive interventions can help prevent negative future outcomes, such as future offending by the children. To get answers with the highest level of confidence, we would need to wait for the outcomes of prospective longitudinal studies comparing (at the least) children of prisoners who receive such interventions with children of prisoners who don't, but in the interim much can be done to find out whether the COPING findings hold for children elsewhere, and to identify further interventions and institutions that appear to have a particularly positive or negative effect on the children.

The other thing that is needed is to continue to raise public and political consciousness about children of prisoners. This should help to reduce stigma towards them and also prevent them falling through the gaps in governmental and non-governmental service provision. Children of prisoners commonly occupy a space between justice and children's ministries in government, with both believing the other should be supporting the children. However, COPING study findings show that there is also a mental and public health dimension to children of prisoners, as well as a significant role that can be played by educational establishments.

Secondary or collateral victims of imprisonment, children of prisoners have committed no crime and should not suffer because of the crimes of others. From the standpoint of fairness, they should be assisted when they face ill-effects caused by another's actions. From the standpoint of expediency, they should be supported in whatever way will most reduce the likelihood of future offending, by the child or their imprisoned parent. But whatever the reason, considering and assisting children of prisoners will most likely benefit the children, those around them and society at large.

Five Questions

1. What can be done to increase awareness and consideration of children of prisoners among criminal justice professionals?
2. What is the best way to ensure governmental provision of support for children of prisoners?
3. What examples of good practice related to children of prisoners can be found in your country/jurisdiction?

4. How would you go about replicating the COPING research in your country/ jurisdiction?
5. How involved are children in designing programmes aimed at supporting them?

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Gender and Victims' Expectations Regarding Their Role in the Criminal Justice System: Towards Victim-Centred Prosecutorial Policies

Jo-Anne Wemmers and Katie Cyr

Abstract Therapeutic jurisprudence is an interdisciplinary approach to law that offers a rich way of looking at law and to study the extent to which legal rules, procedures or practice promote the psychological well-being of the people it affects. Law is a tool and people who engage the criminal justice system do so for a reason. As such it is important to consider the extent to which legal procedures meet victims' expectations. In this chapter, we examine victims' expectations regarding their role in the criminal justice system. Following a discussion of recent international policy developments regarding victims of crime and victims of violence against women in particular, we consider possible gender differences and how the victim's relationship with the offender affects their expectations, including the awareness of possible future victimization.

1 Introduction

Criminal victimization is a global phenomenon. However, only a minority of incidents is reported to the police, and reporting levels have been found to be related to confidence in the police (Van Kesteren et al. 2014). Moreover, in some countries such as Canada, reporting levels have decreased steadily over the last 20 years (Perreault and Brennan 2010; Wemmers 2003). Criminal justice depends largely on victims to report crimes in order to function effectively. While most people are satisfied with the police (Van Kesteren et al. 2014), victims tend to be less satisfied with the police than non-victims (Gannon 2004). Victims are often

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dissatisfied with their role in the criminal justice system and these negative experiences mean that they are less inclined to report to authorities in the future (Shapland et al. 1985; Van Dijk 1999). Victims' expectations regarding the criminal justice system are therefore highly important as they can shape how victims evaluate their experiences, which ultimately can affect the functioning of the justice system. Understanding the importance of victims for the proper functioning of criminal justice has led internationally to efforts to improve the treatment of victims.

Therapeutic jurisprudence studies the law's impact on the wellbeing of individuals who come in contact with it (Wexler and Winick 1991, 1996). It considers how substantive rules of law, legal procedures and the role or actions of legal actors are therapeutic or helpful for people. Conversely, it considers how the same processes can be non-therapeutic or harmful (Erez et al. 2011). This is commonly referred to as "secondary victimization" in the victimological literature, where it refers specifically to the anti-therapeutic effects of criminal justice procedures and criminal justice authorities on crime victims (Maguire 1991; Symonds 1980; Wemmers 2003). However, therapeutic jurisprudence goes beyond secondary victimization in that it applies to all parties affected by the law, not only victims, as well as all types of law. Moreover, therapeutic jurisprudence emphasizes basic legal values such as equity and the presumption of innocence, while addressing the therapeutic impact of the law on all parties involved.

Therapeutic jurisprudence is, however, not a theory. It is a way of looking at the law for all sorts of cases, also non-criminal ones. In order to explain and predict how people are affected by the law, therapeutic jurisprudence relies on procedural justice theory (Waldman 1998). According to procedural justice theory, people are concerned about fairness and in particular, about being treated fairly (Lind and Tyler 1988; Tyler and Lind 1992). Fairness is important because it communicates to people that they are valued and respected members of their group (Tyler and Lind 1992; Van den Bos et al. 2001). Wemmers (1996) has established the relevance of procedural justice for victims of crime and found that victims' fairness judgments affected their confidence in criminal justice authorities. More recently, research on procedural justice and victims has shown that when victims feel they were treated fairly, they also feel better, suggesting that fair treatment has a positive influence on healing or recovery (Orth 2002; Wemmers 2013; Parsons and Bergin 2010; Wemmers 2003). In particular, when victims felt that police and public prosecutors had shown an interest in them, had given them an opportunity to express their wishes and had taken their wishes into consideration, victims were more likely to feel that they had been treated fairly (Wemmers 1996, 2010; Morissette and Wemmers 2016).

In this chapter, we examine victims' expectations regarding their role in the criminal justice system. Following a discussion of recent policy developments regarding victims of crime and victims of violence against women in particular, we consider possible gender differences and how the victim's relationship with the offender affects their expectations.

2 Victims' Role in Criminal Justice

The primary role of victims in the criminal justice system is that of a witness to a crime. In adversarial procedures there are two opposing parties, the accused versus the state. The prosecution represents the state and, while they may rely on victims for evidence, the prosecutor is not the victim's lawyer. This has been a major source of dissatisfaction for victims who want to be recognized as more than a mere witness to a crime and feel that they should have a special status in criminal proceedings (Kilchling 1995; Shapland 1985; Wemmers 1996; Wemmers 2013; Herman 2005).

The role of victims as witnesses has evolved over time. The idea that crime constitutes an act against society rather than an act against the victim is a notion that dates back to the Middle Ages (Viau 1996). Up until the eleventh century, the victim occupied a key position in common law and was responsible for the apprehension, charge and prosecution of offenders. This was known as private prosecution, and victims controlled every aspect of the judicial process including punishment (Kirchengast 2006). The victimologist, Stephan Schafer refers to this period as the "golden age" of the victim because victims exercised such an important role in the criminal justice process (Schafer 1968). From the twelfth century onwards, the state gradually took on an ever-increasing role in keeping the peace and sanctioning offenders until eventually it completely replaced the victim (Doak 2008; Kirchengast 2006). Gradually, the state and its offices and institutions replaced the King but power was never returned to the victim. From the seventeenth century onwards, parliamentary sovereignty grew and the King became less influential personally. As a result, crimes ceased to be considered a violation of the King's peace and instead were viewed as threats to civil society and social interests (Kirchengast 2006, 2011).

The absence of the victim was not even noticed by authors until well into the second half of the twentieth century, following the birth of victimology and a growing interest in victims of crime. In an effort to improve the position of victims in the criminal justice system, both international bodies such as the Council of Europe and the United Nations, as well as national governments developed guidelines regarding the treatment of victims. A milestone in the development of rights for victims is the adoption of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* in 1985 by the United Nations General Assembly (UN doc. A/RES/40/34).

The UN *Declaration* takes a victim-centred approach. It includes victim participation and states that victims should be given an opportunity to present "their views and concerns" at "appropriate stages of the proceedings where their personal interests are concerned."¹ In an effort to provide victims with an opportunity for participation, many countries introduced victim impact statements. Victim impact

¹ Article 6b, United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Adopted by the UN General Assembly 29 November 1985.

statements are written statements regarding the impact of the crime, which are submitted to the court at sentencing (Erez 1999). In Canada, for example, victims have the legal right to submit a written statement or read their statement aloud in court.² Similar measures exist in other countries including the USA, England and Wales and Australia (Erez and Roberts 2007).

More recently, certain jurisdictions, in the USA and the UK, introduced enforceable rights for victims (Kirchengast 2011). This means that the state has an obligation to respect the victim's rights, and failure to do so is not without consequences (Beloof 2005). For example, as a result of the 2004 *Justice for All Crime Act* in the USA, victims of federal crimes can hire a lawyer to represent their interests in the criminal justice process. In England and Wales, the government launched the Victims' Advocate pilot scheme, which provided a publicly funded lawyer for the family members of homicide victims (Sweeting et al. 2008). These measures give victims a voice in the criminal justice process.

Such victim-centred policies coincide with the literature on therapeutic jurisprudence. Giving victims the opportunity to actively participate in the prosecutorial process enhances their wellbeing (Erez and Hartley 2003; Wemmers 2008; Wemmers 2013; Finn 2013). Moreover, the absence of having a voice and any real influence in criminal proceedings may be harmful to victims' wellbeing (Diesen 2012).

2.1 *Protecting Victims*

At the same time that governments developed measures in order to give victims a voice in the criminal justice process, they also introduced measures that restrict victim input for certain offences, namely domestic violence. Dempsey (Dempsey 2009, p.4) describes the "radical transformation" of prosecutorial policies over the last 30 years, in which victims have increasingly been given less input, in order to protect them from undue pressure by their offenders. In an effort to better serve and protect victims of domestic violence, throughout the 80s and 90s, many areas in the United States and Canada, introduced mandatory arrest policies (Gouvernement du Québec 1995; Snider 2008). Such policies purposely reduce the victims' voice in the decision whether or not to arrest the offender. The aim is to send a clear message that violence is unacceptable and to protect victims from possible intimidation by the offender by removing victim input into decisions and placing responsibility for the decision to arrest solely in the hands of the state (Hanna 1996; Schneider 2000). Dichter et al. (2011) find that victims of intimate partner violence favour prosecution initiated and driven by the criminal legal system and want the system to take over prosecution without requiring their participation. Mandatory policies are

² Article 722, Criminal Code.

thought to deter offenders (Maxwell et al. 2001) and reduce the risk of victim intimidation (Wills 1997).

Mandatory policies have, however, been strongly criticized for disempowering victims (Ford and Regoli 1993a, b; Römken 2006). While there is a strong degree of support among victims of violence for mandatory charging and arrest, there is a substantial degree of dissatisfaction with the policy of mandatory prosecution (Brown 2000). Several studies indicate that victims use the law as a tool (Fleury-Steiner et al. 2006). According to Ford (1991), victims use prosecution as a rational power strategy for determining the future course of their relationships. Similarly, Lewis et al. (2000) find that victims use the law, purposefully and actively, as a part of a strategic process of challenge and resistance. However, they do so within the confines of the law and of their relationships. Ford (1991) concludes that mandatory arrest and no-drop policies are counterproductive because they disempower victims. Finn (2013) refers to these two distinct policy approaches as *mandatory prosecution* versus *victim-centred prosecution*. Victim-centred prosecution, which allows victim participation in criminal justice procedures, has been found to yield better outcomes for victims of domestic violence in terms of reducing recidivism than mandatory policies (Finn 2013). As Johnson and Dawson (Johnson and Dawson 2011) conclude, debates on the efficacy of these policies are far from over.

The victims of domestic violence are for the most part women and therefore the question of gender is particularly important in this context. Men and women have similar overall rates of victimization but they are susceptible to different types of crime (Perreault and Brennan 2010). Women are more likely than men to be victims of crimes in which there may be a relationship with the offender such as sexual assault (Perreault and Brennan 2010) and domestic violence (Tjaden and Thoennes 2000). Half of violent incidents are committed by someone known to the victim, and victims of sexual and physical assault are more likely to know their offender than victims of other crimes (Gannon and Mihorean 2005).

Hence, there appears to be a dichotomy in public policy on victims, which centres largely on women. On the one hand victims are offered increased possibilities for participation and on the other hand, they are disempowered by mandatory policies regarding domestic violence. As Brown points out, charging and prosecution policies were in part implemented as a response to the perceived need for criminal justice professionals to treat domestic violence like any other crime (Brown 2000). In other words, family violence should be viewed as a threat to civil society rather than a private matter. The irony is that, in fact, these policies differentiated between domestic violence victims and other victims. The question is whether these policy differences correspond with what victims want. Do victims of domestic violence—as no-drop policies suggest—expect the prosecution to take over fully whereas other crime victims seek to retain some influence and control?

In this chapter we examine victims' expectations regarding their role in the criminal justice system. In particular, we consider possible gender differences and whether victims' relationship with the offender impacts their expectations.

3 Method

3.1 Recruitment

Participants were contacted with the help of the Ministry of Justice, Quebec (Canada). All victims whose cases entered the criminal courts of Montreal, Trois-Rivières and Sept-Îles between December 2003 and March 2004 were sent information about the study and invited to participate in it. Victims who wished to participate in the study were asked to contact the researcher. One reminder letter was sent to all victims who had not responded to the original letter. Research shows that crime victims will often move in order to escape crime, which makes it difficult to find them using court data (Xie and McDowell 2008). As a result, this type of study often results in a low rate of response (Brickman 2003; Resick 1988), and this study is no exception with an overall response rate of 8 %. While a more dynamic approach might have generated a larger response, it is unethical to aggressively pursue victims and therefore a more passive approach was favoured.

In all, 188 victims completed an interview. This is a convenience sample and clearly not a representative sample of victims. However, it is interesting nonetheless because it is a non-clinical sample and provides insight into the experiences of victims of a wide variety of crimes before the courts.

3.2 Interviews

The interviews were conducted by phone by graduate students in criminology. A closed-questionnaire was developed for the interviews. It included some open-ended questions in order to allow victims to explain their answers. By conducting the interviews by phone the researchers were able to cover a large geographic area with limited resources. Research comparing telephone and face-to-face interviewing shows that telephone interviewing can be used productively without reducing the quality of the data (Sturges and Hanrahan 2004). The interviews were conducted in English and French. The questionnaire was made up of 21 different sections, each examining different aspects of the victim, the victimization and their expectations and experiences with the criminal justice system. On average, each interview lasted 1 h.

3.3 Participants

Of the 188 victims who completed an interview, 165 had reported the crime to the police themselves. As the present analyses are based only on victims who chose to report the crime, we will limit our description of the sample to these 165 cases. In

all, 60 % of respondents were female and 40 % were male. The victims varied in age from 15 to 77. The median age of the victims was 36. Most (72 %) of the respondents completed secondary school, and 35 % had a college or university degree. Many (44 %) had a family income of \$25,000 or less, 19 % earned between \$25,001 and \$50,000, 27 % earned over \$50,000 and 10 % did not know or did not answer this question.

Regarding the type of victimization, almost three-quarters (71 %) of respondents were victims of violent crime. The remaining 29 % were victims of a property crime. In most cases there was just the one victim involved in the offence (66 %) and likewise, most offences involved just one offender (84 %). Most victims (64 %) knew their offender: 40 % were (ex-) partners; 6 % were family members (e.g. brother, brother-in-law); 13 % were neighbours; 9 % were friends; 5 % were colleagues and the remaining 27 % were "other" types of relationships including informal acquaintances.

Half of the victimizations took place less than 4 months prior to the interview (median = 130 days; mean = 190 days; mode = 100 days; SD = 229 days).

4 Results

4.1 *What Role Do Victims Expect to Play?*

In order to assess victims' expectations, we asked respondents whether, when they reported the crime to the police, they thought that they could influence the criminal justice *process*. Most victims (54.6 %) expected to have a little or some influence on the criminal justice process (See Table 1). Similarly, 53.4 % felt that they would be able to influence the *result* of their case (See Table 4). However, most victims (64.2 %) understood that they would not have a say in *sentencing* (See Table 2). In other words, most victims appear to expect to have some informal influence over the criminal justice process and outcome but they do not expect to have a say regarding the sentence.

4.2 *Women and Men Have Different Expectations*

Next, we compared men's and women's expectations. Although women tended to be slightly more optimistic than men about their ability to influence the criminal justice process (see Table 3) and their ability to influence the result (see Table 4) these differences were not statistically significant. However, women were much more likely than men to believe that they would have a say regarding the sentence (see Table 5).

Table 1 When you reported the crime to the police, did you think that you could influence the criminal justice process? (N = 165)

	Frequency	%
Not at all	75	45.5
A little	58	35.2
Yes, definitely	32	19.4

Table 2 When you reported the crime to the police, did you think that you would have a say in sentencing? (N = 165)

	Frequency	%
Not at all	106	64.2
A little	42	25.5
Yes, definitely	17	10.3

Table 3 Cross-tabs: gender by victims' expectations when reporting the crime regarding their influence on the criminal justice process (N = 165)

		Did you think that you could influence the criminal justice process when you reported the crime?			Total
		Not at all	A little	Yes, definitely	
Gender	Men	32 (48.5 %)	27 (46.6 %)	7 (10.6 %)	66 (100 %)
	Women	43 (43.4 %)	31 (31.3 %)	25 (25.3 %)	99 (100 %)
Total		75 (45.5 %)	58 (35.2 %)	32 (19.4 %)	165 (100 %)

Chi-sq = 5.6; df = 2; p = 0.060

Table 4 Victims' expectations to influence the result by gender (N 165)

		Victim expecting to influence the result			Total
		Not at all	A little	Yes, definitely	
Gender	Men	36 (54.5 %)	23 (34.8 %)	7 (10.6 %)	66 (100 %)
	Women	41 (41.4 %)	35 (35.4 %)	23 (23.2 %)	99 (100 %)
		77 (46.7 %)	58 (35.2 %)	30 (18.2 %)	165 (100 %)

Chi-Square = 4.938; df = 2; p = 0.086

Table 5 Gender by victims' expectations regarding having a say regarding the sentence (N = 165)

		Did you expect to have a say in sentencing?			Total
		Not at all	A little	Yes, definitely	
Gender	Men	49 (74.2 %)	10 (15.2 %)	7 (10.6 %)	66 (100 %)
	Women	57 (57.6 %)	32 (32.3 %)	10 (10.1 %)	99 (100 %)
Total		106 (64.2 %)	42 (25.5 %)	17 (10.3 %)	165 (100 %)

Chi-sq = 6.3; df = 2; p = 0.043

4.3 Women Who Know Their Offender Expect to Maintain Power

We then examined if the relationship between the victim and the offender was related to victims' expectations. Using $2 \times 2 \times 2$ tables, victims' expectations were crossed with gender and their relationship with the offender. When the offender is a stranger, neither men nor women expect to have a say at sentencing ($X^2 = 3.607$; $df = 1$; $p = 0.887$). However, when women know their offender, they expect to have a say regarding the sentence (See Table 6) and they are more likely to think that they will be able to influence the result (See Table 7).

These findings warrant a closer look at the relationship between the victim and the offender for the men and women in this sample. While both men (54 %) and women (70 %) in this sample were likely to know their offender, women were more often victimized by their (ex)partner (54 %) than men (14 %). Table 8 provides an overview of the relationship between victims and offenders by gender.

Table 6 $2 \times 2 \times 2$ table: victims' expectations to have a say regarding the sentence by gender by relationship with offender (n = 164)^a

			Victims expecting to have a say regarding the sentence		
Victim-offender relationship			No	Yes	Total
Family/Acquaintance	Gender	Men	27 (75 %)	9 (25 %)	36 (100 %)
		Women	37 (53.6 %)	32 (46.4 %)	69 (100 %)
Chi-square = 3.607; df = 1; p = 0.058					
Stranger	Gender	Men	22 (73.3 %)	8 (26.7 %)	30 (100 %)
		Women	19 (65.5 %)	10 (34.5 %)	29 (100 %)
Total			105 (64 %)	59 (36 %)	164 (100 %)
Chi-square = 0.020; df = 1; p = 0.887					

^amissing = 1

Table 7 $2 \times 2 \times 2$ table: victims' expectations to influence the result by Gender by Relationship with offender (n = 164)^a

Victim-Offender relationship			Victims expecting to influence the result		
			No	Yes	Total
Family/Acquaintance	Gender	Men	20 (55.6 %)	16 (44.4 %)	36 (100 %)
		Women	25 (36.2 %)	44 (73.3 %)	69 (100 %)
Chi-square = 4.542; df = 1; p = 0.033					
Stranger	Gender	Men	16 (53.3 %)	14 (46.7 %)	30 (100 %)
		Women	16 (55.2 %)	13 (44.8 %)	29 (100 %)
Total			77 (47 %)	87 (53 %)	164 (100 %)
Chi.square = 0.42; df = 1; p = 0.514					

^amissing = 1

Table 8 Frequency distribution of relationship between victim and offender by gender

Relationship	Men	Women	Total
(Ex-)partner	5 (14 %)	37 (54 %)	42 (40 %)
Family	3 (8 %)	3 (4 %)	6 (6 %)
Friend	4 (11 %)	5 (7 %)	9 (9 %)
Colleague	3 (8 %)	2 (3 %)	5 (5 %)
Neighbour	5 (14 %)	9 (13 %)	14 (13 %)
Other	16 (45 %)	13 (19 %)	29 (27 %)
Total	36 (100 %)	69 (100 %)	105 (100 %)

5 Discussion

Most victims know that they will not have a say in sentencing and many that they will have little to no influence over the criminal justice process. For these victims, their expectations are realistic and correspond with victims' legal role as witnesses to a crime against the state. However, most victims think that while they might not have a say in sentencing, they will retain some influence over the criminal justice process and its outcome. Victims want to be recognized as more than a mere witness to a crime and felt that they should have a special status in criminal proceedings (Herman 2005; Shapland 1985; Wemmers 2013).

Recent efforts to grant victims enforceable rights in the criminal justice process correspond with victims' expectation to play a role in the criminal justice process and should therefore be encouraged. The victim impact statement, which exists in many common law countries, allows victims to express how the crime affected them but it is only introduced at the sentencing stage. This means that victims are excluded from most of the criminal justice process where their only role is that of a witness (Erez 1999; Erez and Roberts 2007; Wemmers 2003). The victim impact statement does not give victims a say in the sentencing of the offender, however, most of the victims in the present study do not expect that either. While most western countries promote victims' rights such as information, consultation and reparation, few actually enforce these rights (Brienen and Hoegen 2000; Groenhuijsen 1999; Kirchengast 2011; Sullivan 1998; Wemmers and Ménard-April 2013). As a result, there is no certainty that victims' rights will actually be recognized and this, in turn, is a source of disappointment and dissatisfaction for victims (Shapland et al. 1985; Wemmers 1996; Herman 2005).

These findings correspond with the research on procedural justice (Lind and Tyler 1988; Tyler 2000). Procedural justice refers to the perceived fairness of decision-making procedures. Research shows that while parties are sometimes willing to cede decision-control to a third-party, they usually want to maintain some influence or voice over the process (Lind et al. 1983; Thibaut and Walker 1975; Tyler 2005; Wemmers 2010). As a result, while victims are willing to give decision-control to criminal justice authorities, they tend to want to retain influence or voice over the process (Wemmers 1996; Van Camp and Wemmers 2011;

Wemmers 2002a; Wemmers 2002b). Most of the victims in this study—both men and women—expect to have some influence over the process but do not expect to have a say at sentencing.

However, women who know their offender have different expectations than other victims. They not only expect to retain some power or influence over the criminal justice process, they also expect to have a say at sentencing. From the victim's perspective, she may believe that because she knows the offender, she has important information for the authorities that will help them make an informed decision (Shapland et al. 1985; (Wemmers and Cousineau 2005). In contrast, victims who do not know their offender may not have something to say about the offender and, therefore, be quite willing to leave it up to the professionals. As for the men who were victimized by someone they knew, very few were victims of intimate partner violence. Hence, the observed differences in victims' expectations may be explained by the high prevalence of intimate partner violence experienced by the women in this sample. The nature of the victimization may indeed be more important in shaping victims' expectations than gender (Felson and Paré 2008). According to the betrayal trauma theory, trauma perpetrated by someone the victim trusts or on whom the victims depends is more psychologically damaging (Freyd 1996). Victimization high in betrayal, in which trust is violated, affects the manner in which victims evaluate their victimization, and is associated with stronger negative appraisals (Gamache et al. 2013). In a recent study, it was found that although women made stronger negative appraisals compared with men, the gender difference became negligible once traumas high in betrayal were considered (Gamache et al. 2013). It is possible that victims who experienced victimization high in betrayal have greater expectations regarding sentencing because the crime had a larger impact or because they perceive more unfairness in the situation and want to restore the balance or regain some power over the situation.

These women's expectations do not correspond with their role in the criminal justice system and, as a result, they will likely be disappointed. Even more than other victims, these women expect to be able to retain some power in the criminal justice system. Yet, the introduction of no-drop policies means that victims of domestic violence have even less power in the criminal justice system than other victims. When victims are excluded and are unable to give their account of the offences, they experience the criminal justice system as unsupportive (Lewis et al. 2000) and they are less satisfied with the criminal justice system (Fleury 2002). Not surprisingly, no-drop policies have been criticized as ineffective and giving rise to new problems (Ford 1991; Landau 2000). The criminalization of family violence provides women with a tool to use in stopping the violence. Several authors (Fischer and Rose 1995; Ford 1991; Hoyle 1998) argue that in many cases victims use the power of the legal system to manage the violence and then disengage from the system. The findings in the present study suggest that women enter the criminal justice system expecting that they will maintain some control or at least have input. Women make choices about the extent of intervention they deem appropriate.

Our findings coincide with those of Lewis et al. (2000) who find that women want to use the system in a more flexible way and often find the court and the prosecution unsupportive. The law should empower victims: helping them to stop victimization and re-establish a sense of control over their lives. No-drop policies should be modified and victims should be given a special status in the criminal justice system, which recognizes them as something more than a mere witness to a crime.

One needs to ask how disappointment with the criminal justice system will impact victims' willingness to go to the police again in the future. Survivors of traumas high in betrayal are less trusting of people in general (Gobin and Freyd *in press*) and at increased risk of re-victimization (Gobin and Freyd 2009). Repeat victims are less likely to report crime to the police than people with little or no prior victimization experience (Van Dijk 1999). If the criminal justice system essentially discourages victims from collaborating with criminal justice authorities again in the future, how does it protect victims or civil society?

The introduction of rights for victims is, however, very controversial primarily because of concern for the rights of the accused (Ashworth 2000; Roach 1999; Young 2005). Yet, as this study and others have shown, most victims are looking for information and consultation and not decision-making power (Wemmers 1996; Wemmers 2013). Even victims of domestic violence are merely looking for a say in sentencing and not full control. When criminal justice authorities inform victims and consult with them about the developments in their case this does not necessarily jeopardize the rights of the accused (Doak 2008).

Understanding victims' expectations is important in order to avoid that victims will be disappointed and dissatisfied with the criminal justice system. While the present study sheds some light on victims' expectations, the findings are based on a non-representative sample and must be interpreted with caution. Further research is needed in order to enhance our awareness of victims' perspectives across different types of victims and victimizations.

Five Questions

1. What is the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and why is it important?
2. Why might victim-centred policies yield better outcomes for victims than a protective approach, which mandates prosecution?
3. What is *betrayal trauma theory* and why is it particularly relevant in the context of violence against women?
4. What is the relationship between *Therapeutic jurisprudence* and secondary victimization?
5. According to the research on victims of crime, what role do victims do they appear to want play in the criminal justice process?

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Mediation, Restorative Justice and Social Reintegration of Offenders: The Effects of Alternative Sanctions on Punishment

Helmut Kury

Abstract Empirical criminological research of the last decades has confirmed the validity of previous doubts that punishment may not be the best way of crime prevention. Already Beccaria (*Dei Delitti e delle Pene – Von den Verbrechen und von den Strafen*. Berlin: Berliner wissenschafts-Verlag, 1764; 2005) discussed the “useless frequency of criminal sentences, which have never made people better” (2005, p. 48). So-called alternative sentences, generally known under the heading of mediation, victim-offender restitution or restorative justice, may actually have greater potential to reduce the conflicts and the harm caused by crime than punishment. This is especially true when the victims are women and children. Yet despite the encouraging results of recent research, traditional criminal justice has a hard time integrating these new possibilities of dealing with offenders because it cannot combine it easily with the principle that justice and the protection of the public require punishment. It would also necessitate changes in the training of the legal profession and a new and expanded perception of the role of judges. This chapter will discuss the recent developments of mediation, its implementation in different countries, and its potential for the solution of societal conflicts such as the victimisation of the most vulnerable: women and children.

1 Introduction

Everywhere and at all times punishment has commonly been considered the most efficient means to correct socially unacceptable, in particular delinquent behaviour. Still today, as soon as there is an increase in registered crime there will invariably be calls for tougher laws and harsher punishment, which are eagerly taken up by politicians, despite the fact that research has consistently shown that tougher punishment is not the most effective way of crime prevention (see Kury and Shea 2011; Dölling et al. 2011). This greater insistence on more punitive laws has to be

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seen today also in the context of changing social conditions, such as the opening of the national borders inside the European Union, the never ending wave of refugees arriving from war-torn and impoverished countries and the growing uncertainty about our economic future. Citizens get the impression that politicians are unable to cope with the new situation and see thus the only solution in getting tough with those perceived to be responsible for the present malaise. Hassemer (2009, p. 285), a former Judge and Vice-president of the German Constitutional Court summarizes the problem as follows: “Between the two poles of security and freedom, penal law, like other aspects of our life, has for some time been moving toward security. In this movement, penal law becomes tougher, but it does not become better. More and more complicated prohibitions, more severe laws and longer sentences, increased police powers for their investigation, a reduction in guarantees that serve to protect the rights of suspects and to spare the innocents but could slow down the investigation and trial. This answers the increasing fear of modern societies of uncontrollable risks, a larger need for control, processes of normative disorientations, in which certainties fade, on which we previously could blindly rely.” Thus, the call for tougher sanctions takes on a substitute function to reduce uncertainties that may have nothing to do with crime.

Given that an increasing number of research result demonstrate the limited and even non-existent preventive effect of criminal sanctions and the possible harmful effects of custodial sentences, particularly on juveniles or imprisoned parents and their children (see Robertson et al. and also Allen in this volume), the search for alternatives has come to the forefront. This search has also been linked to a more intense discussion in the early 1990s of the importance of “emotions” in dealing with offenders. Sherman (2003), for instance, pleaded for a “more emotionally intelligent justice”, and Karstedt (2011, p. 3) underlines that we see from the early 1990s onwards a “surprisingly abrupt end of the secular movement and modern project of the ‘rationalisation’ and ‘de-emotionalization of law’” (see also Laster and O’Malley 1996). This development is for instance reflected in the return of “shame” in criminal proceedings, especially in restorative justice, and a greater consideration for victims and their emotional needs. “The main trajectories of the return of emotions seem to have been embedded in the major movements that have changed the face of criminal justice over the past two decades: the victims’ movement, restorative justice and the emergence of a highly emotional and mostly punitive public and political discourse on crime and justice” (Karstedt 2011, p. 3). Pratt (2006, p. 64) points out in this context that both the support for restorative justice and at the same time the call for tougher punishments are linked to “decline of the welfare state” and “the particular arrangements of penal power” (see also Karstedt 2011, p. 4; Pratt et al. 2005).

The re-discovery of emotions in the context of crime-related conflicts has also met with some critical appraisals. As Karstedt (2011, pp. 1f.) points out, criminologists as scientists are often cautious about emotions. “Emotions are suspicious to them, and criminology’s approach to emotions has been cautious and circumspect. Criminology as a science is a descendant of the Enlightenment, and is as such committed to the ideals of reason and reasonable discourse. This equally applies to

modern penal law, and to the practice of criminal justice and its institutions as they developed since the Enlightenment in the late eighteenth century, and within modern liberal democracies. Just as exuberant emotions in the political sphere of democratic societies threaten to disrupt the whole system (and are typically observed in a breakdown of the political system), so the legal system strives to curb the strong emotions that it routinely and inescapably confronts. Yet for a long time it has ignored their undeniable presence and strength. Consequently, the presence of emotions in public debates about criminal justice has deepened the uneasy feelings of criminologists. Collective emotions and their expressions are seen as capable of being manipulated in the interest of politicians and other groups, and in particular by the media, in an irresponsible way. Criminologists tend to deny authenticity to outbursts of collective emotions, and they are more inclined to perceive them as manifestations of popular ‘false consciousness’” (see also Burkitt 2005; Loader 2011). Karstedt also underlines that: “The process of ‘emotionalization’ of law and criminal justice has decisively changed criminological perspectives on the role of emotions in crime and justice during the last decade. ‘Reintegrative Shaming’ and Restorative Justice have been influential in re-shaping criminal justice around the globe, and the ‘return of emotions’ into criminological perspectives, theories and research is presently re-configuring notions of the ‘rational offender’ and criminal justice policies based on these” (2006, p. 223). Already in an earlier work (2002, p. 299) she had pointed out that: “During the last decade, a process of ‘emotionalization of law’ has spread around the globe, changing the criminal justice system in many ways. Anger, disgust and shame are perceived as ‘valuable barometers of social morality’ and brought back to criminal procedures. The ‘return of emotions’ to penal law and criminal justice is linked to and illuminates the moral imagination of late modern societies”.

Allowing emotions a stronger place, as has been already done in the context of restorative Justice, produces positive results in finding constructive solutions not only in the courts but also in police interrogations, even in interrogations of terrorists (see Alison et al. 2013, 2014). Based on the analysis of 181 police interrogations of terrorists, Alison and colleagues (2014) could show “that adopting an adaptive rapport based interrogation style in which suspects are treated with respect, dignity and integrity is an effective approach for reducing suspects’ use of CITs (Counter Interrogation Tactics).” For decades, psychotherapy research has already convincingly demonstrated the importance of an emotional rapport for the effectiveness of treatment, and this in particular for the rehabilitation of imprisoned offenders. Already Orlinsky and Howard (1986) assigned the “therapeutic bonds” an important role in the success of a therapy. A good therapeutic bond improves not only the feeling of self-worth of the patient and increases his willingness to confront his difficulties; it also makes the patient more open to the therapeutic influences, receptive for the therapeutic interventions, which, without such receptiveness could not achieve much (Grawe et al. 1994, p. 781).

Research results from different fields underline thus the positive effects of giving more considerations to emotions in the resolution of conflicts, even in criminal procedures. Forms of alternative conflict solutions are not new, we have only

“rediscovered” them. They were for instance used in medieval Europe, and can still be found in traditional societies as a means of reducing conflicts in society. Today we usually summarize them under the heading of “mediation” or “restorative justice”, and there exists now a vast array of procedures and publications (see for example: Hopt and Steffek 2008a; Johnstone and Van Ness 2007a; London 2011; see also Dandurand; Hamilton and Yarrow; Ehret et al. in this volume).

Expanding of research about victims of crime after World War II and the establishment of victimology as an essential and important part of criminology fostered a greater awareness that the victims of crimes did not receive enough attention and support (Braithwaite 1989). During the last decades, many countries have put in place new regulations to ensure better support and help for victims but they often did not translate into practice and the actual changes were few if at all. Even today, in criminal justice procedures the role of victims is reduced to that of witnesses; compensation is given, if at all, seldom by the state or the offender, but mostly by more or less private institutions, in Germany for example by the “White Ring” (“Weißer Ring”; see: <https://www.weisser-ring.de>).

Yet, international empirical research shows clearly that most victims, except in cases of very severe crimes, are more interested in restitution of the damage than in a severe punishment of the offender (Sessar 1992, 1995). But the interests of the state and the established court system are different: their focus is on “justice”, on the re-establishment law and order, thereby disregarding the interests of most victims and large parts of the population in restoring peace in society and reducing the conflict caused by crime. Here measures of mediation can help to establish a bridge between different interests. “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” (Gromet 2009, p. 40).

In order to have mediation accepted in society as a valid alternative to regular court procedures, it is very important that this measure and its benefits are clearly understood by the population and especially by the courts. Johnstone and Van Ness (2007b, p. 6) still regretfully point out: “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.” During an international conference in Germany the main reason given for the fact that restorative justice is still today rarely used was that these alternatives are not well known both in society and in the criminal justice systems. Even judges are often poorly informed and share in the general opinion that restorative justice is a “soft” option, and certainly not as effective in crime prevention as proper punishment (Lummer 2011, pp. 240f; Kury and Shea 2011).

In the first part, this chapter will briefly discuss the historical development of mediation and alternative conflict solution. Mediation is a collective term often used in different contexts and different ways. In a second step we will therefore

discuss its different definitions. The main part of the chapter will present information about practice and experiences with mediation in Germany and other European countries, with special emphasis on its use in the juvenile justice system (see also Hamilton and Yarrow; Ehret et al. in this volume). A central question concerns the crime prevention effects of mediation, especially in comparison with “classical” punitive reactions of criminal justice, and results of evaluation of these alternatives are presented. In a final discussion we will compare the main results (see also Kury and Kuhlmann 2016) and try to show that alternatives to classical penal procedures have many positive effects in dealing with female and juvenile offenders and victims.

2 Historical Examples of Crime Related Conflict Reduction in Society

Advocates of mediation and restitution in criminal cases often refer to historical examples (see also Kury and Kuhlmann 2016). For example Frühauf (1988, p. 8) discusses the history of restitution and shows that this is one of the most interesting topics in the history of punishment. In earlier times it was a natural part of each sanctioning system and dates back to the beginning of written laws (see also Hagemann 2011). Already the Codex Hamurabi—a Babylonian law code dating back to about 1754 B.C. and one of the earliest law books known—includes next to severe punishments many regulations about restitution to the victim by the offender. Roughly 400 years later, around 1300 B.C., more detailed measures of restitution can also be found in Hittite legislation. Hittite laws were formulated as case laws, starting with a condition, and followed by a ruling, e.g. “If anyone tears off the ear of a male or female slave, he shall pay 3 shekels of silver.” Alternative measures to reduce conflicts in societies caused by crime have obviously a long and successful history.

Detailed regulations about restitution seem to have been common in most cultural regions (Frühauf 1988, p. 11). We find them for example in the Old Testament (Burnside 2007), in the Islamic penal system and as an integral part of tribal customs (Zinsstag and Vanfaechem 2012). As Sharpe (2007, p. 26) points out: “Reparation has been a vehicle for justice throughout human history”. Rössner (1998, p. 878) concludes that on the basis of behavioural research the aim of establishing peace is part of our biological makeup. Without systematic measures to reduce conflicts, there would be no human community. Until the Middle Ages the restitution of penal peace by social compensation was considered the central part of penal justice.

Frühauf (1988, pp. 13ff.) gives a detailed description of the evolution of restitution over the centuries in German law. From the fifth century A.D. on, we find an increasing number of laws written by the different nations inhabiting these regions. In the “Lex Salica” for example, written between 507 and 511 A.D., a catalogue of

penances was defined, which fixed for each crime a restitution to be made by the offender to the victim, even for homicides. The punishment of offenders through restitution was in those times seen as normal and usual (Frühauf 1988, p. 17). The offender was pressured to compensate the damage caused by his criminal act. In the following centuries the principle of restitution was however increasingly replaced by harsher punishment. With the establishment of kingdoms, the distribution of power between state and tribes changed fundamentally (p. 37). In a desire to increase their own power, the rulers of the kingdoms had an interest in abolishing the old legislations in order to take the jurisdiction in their own hands. This was also the beginning of a fundamental change in social control. The new kingdoms established a general penal system, in which law breaking was now increasingly sanctioned by the king, taking it thus away from the people. With the creation of a state penal law in the early Middle Ages private conflict was transformed into a public conflict (Rössner 1998, p. 880). The concept of restitution no longer fitted into the concept of punishment by State authorities. The re-establishment of a balance impaired by a criminal act was taken away from the community and was managed now by the state in a new power relation between state and offender. The aim was no longer inclusion and integration, but exclusion and separation. Both the conflict and the cooperation in solving or at least reducing it were taken away from the victim (Christie 1977) and the process was more and more formalized and neutralized.

Punishment is used as a measure of power. Especially as far as the use of the death penalty is concerned, it mirrors the interplay between a move to absolute power of the kings and the new authoritarian penal laws (Frühauf 1988, p. 43). After an arrangement, the state began enforcing a *Friedensgeld* (money for peace), which is no other than a fine. Punishment became thus an income for the state. This was the beginning of a problem, which is still with us today: by the end of the reign of the Franks the money to be paid to the state had become the bigger part of the punishment and the damages caused to the victims remained their own private problem (Frühauf 1988, p. 44). This regulation did not substantially change until recently. In Germany, for example, in 1976 a special law was passed regulating the restitution for victims of violent crimes (“Gesetz über die Entschädigung für Opfer von Gewalttaten”; see the overview in Schwind 2011, p. 441 ff.), but in practice only a relatively small part of all victims really receive a (financial) restitution because of too many formal obstacles (see the overviews in Villmow 1988; Villmow and Plemper 1989; Villmow and Savinsky 2013).

Frühauf (1988, p. 45) talks of an all-round “fiscalisation” of penal law on the background of massive financial interests of the kingdoms. Fines were—and still are—a good source of income for the state; only lately restitution to the victims as a task of the state has again become a topic of discussion. Frühauf (1988, p. 59) notes that the regulation and control of justice by the state to control the social behaviour of citizens was and still is the best solution, despite its problems. In the final analysis it guarantees greater justice and a more equal treatment of all penal cases. In this sense, the development beginning in the Middle Ages was a huge progress in civilization. Yet, as Rössner (1998, p. 880) points out that in the

absolute theories of punishment propagated by Kant and Hegel—with their continued impact on German politics of punishment and crime control—there is no place for restitution and conflict solution. This might be one of the reasons why in German criminal law the development of victim offender restitution has still not reached the importance it had in earlier times as in practice, victim offender restitution in Germany plays a minor role (Rössner 1998, pp. 880 f.). Even if there is some overall improvement, it is not yet reflected in criminal matters (Schmidt 2012, p. 191). For example in the German *Land* of North Rhine-Westphalia in 2007 we count 4535 cases of victim offender restitutions in comparison to 184,800 “classical” criminal court decisions.

The question to what extent the state needs the principle of punishment was already discussed in the 1980s (Frühauf 1988, p. 60) but has lost nothing of its actuality. Living conditions have changed in society and the restricted use of restitution can be seen as a disadvantage in actual criminal justice, especially in handling crimes of young persons. Dealing with crime means primarily concentrating on the offender; beside penal sanctions there exists today a broad network of treatment and diversion measures, and fines have become the primary sanction but without providing a tangible benefit for the victims of crime. Only modern discussions about victimology have slowly brought about a different way of thinking about crime control (Frühauf 1988, p. 65). Based on the example of other countries, such as the United States, Canada, Australia or New Zealand (see Wemmers and Cyr in this volume; Shearar and Maxwell 2012), also in Germany an increasing number of projects about restitution were implemented.

3 Definition of Mediation

Braithwaite (2009, p. 497) one of the founding fathers of the newer movement in mediation distinguishes between “mediation” and “restorative justice” and points out: “Mediation between just a victim and just an offender can be described as a ‘restorative process’, but it does exclude other stakeholders such as the family of the offender”. In contrast he defines restorative justice as “a process where all the stakeholders affected by a crime have an opportunity to come together to discuss the consequences of the crime and what should be done to right the wrong and meet the needs of those affected. Of course such an ideal is secured to greater and lesser degrees”. On the basis of this process-definition “one on one victim-offender mediation is not as restorative as a conference or a circle to which victims and offenders are encouraged to bring their families and other supporters. In a restorative justice conference both victims and offenders are asked to bring along the people who they most trust and respect to support them during the conference”. But restorative justice refers according to Braithwaite (2009, p. 497) not only to processes, “it is also about values. It is about the idea that because crime hurts, justice should heal. The key value of restorative justice is non-domination (see also Braithwaite and Pettit 1990; Braithwaite 2002). The active part of this value is

empowerment. Empowerment means preventing the state from ‘stealing conflicts’ (see Christie 1977) from people who want to hang on to those conflicts and learn from working the through in their own way. Empowerment should trump other restorative justice values like forgiveness, healing and apology, important as they are.” In this context to fully accept “empowerment” means also that if a victim wants to react to a victimisation in a more retributive than restorative way, this must also be accepted but, as Braithwaite puts it: “because non-domination is the fundamental value that motivates the operational value of empowerment, people are not empowered to breach fundamental human rights in their pursuit of revenge” (Braithwaite 2009, p. 497 f.).

According to Walgrave (2007, p. 559) the difference between restorative justice and criminal justice can be particularly seen in the following 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. - Contrary to formalized and rational criminal justice procedures, restorative justice processes are informal, and include emotions and feelings. - The outcome of restorative justice is not a just infliction of a proportionate amount of pain but a socially constructive, or restorative, solution to the problem caused by the crime. - Justice in criminal justice is defined ‘objectively’, based on legality, while justice in restorative justice is seen mainly as a subjective-moral experience.” But the author also emphasizes the fact that the differences between criminal and restorative justice have become smaller over the years. “It is becoming obvious that a clear-cut distinction between restorative justice and criminal justice cannot be sustained as was originally proposed” (Walgrave 2007, p. 560).

There is also no clear and comprehensive definition of mediation and its different forms. As Zernova and Wright (2007, p. 91) point out that there are many different ways how restorative justice can be used in practice. “There is no agreement among restorative justice proponents as to how exactly restorative justice should be implemented and what its relationship to the criminal justice system should be”. The authors differentiate between a process-oriented and a result-oriented model. Very often there is a differentiation between court-internal mediation, organized and managed by the judges themselves and included in the penal process, a mediation close to the penal process and more or less included in it and at the same time separate from the penal procedure, and finally mediation completely separated from the court procedure, precisely with the aim to prevent a criminal trial (Hopt and Steffek 2008c, pp. 9 and 19). The two authors found that in the countries included in their research, mediation outside the courts or in cooperation with the courts were the most frequently chosen model (Hopt and Steffek 2008c).

The authors also discovered (2008c, p. 12) that the definitions of mediation varied greatly in the countries included in the project. Given these variations, they

chose to use the smallest common denominator for their definition of mediation, which is as follows: “Mediation is a procedure based on voluntary cooperation of the parties, with a mediator without the power to make decisions who facilitates systematically the communication between the parties with the aim to find a solution of a conflict between the parties accepted and produced by the parties.” A central element, accepted by all criminal justice systems is that of voluntary cooperation, but again this is defined in different ways in different countries. Also the power to implement the solutions agreed upon is regulated differently and ranges from compulsion (for instance in England, Austria or Portugal) to the free decision of the parties (as in China). Agreement exists to a greater extent about the rule that the mediator has no power to decide, and that conflict resolution is fully in the hands of the parties (p. 12). But again there are differences between the countries concerning the question how far the mediator has the right to propose solutions for conflict regulation (Hopt and Steffek 2008c, p. 13).

It is important to see that mediation is not only used to reduce conflicts of criminal justice matters but also other conflicts, for example in cases linked to social problems. The communities included in Hopt’s and Steffek’s research generally agreed that the strength of mediation became particularly visible in the fact that the procedure from the outset aimed at finding a solution of the social conflict, and the legal regulation only had an ancillary function. A systematic promotion of communication by the mediator was a key element, in addition to the confidence in the procedure and the neutrality of the mediator. The definitions of mediation in the different countries included in the project shared in common the following prerequisites: (1). Existence of a conflict, (2). The engagement to solve the conflict on a voluntary basis, (3). The systematic promotion of communication between the different parties, (4). Acceptance of responsibility for the solution found, including the condition that the mediator has no power of decision. Voluntary cooperation is also insofar a very important topic because agreements on the basis of mediation have virtually no chance of being executed by force. In particular with juveniles this approach to handling conflicts works well. They feel more respected (Hopt and Steffek 2008c, p. 13).

An important part of mediation is victim offender restitution (*Täter-Opfer-Ausgleich TOA*) or repairing the damage. Heinz (1993, p. 376) points out that victim offender restitution is strongly correlated with the idea of repairing the damage caused but has, at the same time, a larger scope in the central idea of fairness and satisfaction. By considering the interests and needs of both parties, a fair settlement should be achieved, and in the best cases even reconciliation. This could be arranged by using the possibility of a private-autonomous solution. The offender should learn to see and to accept the effects of the damages caused to the victim and should accept his social responsibility. This idea exceeds the frame of victim offender restitution as practiced today and includes the perspective of the victim as an example of social learning for offenders on parole, probation or in prison (Heinz 1993, p. 376).

In the countries included in the research of Hopt and Steffek (2008c, p. 22) restitution measures receive financial support. As the authors point out, the main

reason for the granting financial support has to do with the hope that this will be a cheaper way of solving crime problems: the courts will have to deal with fewer cases and the proceedings will be shortened. The different law systems don't clearly separate mediation from other forms of conflict reducing measures (Hopt and Steffek 2008c, pp. 15 ff.). Related topics may overlap or the title is the same but the procedure different. Some countries ask for special training of the mediators (usually attorneys, social workers or psychologists), others don't. Also the regulations differ strongly between the countries. According to some authors, too rigid regulations may reduce the chances of successful mediation.

A controversial topic in some countries and in the literature is also a division between mediation and retribution. Are they opposites or not? Some authors think that mediation and retribution are very different reactions to deviant behaviour (Braithwaite and Strang 2001). In their view, restitution is hindered if the focus is on punitive measures which exclude the offender from society instead of including him. McCold (2000), for example, refuses all pressures by courts in cases of restorative justice, as this would take the proceedings again in a punitive direction.

Other authors suggest that a combination of mediation and retribution is the best response. Proponents of this concept point out "that retribution is an essential component of addressing wrongdoing, and it is the combination of restoration and retribution that will best achieve justice (see also Barton 1999; Daly 2002; Duff 2003; Robinson 2003). In this view, a pure restorative response is rejected as an acceptable response to wrongdoing. Proponents of this model contend that both the victim and the community have a right to desire retribution for the crimes that wronged them" (Gromet 2009, p. 45). Gromet (ibid. pp. 45 f.) further points out that in an "integrative view of restorative justice ... restoration and retribution are not necessarily competing. ... The combination of restoration and retribution in fact may provide a better response to wrongdoing than either response on its own, as multiple justice goals can be accomplished. ... The justice goals with regard to restoration and retribution are punishment and rehabilitation of the offender, restitution and restoration of the victim, reinforcement of the values of the community and restoration of the community".

Walgrave (2007, p. 565) underlines another important aspect in this discussion: "... restricting restorative justice to voluntary deliberations would limit its scope drastically (see also Dignan 2002). The mainstream response to crime would remain coercive and punitive. The criminal justice system would probably refer only a selection of the less serious cases to deliberative restorative processes, thus excluding the victims of serious crimes who need restoration the most." According to Walgrave (2007, p. 565) restoration and retribution have a lot of commonalities (see also Zehr 2002), "clear censure of reprovable behaviour, an appeal to responsibility and an attempt to restore a balance. Restorative justice scholars, however, should accept the necessity of using coercive power when deliberative processes are impossible."

In some countries, also in Germany, there exists now also online-mediation. This has the advantage to use the procedure in cases where the parties live far away, for example in different countries. Research shows that this procedure is useful

especially in minor cases with low amounts of money involved or in cases of online businesses (Hopt and Steffek 2008c, pp. 51 ff.).

4 The Development in Germany

As Frühauf (1988, p. 20) in his historical overview concludes that the displacement of restitution payments from the victim to the State was a big mistake as far as the solution of conflicts in a society and dealing with crime problems in a community are concerned (see also Kury and Kuhlmann 2016). According to Kaiser (1996, p. 1088) the need to solve conflicts by speaking with the other party is still today deeply rooted in society. Yet the potential for dialogue with the other party in penal procedures is not or only poorly used, despite its importance (Bussmann 1986, pp. 158 f.). In Bussmann's view, crime policy should necessarily include victim offender restitution as a more constructive reduction of conflicts in society.

In the middle of last century, after a long period of oblivion (Frühauf 1988, p. 63), the positive effects of mediation became again a subject of international discussion mainly thanks to the interest created by the newly established victimology research (Hentig 1948; Schneider 1975). Also in Germany penal sanctions increasingly included a broad network of treatment and diversion measures, initially however restricted to minor offences (Frühauf 1988, p. 64). The development of mediation in Germany in the 1980s was mainly triggered by reports about its positive effects in the United States, where we find the beginning of an intensive and often controversial discussion about "restorative justice" already in the 1970s (Rössner 1998, p. 889; Rössner and Wulf 1985; Frehsee 1987; Abel 1982; Kaiser 1996, pp. 216 ff.).

"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" (London 2011, p. 13). Even if we do see in the United States from the early 1970s onwards an increase in punitiveness, "along with their interest in punishment, the public's interest in alternative non-punitive solutions has also been recognized" (London 2011, p. 103). If the public is informed about the rather disappointing effectiveness of punishment compared to alternative sanctions, punitiveness decreases; this has been confirmed by several studies (see for instance: Doob and Roberts 1983; Roberts and Hough 2002; Sato 2013). "In sum, while the public's support for punishment is well known, its support for alternatives to punishment and sanctions with a restorative quality is also strong" (London 2011, p. 104). "Punishment alone is an extraordinarily poor way of restoring trust either in an offender or in society" (London 2011, p. 105). This is particularly true for juvenile offenders.

At the beginning of discussions about alternative measures of crime prevention the advantages of mediation were put to the fore, and this for the following reasons: mediation is less formal and more personal, mediation provides greater satisfaction

and acceptance of results, can find solutions to conflicts in favour of all parties, is perceived as a more just solution from the point of view of the different parties and the community, offers a better chance to both victims and offenders, alleviates the load of the criminal justice systems and saves costs for the state and the parties (Hopt and Steffek 2008c, p. 7; see also Bush and Folger 2005). Given these advantages, the support for mediation grew steadily, and Germany, like other countries, followed the American example (Hopt and Steffek 2008b, p. 9).

It was the modern victimological research, which led to a new philosophy in criminal justice, even if initially its effects on penal practice were scant. This new interest in victims was also linked to the women's movement, which drew attention to the large number victimized women and children. Goodey (2005, p. 102) discussed three main reasons for the sudden attention paid to crime victims and victimology in the United States and Great Britain in the late 1960s and early 1970s—the rise in crime rates and the increasing scepticism about the effectiveness of the treatment of offenders, summarized in Martinson's famous formulation “nothing works” (Martinson 1974; Lipton et al. 1975; Kury 1986)—the beginning of an increasingly right-wing oriented punitive (crime) policy, calling for a harsher treatment of offenders and resulting, particularly in the United States, in a dramatic increase of prisoners—the strengthening of the women's movement and with it the call for more empathy for women and children as victims of mainly male violence. The victims of crime got increasing rights also in criminal trials and could so at least partly overcome the role of being only a witness or spectator. The movement soon spread to other, similar criminal justice systems and also strongly influenced German policy.

Empirical research soon was able to show that restitution and compensation were seen as needs that were widely accepted by both the population and the victims of crime and thus deserved more attention in a modern criminal justice system (Kaiser 1996, p. 1088). In Germany, a model project in mediation in the form of victim offender restitution with juveniles began in 1984/1985 after the German Probation Organisation (*Deutsche Bewährungshilfe e.V.*) had established in 1983/84 a working group “victim offender mediation” (*Täter-Opfer-Ausgleich—TOA*). At about the same time, in 1984, the first German model project in adult criminal law was started (Schmidt 2012, p. 187). After this, the idea took off rapidly (Rössner and Wulf 1985). Already in 1988 victim offender mediation was included in the recommendations of a *Bund/Länder-Adhoc-Kommission* (government/state-adhoc-commission) under the label of “Diversion” (about the discussion of diversion see Kury and Lerchenmüller 1981). In 1991 many new model-projects of victim offender restitution with adults started and enlarged the movement (Delattre 2010, p. 88). As a first official organisation for mediation the *Bundesarbeitsgemeinschaft für Familienmediation* (BAFM) (Governmental working group for mediation in family affairs) was founded in January 1992 (Hopt and Steffek 2008c, p. 7). In September 2008 also the annual conference of German lawyers (*Deutscher Juristentag*) in Erfurt included mediation for the first time (see Heß 2008).

In 1999 the German government voted the “*Gesetz zur Förderung der außergerichtlichen Streitbeilegung*” (Law for out-of court conflict solution). With

this law victim offender restitution (TOA) became officially part of penal procedure (Delattre 2010, p. 90). Now, prosecutors and judges at all stages of criminal proceedings should examine the option of solving the cases by mediation (*Bundesministerium des Innern/Bundesministerium der Justiz* 2006, p. 590). Experience shows that most of the offenders and victims, when asked and given proper information, are willing to participate in a victim offender restitution program. The results of the cases dealt with TOA between 1993 and 2002 are as follows: in 69 % of cases the offender apologized to the victim for his crime, in 30 % of cases he paid damages, in 19 % he paid punitive damages for causing pain and sufferings, in 13 % of cases there were other benefits, in 7 % no other benefits and in 6 % he did work for the victim (*Bundesministerium des Innern/Bundesministerium der Justiz* 2006, p. 594). Only 2.5 % of agreements failed.

In juvenile justice legislation (*Jugendgerichtsgesetz—JGG*) education of the offender is the primary goal. From an educational point of view restitution is seen as very important because it makes the offender clearly aware of his wrongdoings. Already in 1923 the court could ask for restitution by the offender on the basis of the JGG. This way the young offender could learn through restitution that he had caused pain and had made a mistake and realise the negative consequences this had caused for himself (Frühauf 1988, p. 76). Victim offender restitution was thus first implemented in juvenile court, and then in 1994 in the criminal code for adults.

To promote victim offender mediation in Germany, since 1999 prosecution offices and the courts have the duty to propose TOA. They must in all cases examine the possibilities and chances of a successful (voluntary) victim offender restitution and must in suitable cases appoint qualified agencies to implement it (Schwind 2011, pp. 438 f.).

The procedures for victim offender restitution is still not the same in all the *Länder* but there is some agreement on what criteria should be applied to use or not to use TOA (see Delattre 2010, p. 93)—TOA should not be used for petty crimes to avoid net widening of social control (see Kury and Lerchenmüller 1981)—the victim must be a person—the facts have to be clear-cut: the offender accepts the charge and confesses his guilt—both parties, victim and offender, accept the procedure and are willing to cooperate. As for the danger of net widening, Johnstone (2007, p. 609) points out that: “Less serious cases will be diverted to informal restorative processes and sanctions. But, because they are less formal and regarded as more benign, these processes will be extended to cases which previously would not have given rise to penal interventions. Overall the reach of the system of penal control will be extended rather than cut back” (see also Zehr 1990, p. 222).

Victim offender mediation is rightly seen as a great pedagogical tool for the offender and a better way to reduce the harm suffered by the victim; yet despite these advantages, it is even now relatively rarely used in Germany (Kilchling 2012; Dünkler and Párosanu 2015). The courts still mostly prefer to punish the offender by a fine payable to a non-profit institution. Even in juvenile law, where the duty of the offender to make restitution was discussed at length on a theoretical level, in praxis

it is only used in relatively few cases. That may have to do with the legal training in Germany, especially that of juvenile judges (Frühauf 1988, p. 77).

Based on a decision of the Government and Parliament, the German Probation Organisation (*Deutsche Bewährungshilfe e. V.*) has opened in 1992 a service bureau for victim offender restitution as a supra regional counselling bureau, financed most by the ministry of justice and the *Länder* (<http://www.toa-servicebuero.de/>) Bundesministerium des Innern/Bundesministeri- um der Justiz 2006, p. 589).

Since then, by order of the ministry of justice more and more neutral bureaus of conflict resolution were established by non-governmental organisations but also by the social services of the justice and social work bureaus.¹ These offices can be used by the prosecution before the trial or by the courts during the trial to promote restitution. The mediators usually are pedagogues or social workers and mostly have an additional specialized training in mediation (Delattre 2010, p. 90). Today roughly 400 of these mediation bureaus exist in Germany (Schwind 2011, p. 439), of which over 300 are staffed with full-time professionals (Germany has approximately 82 Million inhabitants) (Delattre 2010, p. 90). These offices deal today with about 35,000 cases per year, up from roughly 25,000 cases 10 years earlier (Trenczek 2003, p. 104; Delattre 2010, p. 91). This puts Germany in the top bracket of restitution cases in Europe. In comparison with roughly 550,000 criminal charges per year these number is nevertheless relatively low (Schwind 2011, p. 439).

Statistics collected by Kerner et al. (2005) show that in 2002 a majority of cases (47 %) in which victim offender restitution was used were assault cases causing bodily harm (see also Jehle 2005, p. 40), and of these, half concerned conflicts in partnership and other forms of inner-familiar violence (Trenczek 2003, p. 105; Vázquez-Portomene 2012; see also about mediation in cases of partner conflicts: Rössner et al. 1999). Schmidt (2012, p. 189) lists besides bodily injury also damaging of goods, insults, threats, intimidation, trespassing and property crimes. The focus of victim offender restitution is not on the reparation of material damages but of personal conflicts between human beings (Walter 2004, p. 339). In cases of successful victim offender restitution between both parties, the prosecution will in 80 % of all cases close the penal process and the case will not come to court. In other cases the court can reduce the punishment or abstain from it altogether (Jehle 2005, p. 39; for a summary: Schwind 2011, p. 439).

In areas outside the criminal justice system we can also see a growing tendency to regulate conflicts in a non-judicial way. Yet despite this progress and the fact that mediation has become an accepted form of conflict resolution in Germany the possibilities of mediation are still far from being fully exhausted (Hopt and Steffek 2008c, p. 7).

Research in New Zealand and Australia has pointed to conferencing as a particularly helpful form of mediation to reduce conflicts caused by juvenile offending or conflicts in families or partnership. According to Vanfraechem and Zinsstag (2012, p. 1): "Restorative justice in general and conferencing in particular

¹ Source: TOA statistics, which have been collected since 1993 by Kerner and colleagues (2005).

have in the last two decades developed extensively. They have during this time established themselves as valuable potential alternatives to a problematic criminal justice systems, or as an ideal partner through which coordination with a more punitive type of justice attempts to bring a fairer sense of justice to all stakeholders of a crime". Conferencing is a restorative justice practice that is especially helpful to repair the harm caused by the crime to the victim and the community (Walgrave 2008, p. 21). "Family group conferences (FGC) started in New Zealand in 1989, both for youth justice and youth care cases" and this was "the model for various practices throughout the world" (Vanfraechem and Zinsstag 2012, p. 2; see also Morris and Maxwell 2001). As Shearar and Maxwell (2012, p. 101) point out: "New Zealand's youth justice system owes much of its success to the fact that it was based on principles which emphasized constructive outcomes for victims, young offenders, families, and communities through the creation of the family group conference (FGC)". The authors come to the conclusion (2012, p. 114): "New Zealand's youth justice model has provided the world with an important model for youth justice systems. It places emphasis on family and community support for children and young people's pro-social development while making them accountable for their actions. The New Zealand experience has shown the need for widespread commitment from the government, communities, families, and agencies for this model to succeed". That conferencing has its origins in New Zealand and Australia is no accident: this form of conflict resolutions has long been practiced by the aboriginal population of the two countries (see also Daly 2012, pp. 118 ff.; Kury and Kuhlmann 2016).

Daly (2012) discusses the possibilities and risks of using conferences also in cases of gendered violence: "Using conferences in cases of gendered violence (sexual, partner, and family violence) is controversial. Two countries – New Zealand and Australia – have been pioneers in developing appropriate practices. A small body of evidence from the region and elsewhere is available on the topic" (2012, p. 117). The use of appropriate practices is of great importance for a successful outcome in such cases (ibid. p. 130): "Gendered violence offences pose challenges to conferencing and restorative justice, in part because of a charged political context and in part because these offences require serious reflection on the role and place of victims in a justice process. Victim safety and voluntary participation, and facilitators who are knowledgeable about the dynamics of gendered violence offences, are obvious pre-requisites" (see also Cook et al. 2006; Daly and Stubbs 2006).

5 The Development in Other European Countries

Hopt and Steffek (2008b) also give an overview about the development and the actual state of mediation in other countries (see also Rössner 1998, pp. 881 ff.). The volume includes regulations and research from the United States, Austria, France, England, the Netherlands, Japan, Australia, Bulgaria, China, Ireland, Canada,

New Zealand, Norway, Poland, Portugal, Russia, Switzerland, Spain and Hungary, i.e. from western industrialized countries but also from former Soviet Republics. Positive reports about mediation from one country encourage other countries to also include these alternatives in their penal codes. For instance, in their report about the United States, Bush and Folger (2005) praise the introduction of mediation as a “satisfaction story”, a “social justice story” and a “transformation story”—praise that had a stimulating effect (see Hopt and Steffek 2008c, p. 10).

Miers (2007, pp. 447ff.) reported about the development of mediation in USA, Belgium, England and Wales and New Zealand. According to his study, in 1996 there existed 289 victim-offender-mediation programs in the United States, albeit only few of them included juveniles (see also Umbreit and Greenwood 1998). Five years later Schiff and Bazemore (2002, p. 180) counted already 773 programs with conferencing. For Canada, Griffiths (1999) counted in 1998 more than 200 programs. Umbreit et al. (2001, p. 121) estimated for the year 2000 worldwide in about 20 countries 1300 programs for juvenile offenders. Mestitz (2005, p. 13) found in Europe strong differences in the distribution of mediation programs, especially concerning juvenile offenders. While in Germany or in France 200 to 300 victim offender restitution programs existed, in other countries like Ireland or Italy there were only very few. Authors link the differences in the programs to the differences in legal systems but to some extent also to the presence or absence of financial support. There were also many differences between “design and delivery” of the programs (Daly 2003b). Restorative justice simply “means different things to different people” (Weitekamp 2002, p. 322). Hopt and Steffek (2008c, pp. 12ff) share this assessment. From a theoretical point of view it is essential that cooperation on a voluntary basis is a key element of mediation yet in some countries the discussion is still going on whether in some cases the parties can be forced to cooperate. There are also differences in the definition of the role of the mediator, for example whether he/she can bring in suggestions and solutions or not. However one positive aspect of mediation shared by all participating countries is the fact that the procedure is centred on the social conflict, and that the legal regulations only have a helping function. This makes it possible that problems outside the juridical sphere, for example in family matters or at the work place, can be handled through mediation as well (see for example Montada 2004, p. 184). There is a common consensus that mediation needs to be handled by trained staff and not by amateurs (Hopt and Steffek 2008c, p. 13). As Hopt and Steffek (2008c, p. 13) point out the definitions of mediation in different countries concentrate on four points: there needs to be a conflict; participation must be voluntary; there has to be systematic support of the communication between the parties; the role of the mediator is to help the parties to come to an agreement, but he has no power to force a decision on them. Also important is the confidentiality of the procedure and the neutrality of the mediator.

One of the reason why most countries report positive results has also to do with the fact that the reduction of conflicts is not from the outset pressed into a rigid corset but that the parties and the mediators have the opportunity to find flexible solutions based on the nature of the conflict (Hopt and Steffek 2008c, p. 42). The

flexibility of the concept is a very important aspect the success of which depends to a large extent on the quality of the training of the mediators. In Germany for example, the “*Bundesarbeitsgemeinschaft Täter-Opfer-Ausgleich e. V. (BAG TOA e.V.)*” gives a diploma of quality to qualified mediators which should guarantee high standards in the praxis (Lippelt and Schütte 2010, p. 66). Jung (1998, p. 921) cautions that mediation can lose its specific characteristics and the potential to present a more humane regulation of conflicts as soon as it is incorporated and instrumentalized by the criminal justice system. In this case it can easily degenerate into an inferior variation of the decision making process of the judge. This does not mean that the procedural guarantees of criminal justice should be neglected because, as Walgrave (2007, p. 570) puts it: “It is now almost generally accepted that a state-controlled legal framework is needed to locate restorative justice within the principles of a constitutional democracy.”

Tränkle (2007, p. 335) compared the German victim offender mediation procedure and the French model of *médiation pénale* for adults and examined their chances of success under the conditions of the respective criminal procedures. She points out that the mediators would have to bring about a transformation of the classical penal court procedure for an effective mediation (p. 336). Mediation is hindered if the parties are still locked into their roles in the classical penal procedure—this is not a good starting point for open conversation (p. 338). The chances for an open conversation have to be settled before the real mediation can begin. The author comes thus to the conclusion (p. 340) that the structural docking to the penal procedure hinders mediation in its development. And yet, restrictions and structuring on the basis of the classical penal procedure cannot be excluded because the mediation can only partly, if at all, transgress the classical penal court procedure. This analysis is confirmed by Hopt and Steffek who, in their international comparison of penal laws, also show that in some countries the possibilities of free agreements between the parties are substantially reduced (2008c, pp. 70 ff.). Some countries require first special conferences or court decisions, which have to be followed. Coercion for a voluntary solution of conflicts, the so-called Mediation-Paracos, is in any case contra-productive (p. 88).

As far as the training of mediators is concerned, Hopt and Steffek (2008c, pp. 70 ff.) have found in their international analyses great differences between different countries. Only in a few countries have clear training programs been formalized, and also the question which professional groups should be active as mediators finds different answers. Problems with mediation are regularly also linked to the criminal justice regulations of a country. Especially in countries where the concept is new, the authors find problems in the realization, bad conceptualization, little institutional support or even misuse in the sense of a prolongation of penal procedures (Hopt and Steffek 2008c, p. 71). In Germany too there was considerable resistance to mediation in the beginning (see Hammacher 2008, p. 30). Sound information, both for the public and the professionals involved is therefore very important. The better the public is informed, the more mediation will be accepted as an alternative (see for example the development of attitudes to

alternatives in the former German Democratic Republic after the reunification of both parts of Germany: Kury et al. 1996; Ludwig and Kräupl 2005).

While in western countries restorative justice is meanwhile largely accepted, at least on a theoretical level, in Eastern European countries such alternatives are less well known, except for those countries that have already adapted their penal policy to western models. Willemsens and Walgrave (2007, p. 491) put it this way: "Although a number of countries in Central and Eastern Europe already have well established victim-offender mediation practices (for example, Poland, the Czech Republic and Slovenia), others are still struggling to take the first steps." On the background of their experiences in the cooperation with Eastern European countries, the authors (2007, p. 491) point out problems and opposition such as: "- a highly punitive attitude among the public and policy makers, - an uncritical reliance on incarceration - strong resistance within the police, 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 of restorative justice pilots, - low economic conditions, making it difficult to set up projects, - no 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 even corruption in parts of the criminal justice system, - heavy administrative and financial constraints on the agencies, preventing investment in qualitative work" (see also Kury and Shea 2011). Chankova and Van Ness (2007, p. 530) emphasize: "The strength of restorative justice as a global reform dynamic is based on more than local dissatisfaction with criminal justice. The recognition that new approaches were being adopted, expanded and evaluated in different parts of the world has encouraged and equipped local practitioners and given them credibility with policy makers." There is therefore hope that also in all Eastern European countries the discussion about restorative justice will rapidly gain ground.

The situation in Russia and Hungary is comparable to that of most Eastern European countries. Kurzynsky-Singer (2008, pp. 837ff.) explains that in Russia mediation is a relatively new development and has not yet been regulated by law. In crime policy discussion, the advantages of the procedure are mainly seen for economic disputes. In 2007 a first draft of a mediation legislation was formulated. The draft also includes disagreements at the workplaces and in family affairs (Kurzynsky-Singer 2008, pp. 837 ff.).

The court has to accept the result of a mediation, the procedure is not confidential and the procedure is not standardized by law. The mediator can be heard by the court as a witness und has to report. Penal proceedings can be ended after a successful mediation. To begin a mediation process, the parties can get information and help from a mediator or a mediation-centre. Anybody can become a mediator and no special training is required. Most mediators have no legal training (Kurzynsky-Singer 2008, p. 846). Some little statistical information is now available, for example from the Saint Petersburg Centre of Conflict Resolution. There, between 1994 and 2006, 520 mediation processes took place of which 364 related to

interpersonal problems, 104 to economic disputes and 42 to problems at the work place. In 89 % of these cases an agreement was found, which was voluntarily reached in 69 %. Some of reasons why mediation is in Russia is still rarely used are as follows (p. 846): for one, the costs are not necessarily lower than in classical penal procedures and, secondly, the missing quality standards are deplorable. Mediation develops in Russia especially as an alternative to the classical penal law system. This is seen in the Russian literature as a positive point because it is hoped that with the help of mediation the risk of corruption at the court and the risk of false court decisions can be reduced (Kurzynsky-Singer 2008, p. 848).

Jessel-Holst (2008, pp. 906ff.) reports on the situation of mediation in Hungary. There, in March 2003, a special law was passed concerning mediation. Mediation is only used in civil cases and the main reason for introducing it was to reduce the caseload of the courts, especially for conflicts in the health system. Mediators must have a university diploma, but no further specialized training is required. Mediation is relatively seldom used. The number of mediations increased in 2004 to 721, of which 532 were successful, and 189 had no positive outcome. 254 cases were about family conflicts, 34 about problems at the work place and 433 about other civil disputes. Overall, the mediation procedures are seen as positive.

Mediation is now in many countries not only used in penal or civil law cases but also for other conflicts, for instance inside families (Bannenberg et al. 1999), schools (Morrison 2007), at work, for conflicts in a community (McEvoy and Mika 2002), in commercial companies (Young 2002), in the police (Senghaus 2010; see also the chapters by Delattre 2010 and Röchling 2010) or in prisons (Walter 2002; Matt and Winter 2002; Van Ness 2007; Sasse 2010). But “it is within criminal justice that it is fast becoming most influential” (Green 2007, p. 183).

The Ministry of England and Wales (2013b) reports in a press release from 14 March 2013 that mediation will be used to help in the separation procedures of couples. “The Government strongly supports mediation – a quicker, simpler and more effective way for separating couples to agree how they divide their assets or arrange child contact, which avoids the traumatic and divisive effect of courtroom battles.” The Ministry of Justice includes in its annual budget £ 25,000,000 to support mediation programs in this field and develop new binding legislation that couples “must consider mediation to sort out the details of their divorce” before going to court (2013a). The main advantages are seen the reduction of cost and of time: “The average cost of resolving property and financial disputes caused by separation is approximately £ 500 through mediation for a publicly funded client, compared to £ 4000 for issued settled through the courts. The average time for a mediated case is 110 days compared to 435 days for non-mediated cases” (Ministry of Justice 2013a).

Morrison (2007) discusses mediation programs in schools (see also Hopkins 2004). “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” (Morrison 2007, p. 325). Today, there are many programs internationally, “that focus on developing social and emotional intelligence in schools” (p. 327), in the sense for example of Sherman (2003), who sees

restorative justice as “emotionally intelligent justice”. 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” (Morrison 2007, p. 340).

Van Ness (2007, p. 314) writes about mediation programs in United States prisons, for example in the context of “victim awareness and empathy programmes” but also for the solution of conflicts between inmates and prison staff. In some programs, victims or substitutes are included but in others the immediate victims don’t participate (see for Germany a similar program in Hamburg: Hagemann 2003, p. 225). The use of restorative justice and victim offender mediation in European prisons is on the increase in some countries like Belgium and Germany. For Belgium we can draw on the research by Buntinx (2012). She works for Sugnomè (“ancient Greek word which means looking from different perspectives at the same reality”, Buntinx 2012, p. 1), an organisation that uses victim offender mediation in prisons also for very serious cases, for example homicides. On the basis of the Belgian law of 2005, “a mediation process can be started on the demand of everybody who has a direct interest in a criminal procedure, and this is possible during the whole criminal procedure” (Buntinx 2012, p. 2). The beginning of prison mediations dates back to 2001, and since 2008 in each prison an inmate or his victim can ask for mediation (p. 2). In the time from 2008 to 2012, 1792 requests were made, and 614 mediations and 167 face-to-face meetings actually took place. The evaluation of the author is positive: “... the most important conclusion is of course the very great level of satisfaction on the part of the parties that have participated in mediation. This satisfaction is found both on the side of the offender and that of the victim” (Buntinx 2012, p. 6).

In some programs the main aim is the reconciliation with the family members of the inmate or to prepare the community for the re-entry of the prisoner after release. In “prison-community-programmes” the interest is to reduce the separation between inmate and community, a very important element for a successful reintegration after release. Of special importance is also the reduction of prisonisation. “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” (Van Ness 2007, p. 319; see also Gelber 2012, pp. 441 ff.). Very often offenders are themselves victimized by violent crimes as children or juveniles. In the model project “Seehaus Leonberg” in Baden-Württemberg, which was established in 2003 for juvenile offenders, the staff is engaged in a victim-empathy program for the inmates that also includes restitution. In Lower Saxony mediators receive special training to work in prison with a focus on solving conflicts between inmates and staff. According to several authors, more attention should be paid to victims in modern prison systems (Gelber 2012, p. 447; see also Gelber and Walter 2012; Krause and Vogt 2012). Research shows that the victims are more willing to participate in mediation programs as often suggested.

6 Results of Empirical Evaluation of Mediation

Until a few years ago there were, also internationally, relatively few empirical research results available on the evaluation of mediation, in particular of restorative justice. This has changed: meanwhile there are many studies that show “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” (Bazemore and Elis 2007, p. 397; see also Hayes 2007). Bazemore and Elis (2007, p. 397) point out that in contrast to empirical research about treatment programs for offenders which could also produce negative results, the positive research results about programs of restorative justice are more consistent: “Most studies of restorative programmes, including recent meta-analyses (see also Bonta et al. 2000; Nugent et al. 2003) indicate some positive impact. . . , and some suggest that restorative programmes may have equal or stronger impacts than many treatment programmes. . . .” The positive effects were particularly evident for the victims, whereby the discussion is still open, if this positive effect is a result of restitution or rather of the experience of a just treatment during the penal process.

Hayes (2007, p. 425) assesses the positive results of restorative justice programs as follows: “It seems clear that restorative justice processes have many benefits for victims, offenders and their communities. Victims benefit from active participation in a justice process. Offenders benefit from the opportunity to repair harms and make amends. Communities (of care) benefit from the negotiation of restorative resolutions to conflict. . . . In this sense, restorative justice has achieved many of its aims (i.e. holding offenders accountable and affording them opportunities to make amends in symbolic and material ways, encouraging reconciliations between offenders, victims and their communities of care)”.

While we now have a relatively large number of studies on the immediate impact of mediation, we know little about the question how far the programs also have a positive preventive effect by reducing the recidivism rate of offenders participating in victim offender restitution programs. Such studies exist so far primarily in the United States, Great Britain and Australia (Hayes 2007, p. 433).

The discussion of the results of this research is insofar difficult as there are a lot of methodological problems that can reduce the validity of the studies (Wood 2015). Often it is difficult to generalize the results—the same problems we have seen decades ago in the evaluation of offender treatment programs (see Lipton et al. 1975). Restorative justice is a broad concept, the procedure within the programs may differ and the programs are used in different phases of the penal procedure. Very often the conferences and thus the direct “treatment” of the offender lasts only 60–90 min in one session; the effect may be therefor low, especially if one takes into account the many different factors that can influence recidivism, such as unemployment, inclusion in delinquent networks after release, possible drug and alcohol problems, the situation in the family and with relatives, the people they meet. There is also the risk of a “self-selection bias” because offenders and victims have to agree to participate, and motivated offenders with a

better prognosis may be overrepresented (Gromet 2009, p. 41). Often the programs are in practice not fully implemented because there may be opposition from the prosecution or the courts, and there may be discrepancies between the written programs and their realisation (Hoyle 2002, p. 116). The realisation of experimental studies is scarcely possible. The fact that the criteria of recidivism are often not clearly defined and comparable adds yet another complication (Menkel-Meadow 2007).

Notwithstanding these problems Hayes (2007, p. 440) sees the future in a positive light: "Despite results that show restorative justice effects no change ... or in some cases is associated with increases 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. I am not making 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 suggesting that, on balance, restorative justice 'works'". It could contribute to prevent recidivism, "but post-intervention experiences are important". Johnstone (2007, p. 598) adds a further note of caution by pointing out that most publications about restorative justice are written by experts who support the procedure and this could cause some bias in the evaluation of the results.

The most frequently voiced criticism of restorative justice is about the risk of undermining the deterrent effect of (harsh) punishment. But proponents of restorative justice don't see this as a big risk "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" (Johnstone 2007, p. 601; see also Wilson 1983, p. 117-144).

Some critics point out that restorative justice can be no more than an adjunct to the established punishment by the courts; within criminal justice it has a place but it is no substitute for punishment. Johnstone (2007, p. 610) pleads in his critical appreciation of restorative justice that the programs have to be implemented in a broader pattern of reactions to criminal behaviour. "What is most interesting is that even the most fervent critics tend to regard restorative justice – suitable reformulated and modified – as an extremely valuable contribution to the ongoing debate about how we should understand, relate to, and handle the problem of wrongdoing."

Some authors point out that the reduction of recidivism should not be seen as the only or primary aim of restorative justice (see Morris 2002). The programs concentrate in the first place on the victims and the reduction of damages caused to them. "Rather than focusing empirical scrutiny squarely on reoffending, perhaps researchers should attempt a better understanding of the complex of possible outcomes of restorative processes" (Hayes 2007, p. 440). If the focus of restorative justice is on victims rather than on the offenders, then it makes sense that the preventive effect of restorative justice should not be the only criterion to measure

the success of mediation programs but that the positive impact on victims should also be included (Lippelt and Schütte 2010, p. 43).

Yet there are also authors like Braithwaite (1999, 2009) for whom the positive effects of the programs are impressive, also concerning the reduction in recidivism rates. Braithwaite presents results of empirical research from different countries, which consistently show a remarkable reduction in recidivism rates. Other positive effects are a reduction in family violence, in some cases even in the consumption of alcohol. "Restorative justice is more successful in getting offenders to take responsibility for their wrongdoing. This happens because they experience greater remorse than in traditional criminal law process". Also bullying in schools could be substantially reduced through mediation (Olweus 1993).

As Hopt and Steffek (2008a, b, c, p. 77) rightly point out the effects and importance of mediation has to be seen in combination with the legal situation in a country and the culture of dealing with disputes. This is an important point, especially in comparing results from different countries. For example, in the former Soviet republics the legal conditions and the attitudes of people about this form of conflict resolution are different from western countries given their different historical development (Kury and Shea 2011). Western countries have had a longer experience with mediation, are more familiar with the procedures and accept more lenient reactions to crime. The attitudes of the population about punishment are influenced by the actual practice of dealing with crime in a country. When the German government abolished the death penalty in 1949 after World War II, nearly 75 % of the population were in favour of the death penalty in cases of severe crimes. Today this percentage has shrunk to about 20 % (Kury and Shea 2012). In the former Soviet republics the experience of criminal justice professionals and of the population with alternatives to classical punishment is smaller, and public discussion and media reporting still see harsh punishment as the best means for crime prevention (Ludwig and Kräupl 2005). Mediation as a new method to reduce conflicts is not very well known and rarely discussed.

In Norway in 2000, in 20–25 % of civil cases mediation was practiced, and in 70–80 % of these cases a compromise could be found. The greater acceptance of mediation in countries like Great Britain or the United States is probably also based on the high rates of success. This is not the case in Poland and Russia and also in Switzerland and partly in France where empirical research shows a lower acceptance of the procedure.

Empirical research shows increasingly and on an international scale that restorative justice is seen by the victims as advantageous to them, often more so than traditional criminal trials (Green 2007, p. 177). The well-known Thames Valley Police Project in London (see Hoyle and Young 2002) showed, for instance, that "the vast majority of victims felt that the meeting had been valuable in helping them recover from their experiences" (Green 2007, p. 177). The authors also pointed out that two thirds of the victims after participating in the program stated that through the mediation their view of the offenders had changed in a positive way (Hoyle and Young 2002). Comparable results were found in the evaluation of the "Youth Justice Panels" in Great Britain (see Crawford and Newburn 2003, p. 213). These

Youth Justice Panels “received high levels of satisfaction from victims on measures of procedural justice, including being treated fairly and with respect, as well as being given a voice in the process” (Green 2007, p. 178). An important topic is the openness of the victims to mediation and the willingness to cooperate: “... the general conclusion of most restorative justice studies has been that when victims participate in some form of victim-offender mediation the majority find the process helpful... What is evident is that the attitudes of victims who take part in the restorative process are largely positive when compared with those of victims whose cases are tried and sentenced in the conventional way. At this level, at least, restorative justice appears to fulfil its promise to the victims of crime – for the first time in recent history they have been given both a role and status in the resolution of their victimization” (ibid. p. 178). Despite these positive results, restorative justice does not work for all victims and some remain dissatisfied (see for example Daly 2001, 2003a).

Hopt and Steffek (2008a, b, c, S. 79) come to the final conclusion that mediation is a useful and helpful method to reduce conflicts and should be promoted. Mediation has the best positive effects, as the participants see it, if it is included in a system of conflict resolution. The method is also less time consuming and cheaper than conventional trials (2008a, b, c, p. 80). Research results from England and the Netherlands, but also from Germany show that mediation is in comparison to traditional court procedures 33–50 % shorter. The inclusion of mediation into the traditional court proceedings does not lower the positive results (2008a, b, c, p. 82; but see also critically Tränkle 2007). It has a more intensive effect on reconciliation, and agreements are much more often kept than after traditional penal processes without mediation (2008a, b, c, p. 84). These are demonstrable facts that prove the positive effects of mediation, and not, as some critics claim, simple promises by authors in favour of an alternative approach to criminal justice. Even in cases where mediation is not successful the parties report satisfaction with the experience.

Lippelt and Schütte (2010, p. 43) summarize the most important results of German studies, including also the sound methodological studies by Busse (2001) or Dölling et al. (2002) and come to the conclusion that victim offender mediation in most cases shows a lower recidivism rate than classical procedures, and even in unfavourable cases the results were as positive as in classical court procedures. In Germany too the costs were lower, especially in juvenile cases (Kumpmann 2007). A key positive effect of victim offender mediation that was often underlined was the greater satisfaction of both offenders and especially victims compared with the classical procedure. Bals (2006) could show that more than 90 % of the offenders and victims gave mediation a positive vote, and 80 % of victims and 57.1 % of offenders felt treated fairly. Also Delattre (2010, p. 85) points out that most scientific evaluations of victim offender mediation projects show a clearly positive effect. Schmidt (2012, p. 190) gives, however, a more critical appraisal: according to him, the effectiveness of TOA in Germany has only been examined in single projects or in single local regions. According to him, generalizable results are not available today.

Even if a systematic evaluation of alternative reactions to crime is not yet complete, the research results we have today show clearly the limitations of (harsh) punishment in crime prevention and “that punishment alone may not bring about significant improvements to the emotional and psychological recovery of crime victims. On the contrary, the results from the analysis of sentencing models indicate that the ‘punitive model’ of punishment alone is less conducive to emotional recovery than the ‘non-punitive model’ of apology and restitution without punishment. When punishment was combined with apology and restitution, however, the resulting model was considered to be the most conducive to victim recovery. Indeed the ‘comprehensive model’ was the only model that showed a significant increase in victim recovery for all scenarios” (London 2011, p. 115). Gromet (2009, p. 47) too underlines in this context: “The empirical evidence indicates that the best solution is a combined procedure that contains both restorative and retributive elements”.

According to London (2011, p. IX), “Restorative justice began as a vision of a better way to do criminal justice and, in hundreds of programs throughout the world, it has proven to be just that. It has helped victims to feel more satisfied with the process and more secure in their personal safety. It has increased offenders’ compliance with restitution orders without adversely affecting recidivism rates.”

7 Final Discussion

Mediation and restorative justice are no longer a marginal topic. Today we have on an international level and in particular in western industrialized countries an overwhelming number of publications on the subject. The starting point was the legitimate desire for a greater inclusion of victims’ interests in criminal justice proceedings. The academic discussion was given a new impetus after World War II, especially from the 1960s and 1970s onward, through the fast growing and rediscovered importance of victimology. Before, and often still today, penal law did not care about the interests of the victims and concentrated only on the sanctions for offenders. It came therefore as no surprise that many victims were dissatisfied with the result of criminal justice. Their only “satisfaction” was to see the offender punished, and this in turn promoted the desire for severe punishment.

Sessar (1992, p. 21) points out that the restitution of “penal peace” (“Rechtsfrieden”), on which modern penal policy is almost exclusively focused, does not bring automatically back social peace. Penal peace is primarily concentrated 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 but to look instead at its origins and find a comprehensive solution. Interpersonal regulations have positive effects on socialisation and peace in a society and once the people understand this, the role of a purely criminal justice can be reduced.

Information is a very important factor in the shaping of people's attitudes and without public support innovations are hard to bring about. As Delattre (2010, p. 91) points out victim offender restitution was promoted as the most important and positive initiative in crime policy of the last 25 years. Yet the possibilities of these new ways of dealing with crime are still not fully exhausted despite their obvious positive aspects. The dialogue with the public is even now a neglected element in promoting mediation and has to be intensified (2010, p. 101). The most important partners here are the police because they are in most cases the first to be in contact with offender and victim.

Young (2002, p. 137) points out that according to the British Crime Survey already 1984, 51 % of the interviewed victims said they would be willing to meet the offender outside the court together with an official "helper" to speak about restitution. Answering a slightly differently formulated question in the British Crime Survey of 1998, 41 % of the respondents accepted a meeting with the offender, in presence of a third person, to ask questions about the background of the crime and to have the opportunity to tell the offender about the effects of the victimization. Sanders (2002, p. 222) emphasizes that research has shown that if offenders understand the penal procedure and perceive it as legitimate, they also can accept the result better, even in cases when they perceive the result as being unjust. The same is the case for the victims. Hopt and Steffek (2008a, b, c, p. 79) underline that the culture of reducing conflicts in a society has to be promoted by clear information given to judges and prosecutors, and especially to the public. The procedure has to be explained, judges and prosecutors have to be informed, mediators have to be well trained and the necessary financial support for mediation has to be assured. Part of the success depends also on accompanying measures that help establish a supporting surroundings in which the mediation program can be implemented.

There is little unanimity about the question how far restoration and retribution should be combined, without risking that restoration is losing out. Sessar (1992, p. 21) speaks about the certainty of the penal law. London (2011, p. 180) emphasizes that "restoration" has to be combined with "retribution" or the public will not accept it. "Neither deterrence, incapacitation, nor retribution offers a strategy for reintegration. Even rehabilitation, by itself, is a poor vehicle for genuine reintegration because it neglects the needs of victims and of society for the satisfaction of justice as a precondition for social acceptance. By subsuming each of these traditional goals to the overall goal of restoring trust, however, criminal sentences can be fashioned that attempt to achieve deterrence, incapacitation, restitution, rehabilitation, and retribution not as ends in themselves, but as part of an overall strategy for repairing the harm of crime" (London 2011, p. 183).

London (2011, p. 315) summarizes the positive results and the challenges of restorative justice as follows: "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.” He points out that all parties profit from a 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 transgressions involved in the crime” (London 2011, p. 320).

All modern penal law systems are confronted with the question how to relate to victim offender restitution in their systems (Rössner 1998, p. 881). The international comparison by Rössner (p. 894) shows clearly that restitution should be included in all systems of criminal justice. As the victims themselves report in most cases positive effects, mediation cannot be accused of using victims to bring healing to offenders, as it is sometimes criticised, but it is a measure with positive effects for both parts, offenders and victims. We also should also not forget that many victims are women and children.

Initially, mediation was established to help victims, to improve their condition after the victimization and to give them better chances to receive restitution of the damages. The now numerous research results show clearly that this aim can be reached if the measure is handled professionally. Most victims find that their situation has improved after participation in mediation and that they have a better chance to overcome the harm caused by the crime than in classical penal procedures.

Concerning the effects on the offenders, especially on their re-socialization, the results are not as unanimous, which is not surprising. Mediation is usually a short process of a few hours. It would therefore be hoping for too much to see long lasting effects in offenders, especially incarcerated offenders who often have strong social deficits. But as part of a comprehensive rehabilitation program, mediation plays a very important role and its use should therefore be extended. The classical criminal justice approach has obvious disadvantages as far as the reintegration of offenders is concerned which could be, at least partly, reduced by professional mediation.

Five Questions

1. What are the advantages and disadvantages of a traditional criminal justice oriented solution for the sanctioning of offenders?
2. What do we mean by alternatives to criminal sentences? How are they defined?
3. In the search of conflict solutions, why is it important to consider also the damage caused by the crime and the emotional side of both offenders and victims?
4. What do research results on mediation show? How would victims want conflicts and damage solved that are caused by crime?
5. What developments can be seen in different countries concerning mediation and restorative justice and against which background?

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Alternative Approaches to Preventing Recidivism: Restorative Justice and the Social Reintegration of Offenders

Yvon Dandurand

Abstract Mediation and restorative justice are often praised as efficient alternatives to criminal justice proceedings in dealing with juvenile offenders. However, the most powerful feature of such programmes has perhaps not yet been fully examined—their capacity to facilitate and effectively contribute to the social reintegration of offenders. This chapter seeks to recast mediation and restorative justice programmes as a form of reconciliation between the juvenile offender and the community and a frequent pre-requisite to the offender’s successful social reintegration.

1 Introduction

Many attempts were made over the last few decades to integrate restorative justice principles into the main-stream criminal justice process for juvenile offenders. Early efforts were inspired by concerns for victims of crime who, it seemed, had been progressively excluded from the criminal justice process, except perhaps as witnesses. The purpose of these initiatives was essentially to increase victim participation and access to redress or compensation. Conciliation was another initial objective of these efforts. Some early programmes indeed focused on victim-offender reconciliation. It was only later that the benefits of these alternative processes for offenders—by contributing to their rehabilitation—and to the justice system itself—by providing an alternative to the time-consuming and costly criminal justice process—were formally acknowledged and progressively turned into their main *raison d’être*. As I have argued before, the potential appeal and transformative value of these principles were recognized very slowly (Dandurand 2012).

In 1985, the UN Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power, as it related to access to justice and fair treatment for victims of crime, recommended that “informal mechanisms for the resolution of disputes,

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including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.”¹ Also in 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasized the importance of diversion (A/RES/40/33). In 1989, the Convention on the Rights of the Child (CRC, 1577 UNTS 3) also called for the use of diversion, or measures for dealing with children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected (Article 40 (3) (b)).

In 2007, when the Committee on the Rights of the Child decided to provide some specific guidance on “children’s rights in juvenile justice”, it recommended the use of alternative measures such as diversion and restorative justice, as measures that provide States with “possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short and long-term interest of the society at large.” (Committee on the Rights of the Child 2007 (CRC/CGC/10), para 3). The Committee, based on the principle of the primacy of the best interests of the child, concluded that “the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.” (Committee on the Rights of the Child 2007 (CRC/C/GC/10), para 10; 2013 (CRC/C/GC/14), para 28).

More recently, in her publication on restorative justice for children, the Special Representative of the Secretary General on Violence against Children (2013) explained the need to promote restorative justice in terms of her observation that “countless children face violent and degrading treatment throughout the criminal justice process”.

Restorative justice is essentially presented as an alternative to that process. In May 2014, based on the concern that children who are incarcerated or otherwise institutionalized are at a higher risk of being victimized, the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice² recommend the greater use of restorative justice and other diversion programmes.

That thinking led over the years to the development of a host of initiatives, often supported by UNICEF and various international NGOs involved in the field of juvenile justice, to implement diversion programmes based on mediation and other restorative justice models. In most countries, at this point, the vast majority of restorative justice programmes deal principally with young offenders. What is also significant is that the vast majority of these programmes only focus on restorative justice as a means to divert children away from the criminal justice system. They for

¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G. A. resolution 40/34 of 29 November 1985, article 7 (A/RES/40/34, Annex, art. 7).

² United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, approved by the U.N. Commission on the Prevention of Crime and Criminal Justice, UN doc. E/2014/30.

the most part, neglect to recognize the intrinsic value of such processes when applied as part of a criminal justice intervention. What is perhaps even more significant is that these diversion programmes, except in rare instances, have essentially failed to transform how States and communities respond to juvenile crime and, if anything, have sometimes often broaden the reach of the justice system and “widened its net”.³

Restorative justice programmes were first proposed as a means to put the concerns and issues of victims at the centre of the social response to crime.⁴ They are now being valued mostly for their participatory characteristics and their ability to involve a few members of the community and various stakeholders in finding an appropriate response to individual crimes.⁵ In many countries, the idea of community involvement enjoys a lot of support. Together with problem solving courts and community courts, restorative justice programmes offer communities some means of resolving conflicts. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protecting the rights and interests of victims and offenders.

This chapter reviews the original promises of the restorative justice approach as an alternative to the conventional criminal justice response to juvenile crime. It also notes some of the model’s limitations and the challenges that have shaped and constrained its full implementation. One such promise, the “public safety promise”, was that restorative justice approaches would support rehabilitation and prevent recidivism in a way that other forms of interventions did not or could not. That promise, with a few exceptions, is relatively unfulfilled. At the same time, restorative justice programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. They are also based, in some instances, on a will to return to local decision-making and community building (Dandurand 2012, p. 89). These are the characteristics that make restorative justice such a potentially powerful instrument to facilitate the reintegration of offenders. Unfortunately, there have been relatively few applications so far of the restorative justice principles in the offender social reintegration context.

³ The presence of a “net widening” effect, although a real concern, has not been confirmed in all instances where it has been measured. See: Prichard (2010).

⁴ Many proponents of restorative justice approaches see the centrality of the victim’s concerns as their main defining characteristic. Van Ness and Heetderks Strong, for example, affirmed that “victim concerns and issues should be at the centre of work for restorative justice, and not ancillary” (2006, p. 141).

⁵ See the excellent document of the Law Commission of Canada (2003).

2 Restorative Justice and Its Promises

Restorative justice programmes offer a process for resolving crime by focusing on redressing the harm done to victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. According to the UNODC Handbook on Restorative Justice Programmes, “participation of the parties is an essential part of the process which emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities” (UNODC 2006, p. 7).

According to Sherman and Strang (2007), two major claims have usually been made with respect to restorative justice: a procedural claim and an effectiveness claim. The procedural claim is that restorative justice offers victims and offenders a more humane and respectful way to process crimes than conventional justice. The effectiveness claim, or promise, is that restorative justice can produce better outcomes in terms of public safety, victim healing, community health, and offender rehabilitation and social reintegration. The effectiveness promise, including the public safety promise, is perhaps the hardest one to achieve. It certainly is the hardest one to measure.

As mentioned before, restorative programmes are perceived as an ideal diversion mechanism for children in conflict with the law and dozens of countries have experimented with this approach. However, few of these countries have managed to provide such a diversion alternative on a national scale. In fact, existing programmes rarely achieve the required level of public acceptance and support required for their implementation on a broad scale, and criminal justice resources tend to continue to be channelled towards more traditional criminal justice response mechanisms (Dandurand 2012, p. 90).

So far, the institutionalization of restorative justice has taken many paths in different countries (Artsen et al. 2013). The process of institutionalizing restorative justice principles resists any easy generalization. A frequently expressed concern is that the institutionalization of restorative justice leads to a compromise of restorative justice values and a return to a more retributive focus (Broughton 2012). Notwithstanding that concern, there is a case to be made for expanding the use of the restorative justice model to support the social reintegration of young offenders, and in particular, their successful re-entry into the community after a period of detention or institutionalization. As Bazemore and Maruna argued, “restorative justice interventions are too often focused on the ‘soft end’ of the justice process, when a growing body of evidence suggests that restorative practices might be more effectively focused on the reintegration process for more serious offenses” (Bazemore and Maruna 2009, p. 375).

2.1 Impact on Offender and Desistance from Crime

The evidence on the impact of restorative justice programmes on reoffending is limited, but recent reviews indicate that restorative justice may be more effective for prolific offenders and even serious offenders than for offenders involved in less serious crimes, and more effective after rather than prior to sentencing. Some programmes seem to have a greater impact than others on preventing recidivism. This is the case, for example, of face-to-face restorative justice conferences. A recent systematic review of these programmes showed that, on average, these programmes cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims (Strang et al. 2013).

Joudo Larsen (2014) who reviewed the outcomes of restorative justice programmes in Australia (mostly for juvenile offenders) concluded that “while the evidence is not overwhelming at present, there is growing body of evidence that supports the assertion that restorative justice can reduce reoffending” (2014, p. 26). Others have reached similar conclusions (Sherman and Strang 2007; Bonta et al. 2009). However, we do not yet have a body of evidence that allows us to conclude that restorative justice, as it is currently implemented, is a less expensive and more efficient way of preventing recidivism than other criminal justice interventions (Weatherburn and Macadam 2013; Weatherburn et al. 2012).

Contrary to assumptions that are often made, a restorative justice process can be quite effective in cases involving serious offences or even offenders entrenched in patterns of serious crime. It can be successfully applied when the offender and victims previously had some form of relationship with each other, even when violence is involved (Sherman and Strang 2012). There is no need to confine our use of restorative justice programmes to cases involving first time offenders or relatively minor offences. (Shapland et al. 2011) Restorative justice may even have a deeper healing impact on serious offenders than on others; it certainly acquires a great significance to the community when violent offences are involved.

Based on their systematic review of available evidence on the impact of restorative strategy, Sherman and Strang (2007) concluded that restorative justice programmes produce the best results, in terms of helping victims and reducing recidivism, when they focus on offences involving a personal victim and a violent offence and intentional harm, rather than a non-violent property offence.

2.2 Impact on Victims

Victim satisfaction with the restorative justice process, at least for those who chose to participate in it, tends to be fairly high. According to the evidence reviewed by Sherman and Strang, “on average, in every test available, victims do better when they participate in RJ than when they do not” (Sherman and Strang 2007, p. 22). However, restorative justice does not always increase victim satisfaction with the

justice process and we should try to better understand the reasons why victims are sometimes dissatisfied with the process (Choi et al. 2012).

It is also important to keep in mind that victim participation in a restorative justice process tends to be far more limited than it is usually assumed to be, particularly when dealing with juvenile offenders. A large proportion of children and youth referred to restorative justice programmes are essentially involved in victimless crimes (motor vehicle offences, drug possession, etc.), thus limiting the involvement of a “victim” in the process. Victims’ direct involvement is equally limited, or remains largely symbolic, when relatively minor infractions against corporations and businesses (shoplifting) or public agencies (graffiti on the walls of public buildings) are involved. There are also many cases where the offender victimizes a member of his or her own family (Hannem and Leonardi 2014) and where the unmet needs of the offender’s family make the participation of the latter in a restorative justice or the offender’s social reintegration quite difficult.

2.3 *Community Involvement*

Similarly, the involvement of the community in the vast majority of restorative justice programmes for juvenile offenders tends to be more symbolic than real. The community’s involvement remains quite limited and its potential impact on the juvenile offenders’ social reintegration is likely to be limited.

The concept of “community” is a central one in both the restorative justice and the social reintegration fields. How a restorative justice programme defines “community” is a critical factor in determining the nature and extent of citizen ownership of and participation in the process (Bazemore and Umbreit 1999, p. 8). However, Hoyle (2010) argued, there is usually quite a gap between the theory and practice.⁶ In many ways, restorative justice utopian aspirations are still far away from their realization. The rhetoric of restorative justice often bypasses the “incontrovertible fact that harmony, mutuality, equality, reciprocity and respect are hard won even in our most significant and well-intentioned relationships” (Acorn 2004, p. 9).

Hoyle observed that, in operationalizing the concept of community in restorative justice:

Only those restorative justice measures established with the explicit aim of responding to crimes against community, such as truth and reconciliation processes, regularly achieve meaningful community integration in the process. For this reason, most restorative processes involve communities of interest around the victims and perpetrators rather than the offence (Hoyle 2010, p. 18).

⁶This is obviously not the only gap between the theory and the practice of restorative justice (Gavrielides 2007). In fact, the whole area is characterized by lofty discourses and promises and very pedestrian and limited applications.

Furthermore, many of the communities that embrace the promise of restorative justice are among the least able to mobilize the agency necessary to make it work. Ironically, as Dickson-Gilmore and La Prairie (2005) argued, “restorative justice requires successful communities.”⁷ It is a sad truth that many young offenders neither come from nor are returning to a “successful community”. In fact they are more likely to come from communities which are themselves already challenged by poverty, unemployment, social exclusion, alienation and criminality.

The same challenges are present when practitioners are discussing or trying to influence the relationship between young offenders and the “community”. In the case of young offenders, particularly, the broader involvement of the community is made even more problematic, no matter how it is defined, because of a legitimate preoccupation with protecting their privacy (as required by international child rights law). In practice, there is often a lot more rhetoric about restorative justice than there is an actual practice that brings together victims, offenders and communities in a genuine healing, transformative and offender reintegration process.

The norms and values of a community are offended and sometimes even threatened by youth crime: “(b)y breaking the bonds of their community, offenders might exclude themselves, or be excluded by others, from the community” (Hoyle 2010 p. 24). The reintegration of the young offender requires that these bonds be re-established while the community is reassured that those who have transgressed its norms are censured in order to reassert a shared commitment to these norms. However, as Hoyle rightfully argues, it is not always enough for the community to open its arms and reintegrate the young offender. In some cases, it needs to resocialize the young offender and contribute to his or her education and rehabilitation. It is therefore the potential of restorative justice to resocialize the young offender that makes it so powerful as part of the social reintegration process.

A restorative approach, based on the principle that conflicts are a natural part of life and crime and juvenile misconduct are part of growing up, can conceivably play an important part in the social reintegration of young offenders. The extent to which juvenile misconduct and disruptive behaviour negatively affect the community depends to a large extent on how the community responds to them (Pranis et al. 2003, p. 20). To the extent that a restorative justice process responds to youth crime by encouraging young offenders and the community to be respectful, honest, open, and compassionate, it can bring about personal growth in all concerned and repair or deepen the connection between the offenders and the community.

⁷ Dickson-Gilmore and La Prairie argued very persuasively that this is often the situation, at least in Canada, of Aboriginal communities wishing to improve their ability to deal with conflict and misconduct among their membership (Dickson-Gilmore and La Prairie 2005).

3 Restorative Justice and Its Challenges

As Chris Cunneen observed, one can hardly escape the observation that restorative justice “is essentially a peripheral add-on to the main workings of the criminal justice system” (Cunneen 2010, p. 184). To talk about the role of restorative justice in the offenders’ social reintegration process is not to assume that current restorative justice models will necessarily be equal to that new task. On the contrary, existing models and approaches will likely need to be reconceptualised entirely to create a more genuine opportunity for community involvement and mobilization. In so doing, restorative justice approaches need to re-discover their fundamental commitment to the victims and reconnect with their ability to transform relationships, in particular the relationship between offenders and the community they live in or return to.

3.1 *Transformative vs. Problem Solving Interventions*

A transformative approach to mediation and restorative justice is what is most likely to contribute to the offender desistance from crime and successful reintegration into the community. The transformative approach refers to an approach which sees conflict as an opportunity to transform human consciousness and behaviour. That approach views the “ideal response to conflict as helping parties take advantage of the opportunities presented to actually achieve transformation.” (Baruch Bush and Folger 1994, p. 249) The approach is particularly suited to work with young offenders and communities in facilitating the return and reintegration of the youths who have damaged their relationship with family and community.

Unfortunately, this ideal of restorative justice has largely been replaced by a restorative justice practice focused almost entirely on narrow problem solving and restoration. For example, a recent review of the growth of restorative justice in England and Wales (UK), distinguishing between, on the one hand, approaches based on the offender, victim and community responding together to the aftermath of crime and, on the other hand, programmes more narrowly focused on restoring the harm caused by crime, concluded that criminal justice actors, like the police, tend to be more attracted to the second and much simpler approach (Paterson and Clamp 2012).

Restorative justice should not be equated with conciliation, though the latter can be part of the process. In cases involving young offenders the process labels one party as the wronged and the other as the wrongdoer. It must hold the latter accountable for his or her actions and try to repair the harm caused to the former. It must do so in a manner, which is meaningful to all involved, the offender, the victims and the community. If it does not, it more likely to hinder than help the young offender’s social reintegration.

3.2 Best Interests of the Child and Procedural Protections

The United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules) emphasize the need for a diverse range of services and facilities designed to meet the different needs of young offenders re-entering the community, and to provide them with guidance and support as an important step towards their successful reintegration into society.⁸ They call for efforts to “provide semi-institutional arrangements, such as halfway houses, educational homes, daytime training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society” (rule 29.1). The Beijing Rules also encourage the frequent and early recourse to conditional release of juvenile offenders in detention. They state that “conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time” (rule 28.1), adding that “juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community” (rule 28.2).

The Beijing Rules also stress the importance of the cooperation of the community in the rehabilitation of juvenile offenders. They promote the mobilization of volunteers, local institutions and other community resources “to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit” (rule 25.1). Similarly, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty state that all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release (Rule 79).⁹ Specifically, the rules require competent authorities to ensure that services are available to assist juvenile offenders in re-establishing themselves in society and to lessen prejudice against them and stipulate (rule 80).

Juvenile offenders often belong to families and communities that cannot accommodate them even under the best of circumstances. Therefore, supportive interventions are particularly important. Restorative justice models could be redesigned to ensure that juvenile offenders receive the help and support they need to successfully reintegrate into the community.

Unfortunately, there remains some scepticism, some of it based on experience, about the ability of restorative justice processes to guarantee children’s safety, respect their rights and act in a manner consistent with the principle of the best interests of the child. Restorative justice processes do not always offer the procedural guarantees and protection that the conventional system can offer, at least in theory.

⁸ United Nations Standard Minimum Rules for the Administration of Justice, General Assembly resolution 40/33 of November 29 1985.

⁹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113 of 14 December 1990.

In 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States that are implementing restorative justice programmes to be guided by a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.¹⁰ The resolution accompanying the Basic Principles simply noted that restorative justice was an “evolving response to crime”, with some unique benefits, but it stopped short of promoting restorative justice. The strength of these Basic Principles is that the document puts forward a set of procedural conditions and guarantees that could be applied to ensure the proper application of restorative justice principles and avoid practices that might be counter to the rights of participants in a restorative justice process. Unfortunately, the Basic Principles are not well known and they are ignored at least as often as they are respected.

Even as she was writing in support of restorative justice for children, the Special Representative of the Secretary General on Violence against Children, Marta Santos Pais, devoted part of her report to the need to ensure that the necessary procedural safeguards for children are in place in a restorative justice process. She suggested that a competent authority, such as a child justice court, should have effective judicial overview to ensure that the rights of the child are respected at all times and that the process is lawfully conducted. In practice, however, the presence of such an overview mechanism is the exception rather than common practice.

In particular, a reliance on traditional or customary conflict resolution process to apply restorative justice principles to situations involving juvenile offenders is often problematic. These customary dispute resolution mechanisms cannot be assumed to be restorative in nature simply because some form of compensation is ordered. Many of them are not. Although, as we have seen before, the UN Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power recommended a greater use of alternative mechanisms such as customary and indigenous practices, multilateral organizations have become much more cautious about the role of such traditional conflict resolution mechanisms particularly as it relates to children and young offenders. In its General Comment on indigenous children and their rights under the Convention, the Committee on the Rights of the Child (2009) encouraged States to support indigenous peoples to design and implement traditional restorative justice systems, but only as long as the latter are in accordance with the rights set out in the Convention, notably with the best interests of the child.

For her part, the Special Representative of the Secretary General on Violence against Children, in her report on harmful practices in plural legal systems noted that in countries where national legislation interplays with customary and religious law, the potential tensions between them can be problematic. Traditional conflict resolution mechanisms may present themselves as viable alternatives to the formal justice process in dealing with children. However, as explained by the Special

¹⁰ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Economic and Social Council resolution 2002/12, annex.

Representative, they may allow for the justification of harmful practices on grounds of culture, religion or tradition based on sources of law that may compromise the realization of human rights. Customary law and practices have sometimes placed vulnerable groups, especially women and children at risk of harmful practices (SRSR 2012, p. 17).

4 Restorative Justice and the Reintegration of Juvenile Offenders

Social reintegration refers to various forms of interventions and programmes targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend. Social reintegration interventions are therefore attempts by various components of the justice system, in partnership with social agencies, NGOs, educational institutions, communities and the offenders' family, to support the successful social integration of individuals at risk of offending or reoffending (UNODC 2012).

In recent years, there has been a growing emphasis on managing or facilitating the social reintegration of offenders and, in particular, on managing their re-entry into society after a period of incarceration (Borzycki and Makkai 2007; Griffiths et al. 2007; Myers and Olson 2013).

In that context, restorative justice interventions can help offenders take responsibility for their behaviour in a meaningful way, gain insight into the causes of their behaviour and its effects on others, encourage them to desist from crime and help them regain acceptance by their family and community. The rationale behind that kind of intervention is described as follows in a UNODC publication on the social reintegration of offenders:

Restorative justice is based on the principle that the most effective responses to crime are those which hold offenders accountable for their behaviour in ways that reintegrate them into society rather than increase their sense of isolation and stigma. The objective is to help offenders understand the consequences of their actions and to make amends to the community. By showing offenders the full impact of their behaviour on all those around them, restorative justice can encourage real and lasting change. At the same time, the participation of victims of crime and community members may serve to strengthen ties in the community and to facilitate the development of community-based capacities to assist offenders. (UNODC 2012, p. 101).

In reality, the capacity of current restorative justice programmes to achieve these objectives tends to be quite limited. With a few exceptions directed mostly at violent adult offenders, restorative justice models have not been developed to support social reintegration interventions. However, this is not to say that programmes more directly focused on facilitating the social reintegration of young offenders and their desistance from crime could not be implemented on the basis of genuine restorative justice principles.

Many good practices have been identified that need to be both better understood and more systematically evaluated. For example, some restorative justice elements can be integrated into community-based sentences to facilitate the juvenile offender's social reintegration. In a "restorative probation" model, a judge sentences the offender to probation with a suspended sentence, while a volunteer reparative board meets with the offender and the victim to agree on a contract that the offender agrees to carry out. Fulfilment of the contract is the only condition of probation and the contract is based on restorative goals, namely that the offender understands the effects of the crime and learns how to avoid reoffending, that the victim is restored and healed, and that the community is reassured and offers reintegration to the offender (Kurki 2000; Fox 2010).

4.1 The Social Reintegration of Juvenile Offenders

Facilitating the social reintegration of offenders is a complex task and the impact of specific interventions is often difficult to measure (Griffiths et al. 2007). The primary objective of social reintegration interventions is to provide offenders with the support, assistance and supervision that will help them to lead crime-free lives upon release. However, for such interventions to lead to positive outcomes, the community must obviously also be responsive and engaged in the process (UNODC 2012, p. 81).

Positive reintegration outcomes can be produced when factors predisposing someone to criminal behaviour are addressed in a holistic fashion and when that person's physical and social needs are supported. As part of an aftercare strategy, a number of interventions can be delivered to assist juvenile offenders in reintegrating into their families and the community. The interventions must fit the needs and circumstances of the child, and the choice of an intervention should be based on a realistic assessment of the individual's challenges and needs. When juvenile offenders have been detained, support can be offered at the time of their release to assist them in effecting that difficult transition and to ensure that the community is willing and able to receive them.

As mentioned before, very few restorative justice models actually deliver on the promise to actively involve the community in the rehabilitation, healing and reintegration of offenders. At present, two models are sometimes used to implicate communities more directly in the social reintegration of offenders: sentencing circles and circles of support and accountability (CoSA). In addition, there has been some experimentation with conducting a restorative justice process while the offender (usually an adult) is in prison (e.g., Walker 2009). So far, none of these mechanisms has been used very extensively with juvenile offenders. In fact, a restorative model of re-entry and social reintegration for juvenile offenders has yet to be developed.

4.2 Sentencing Circles and First Nations' Courts

In Canada, sentencing circles and now “First Nations Courts” function as sentencing courts or sentencing-aids, with community participation and at least a nominal commitment to restorative justice principles. Their main purposes is not so much to divert cases from the justice system, but to inform and help shape the criminal justice response in ways that not only consider the offender and the victim, but also the needs, circumstances and capacity of the community to which the offender and the victim belong. These mechanisms represent perhaps the most powerful applications of restorative justice principles in the field of criminal law. They can apply to both juvenile and adult offenders and they challenge communities to accept responsibility for their own safety and development, while considering the need and circumstances of both the offenders and the victims.

Circle sentencing provides for a wide variety of options for restitution and punishment.¹¹ They can offer flexible solutions that are responsive to the circumstances of each juvenile offender, the requirements of each case and the capacity of the community. Circles are designed to strengthen the collective sense of community and empower the victim, the offender and community members through a healing and problem solving process. The goal is to heal all those affected, but also to facilitate the rehabilitation and social reintegration of the offender by mending the social relationship between the offender and the community.

4.3 Circles of Support and Accountability

The CoSA initiative was originally conceived in Canada as a means to fill a gap in services left by government policy that is, regarding those adult individuals that had served their entire court sentence in prison and were released at the expiration of their warrant. These individuals were being released without a formal process of aftercare and without any assistance or supervision. CoSA was initiated out of necessity to work with released offenders who were most likely to fail to successfully reintegrate society, presumably because of a lack of community support or other resources. Many of these individuals were untreated sex offenders and their return to the community was very likely to attract significant media attention. On release, these offenders faced significant reintegration challenges.

The CoSA Model is an example of community participation and of partnerships between the community and the justice system to promote public safety while actively supporting the reintegration of offenders. Volunteers are carefully selected from the community, professionally trained, and aptly supported; they constitute the inner circle. A covenant or agreement is established between the core member and up to seven circle volunteers. Participation is voluntary on both sides. However,

¹¹ See for example: Joudo Larsen (2014).

once the covenant is agreed to, it becomes the road map for both the support and the accountability that can be expected by all participants. The outer “professional” circle refers to the support, guidance and interventions that are provided by professionals and official representatives of law enforcement or correctional agencies (Brown and Dandurand 2007).

The CoSA model was evaluated in Canada and elsewhere and it is consistently shown to reduce recidivism and facilitate the reintegration of adult offenders. An evaluation of a pilot project based on that model in Ontario suggests that the levels of reoffending in men who were involved in the programme were markedly lower than for similar high-risk offenders who did not participate (Wilson et al. 2009; Wilson et al. 2005; Duwe 2012).

5 Conclusion

Progress has been made in many countries in involving communities in risk management and the management and reintegration of offenders in the community. Community-based interventions and programmes for young offenders have been developed which have significantly contributed to the young offenders’ desistance from crime and their successful social reintegration. Many of them are making a good use of professionally trained community volunteers. Positive reintegration outcomes can be produced when factors predisposing a young offender to criminal behaviour are addressed in a holistic fashion and when that person’s physical and social needs are supported. As part of an aftercare strategy, a number of interventions can be delivered to assist juvenile offenders in reintegrating into their families and the community. When juvenile offenders are detained, they can be supported after their release and assisted in effecting that difficult transition and to ensure that the community is willing and able to receive them. In all of these instances, restorative justice could play a very beneficial role. If it does not so far, it is because its application in the field of juvenile justice has been largely limited to diversion programmes.

Very few restorative justice elements have been integrated systematically into community-based sentences or into post-release programmes to facilitate the juvenile offender’s social reintegration. In fact, this chapter has argued that the capacity of existing restorative justice programmes to achieve social reintegration objectives tends to be quite limited. Some good practices have been identified, but they need to be both better understood and more systematically evaluated. The role of the community in that process has to be operationalized differently and far more concretely. At this point, a restorative model of re-entry and social reintegration for juvenile offenders has yet to be developed.

Proponents of restorative justice typically deplore the lack of progress in implementing restorative justice within the juvenile justice system. In my view, they will still be deploring that problem in 10 years from now unless they find ways

to unleash restorative justice full potential in contributing to the social reintegration of offenders, particularly those who have been institutionalized.

Five Questions

1. How can the restorative justice approach be used to actively support the reintegration of offenders?
2. Are there situations in which a victim-offender reconciliation process is a pre-requisite to the offender's successful social integration?
3. How can restorative justice programmes, often valued for their participatory characteristics and their ability to involve community members, be used to promote greater and more positive community involvement in the social reintegration of offenders?
4. What remains to be done to verify the claim of restorative justice programme that they can produce better outcomes in terms of public safety, victim healing, community health, and offender rehabilitation and social reintegration?
5. Are there examples of programmes focused on facilitating the social reintegration of young offenders and their desistence from crime that integrate genuine restorative justice principles?

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Preventing and Addressing Youth Offending: Restorative Justice and Family Focused Programming

Carolyn Hamilton and Elizabeth Yarrow

Abstract Restorative justice measures are often presented as the most desirable method for dealing with cases of children who come into conflict with the law. Whilst restorative practices have the potential to contribute to constructive and curative strategies for addressing child offending, there are limitations to these approaches. Restorative mechanisms often prioritise healing and reparation for victims, over addressing the root causes of child offending, and the social and family contexts which underlie children's offending behaviour. They may be most valuable where they complement, rather than replace, the work done by a wide range of social agencies that play a role in tackling the risk factors associated with child offending.

The first half of this chapter evaluates the theory and application of restorative justice methods for preventing and addressing youth offending, while the second half presents a comparative review of a holistic, family-focused model that has been used as a prevention, diversion and sentencing alternative for children in Azerbaijan, Georgia, Kazakhstan, Tajikistan and Tanzania; and provides a series of recommendations for strengthening these programmes, which aim to address both the impacts and causes of juvenile crime.

1 Introduction

It is a fundamental tenet of international law that the primary goal of a juvenile justice system should not be that of punishment, but of rehabilitation and reintegration of the child offender. Recognising children's special needs and vulnerabilities, article 40(1) of the United Nations Convention on the Rights of the Child ([UNCRC/1577 UNTS 3](#)) provides that children who come into conflict with the law should be treated in a manner which promotes their own dignity and worth, as well

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as their understanding of the rights and freedoms of others, with a focus on reintegration and assisting the child to assume a constructive role in society (article 40 (1), UNCRC 1989).

Given this, it is unsurprising that 'restorative justice' in its many forms has become an increasingly important concept in juvenile justice practice and reform. It is argued that restorative justice methods have the potential to provide innovative, informal, community based solutions to child offending that avoid exposing already vulnerable children to the adversarial, isolating and punitive operations of formal criminal justice processes. Restorative measures not only provide alternatives to detention and institutionalisation of children *after* offending has occurred, but may also form part of interventions to address the needs of children *at risk* of coming into conflict with the law, contributing to prevention efforts aimed at reducing overall rates of anti-social and criminal behaviour amongst children and young people.

Nevertheless, the principles and strategies of restorative justice are not without their limitations. Whilst the ideals and values espoused by advocates of restorative methods are far reaching and ambitious, there is often a gap between these ideals, and actual practices (Daly 2006). Critics have pointed out that restorative processes demand a level of compassion, emotional maturity and moral responsibility that may be lacking amongst participants, and especially young offenders (Daly 2006). Others have questioned whether a one-off restorative process can address children's offending behaviour, without resolving the complex contexts, circumstances and conditions which drive young people to offend (Levrant et al. 1999).

Recent programmes set up in a range of countries by Coram Children's Legal Centre¹ and UNICEF seek to integrate restorative practices within broader community programmes, which emphasise family and social support, and rehabilitation for children in conflict with the law.² These programmes do not take a primarily restorative approach, but rather a 'family focus' and seek to address the underlying drivers of children's offending behaviour, such as family breakdown, poverty, lack of education and other opportunity, and psychosocial distress. This is achieved through the development of tailored programmes which provide children and their families with a range of services, including remedial education; health care; legal services; vocational training and careers advice; sport, drama and art therapy; psycho-social care; family counselling, conferencing and mediation; anger-

¹ Coram Children's Legal Centre is a NGO concerned with law and policy affecting children. The Centre works in the United Kingdom and around the world to protect and promote the rights of children through the reform of law, policy and practice and the provision of direct legal assistance to young people, parents and professionals. The Centre's international department focuses in particular on protecting the rights of children in conflict with the law, and promoting justice for children, in jurisdictions around the world, through: research, law and policy development, advocacy, and the development and implementation of grass roots diversion and alternative sentencing programmes.

² See http://www.childrenslegalcentre.com/index.php?page=international_programmes [Accessed 10 Nov. 2014].

management and conflict resolution courses; drug and alcohol rehabilitation support and others.

The first section of this chapter evaluates the theory and application of restorative justice methods for preventing and addressing youth offending. The second half reviews evidence from a number of evaluations of programmes established in Azerbaijan, Georgia, Tajikistan and Tanzania, which have been designed around a holistic, family-focused, service provision model. It considers, whether embedding restorative techniques and practices within a context of ‘wrap-around’ service provision, can successfully and sustainably curtail both the *impact* and *drivers* of juvenile crime.

2 Understanding Restorative Justice: Core Values, Principles and Justifications

“The primary purpose of restorative justice is just that – to restore justice” (Office of the Special Representative to the Secretary General on Violence Against Children 2013, p. 1).

Restorative justice is a highly contested concept. At its most basic, it is a model of justice which is directed towards the repairing or healing of harm or wrong cause by an offence, to restore individual and community well-being. “Harm” has been understood expansively, to encompass emotional, psychological and relational aspects, as well as financial, material and physical losses. There is significant debate, however, about the content, scope and limits of what can be considered legitimately ‘restorative’, both in theory and in practice; as Howard Zehr commented recently in an interview: “*Restorative justice as a term has [become] so popular, that all kinds of things are being called restorative justice today, some of which...aren’t very restorative*”.³

The debate surrounding the definition of restorative justice, has often been characterised in terms of a tension between those theorists who see restorative justice primarily as a process, and those who focus on the values and outcomes that restorative justice is intended to promote (Braithwaite and Strang 2001). Others have rejected this distinction, pointing out that the desired outcomes of restorative justice derive from the values contained within the process itself (Walgrave 2002; Johnstone 2004). To situate the debate, it is useful to start with Tony Marshall’s widely cited definition of restorative justice, which describes it as:

a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future (Marshall 1999).

This definition incorporates many key features of restorative justice models; nevertheless it has been criticised for failing to provide sufficient principled guidance as to the spirit, character and values of the restorative movement (Bazemore

³ Zehr in Shuck (2014).

and Walgrave 1999). Whilst the idea of ‘collective’ resolution provides insight into the community-based, cooperative character of restorative justice, it fails to elaborate on how ‘collective’ decision making should be carried out, and to what ends. Should the priority be consensus building or conversation; resolution or dialogue; presence or participation; peace or transformation? Does it matter whether the process is coercive or voluntary (Doolin 2007)? And what does it mean to ‘deal with’ the aftermath of an offence and its ‘implications for the future’ (Van Ness et al. 2001; Doolin 2007)? Without further elaboration on these points there is nothing to prevent restorative processes from becoming oppressive, harmful, or degrading experiences (Doolin 2007). Evidence from a recent study of victim-offender mediation practices in Lao People’s Democratic Republic underscores the significance of this point: it revealed (amongst many others) a case where a 15 year old child accused of stealing was physically beaten by the aggrieved adult during mediation, who also repeatedly threatened to kill the child if he ever stole from his house again (Barnes et al. 2013).

On the other hand, a number of restorative justice scholars have set about defining restorative justice in terms of its intended aims or outcomes, or through expounding upon the key values and ideals which form its moral justification and purpose. For example, Gordon Bazemore and Lode Walgrave’s 1999 definition of restorative justice characterised it as: “any action that is primarily oriented to doing justice by repairing the harm that is caused by a crime.” (Bazemore and Walgrave 1999) Whilst ‘outcome’ based definitions of this kind are helpful in providing a conceptual framework through which restorative justice interventions can be understood, they lack precision and practical guidance as to how restorative measures can be empirically identified and applied.

Arguably, the most useful and comprehensive definitions of restorative justice combine the two approaches. In 1998, Canadian Susan Sharpe developed a series of five key principles of restorative justice, which were further adapted by Daniel Van Ness, Allison Morris and Gabrielle Maxwell. According to these principles any genuinely restorative process should include: full participation and voluntary involvement of any person affected by a crime; a focus on healing and recovery for both victim and offender; full and direct accountability and responsibility for the offence experienced by the offender; reconciliation of the offender and victim and actions aimed at strengthening community harmony and safety (van Ness et al. 2001).

In practice, restorative justice is typically understood to involve the application of techniques such as victim-offender mediation, family conferencing and circle sentencing. These methods are explored in more detail in Sect. 3 below.

2.1 *Restorative Justice vs. Criminal Justice*

Much literature and debate has sought to define what restorative justice *is*, through opposing it to what it is *not*. The restorative justice movement has been widely

celebrated as a ‘new paradigm’ for how society should respond to crime; a set of ideas that challenge state-sponsored, institutionalised models of criminal justice (Van Ness et al. 2001). Whilst criminal justice treats an offence as a violation of ‘the state’ and ‘the law’—an abstract set of rules designed to legitimise and uphold established systems of power; restorative justice is concerned with the way that crime hurts people, human relationships and the social bonds that define our responsibilities and obligations to others (Zehr 1990, 1995).

Within formal, state-sponsored justice processes both victims and offenders are reduced to passive objects of a detached, adversarial and bureaucratic process of determining guilt and administering penance (Daly 2006). As Daly writes:

Decisions are made by a distant magistrate or judge, and an overworked duty solicitor and prosecutor with many files to process. . . in the courtroom, a defendant is typically mute and a victim is not present. State actors do all the work of handling and processing crime. The actual parties to a crime (the persons charged and victim-complainants) are bystanders or absent (Daly 2006).

It is argued that, because criminal justice is owned and administered by the state, it has an essentially punitive character. Punishment constitutes a demonstration of power and authority, which compels offenders into submission, yet it has little (beyond revenge) to offer those who are most affected by crime. As such, Nils Christie had characterised the development of formal, criminal justice as a process by which the state has increasingly sought to ‘steal’ crimes from their victims; for the primary goal of maintaining social control: a ‘King’s peace’ (Christie 1977). Restorative justice has a more personal focus: the ‘state’ is no longer the primary stakeholder in justice, but those who are hurt most by an offence. It is a ‘community-centred’, ‘bottom-up’ approach to justice, that prioritises maximising input and participation from all those affected by crime. This type of justice searches for solutions beyond vengeful repression and focuses on how to ensure reparation, reconciliation and reassurance (Van Ness et al. 2001; Zehr 1990).

Of course, there is nothing new or original about this conception of justice. ‘Restorative justice’ as a term is generally thought to have first emerged in criminology in the mid-1970s (Llewellyn and Howse 1998), but the ideas it propounds describe a model of justice that has arguably been dominant “throughout most of human history for all the world’s peoples” (Braithwaite 1997).⁴ In recognition of this, restorative justice is often characterised as an ‘ancient’ or ‘traditional’ conception of justice. The movement is credited with taking justice ‘back to its roots’; a ‘return’ to a primordial understanding of justice, which still has relevance and resonance today (Strang and Sherman 2003). Authors such as Van Ness and Strong have pointed out that restorative conception of justice was prevalent in many

⁴ John Braithwaite as quoted in Llewellyn and Howse (1998), prepared for the Law Commission of Canada (p. 4) http://dalspace.library.dal.ca/bitstream/handle/10222/10287/Howse_Llewellyn%20Research%20Restorative%20Justice%20Framework%20EN.pdf?sequence=1 [Accessed 10 Nov 2014].

‘pre-colonial African societies’ (Van Ness and Strong 1997).⁵ Others have argued that restorative justice similarly has roots in ‘western’ traditions and history (Llewellyn and Howse 1998). Zehr writes:

For most of our history in the West, non-judicial, non-legal dispute resolution techniques have dominated. People traditionally have been very reluctant to call in the state, even when the state claimed a role. In fact, a great deal of stigma was attached to the state and asking it to prosecute. For centuries the state’s role in prosecution was quite minimal. Instead it was considered the business of the community to solve its own disputes (Zehr 1985).⁶

In addition, authors have explored how restorative conceptions of justice can be found today in many aboriginal communities, including the native populations of Canada, New Zealand and Australia (Maxwell and Morris 2001; Alder and Wundersitz 1994); or in the lasting customs of ‘traditional’ societies across the world (Llewellyn and Howse 1998; UNODC 2006). Therefore, whereas ‘criminal justice’ is depicted as an essentially ‘modern’ and ‘western’ model of justice; restorative justice is conversely characterised as historic, ‘indigenous’ and ‘non-western’ in character.

This condensed presentation of the history of justice may be too simplistic. Harry Blag has highlighted that there are dangers associated with ‘collap[sing] together a diversity of indigenous justice practices into a singular ‘Aboriginality’ and assign[ing] the heading ‘restorative’ to them’ (Blagg 2001). At the same time it should be acknowledged that the practice of resolving offending behaviour through the application of collective, community based measures is a contemporary experience of justice that pervades the realities of people affected by crime in diverse communities across the globe today. This may be the case, even in societies characterised by high levels of formal interaction between the state and the population; where some groups may resist, be excluded from, or choose not to use formal mechanisms for a multitude of reasons, including a (state) deficit of political legitimacy, limited legal definitions of rights and protection, institutionalised discrimination, lack of trust in formal systems, high costs of legal services or the personal nature of many crimes (and consequent shame and stigma associated with state-intervention). Addressing offending outside of the formal justice system may be especially common with regards to certain types of abuse, such as sexual and domestic violence (McDonald and Tinsley 2013); or in cases involving particular types of stakeholders, such as, for example, children.

Of course, not all offences are ‘resolved’ when they are dealt with in the community, and not all informal methods of conflict resolution conform to restorative justice principles and ideals. Nevertheless, it may be deceptive to suppose that

⁵ Daniel Van Ness and Karen Strong in Llewellyn and Howse (1998), prepared for the Law Commission of Canada (p. 4) http://dalspace.library.dal.ca/bitstream/handle/10222/10287/Howse_Llewellyn%20Research%20Restorative%20Justice%20Framework%20EN.pdf?sequence=1 [Accessed 10 Nov 2014].

⁶ Howard Zehr as quoted in Llewellyn and Howse (1998) Restorative Justice: a Conceptual Framework, prepared for the Law Commission of Canada (p. 4) http://dalspace.library.dal.ca/bitstream/handle/10222/10287/Howse_Llewellyn%20Research%20Restorative%20Justice%20Framework%20EN.pdf?sequence=1 [Accessed 10 Nov 2014].

a 'lawful' or 'state-sponsored' understanding of 'crime' and 'punishment' is the dominant model of justice imagined and applied by most people, even in 'modern', 'western' societies. To characterise justice in this way is arguably an exercise in power; an endorsement of an essentially patriarchal and ethno-centric logic of justice, which excludes the experiences of many marginalised groups who have historically been denied access to formal criminal justice systems by pre-eminent, institutionalised structures of power. It is through acknowledgement of this latter point that debate has ensued in the restorative justice movement as to whether restorative justice, as a field of both theory and practice, should sit *within* or *outside* of the paradigm of criminal justice (Wheeldon 2009).⁷

This is not just an abstract concern, but a real practical challenge. Harry Blag has pointed out how attempts to incorporate so-called 'aboriginal' restorative practices into formal legal systems have continued to marginalise aboriginal youth, because, after all, these communities have been historically considered *a priori* criminal (Blagg 2001). Similarly, Gerry Johnstone has argued that many restorative justice advocates concentrate their efforts too narrowly: viewing restorative justice primarily as a new set of mechanisms for dealing with 'crime', as officially defined, instead of engaging with the more transformative aspects of the movement which pose a fundamental challenge to our social and political, as well as legal, institutions (Johnstone 2011). He writes:

Criminal law is frequently used, not to prevent harmful behaviour, but rather to prohibit behaviour which those with social power find tiresome or distasteful. By the same token, social power is often used to prevent criminal labels and sanctions being applied to behaviour that seems – by many accounts – to be patently harmful to the majority of citizens. . . . To focus narrowly on criminal justice reform, the restorative justice movement leaves itself open to the charge that it is working within and therefore helping to sustain an ideological definition of the problems facing modern societies. (Johnstone 2004, p.14).

Of course this may be the opposite of the intention of many restorative advocates. But this is a risk that comes from viewing restorative justice primarily from a legal standpoint—within the frame of a criminal justice paradigm—that it leads us into the technocratic question of how to 'do' justice better, instead of questioning the very nature of what 'justice' really is.

In his book *Governing Paradoxes of Restorative Justice*, George Pavlich draws on this point to expound a more fundamental critique of the restorative movement, arguing that 'restorative justice' as a philosophical concept is 'unattainable' because its structure and identity is constructed through a 'bifurcation, that simultaneously occasions two logically conflicting strands of thought'. That is to say, the basic concepts of criminal justice— notions of 'crime', 'a victim', 'an offender', 'the community'—are used, but at the same time these ideas are rejected (Pavlich 2005).

⁷ See Gerry Johnstone's criticism of restorative programmes that focus narrowly on the reform of the criminal justice system, and perceive restorative justice primarily as a method for responding to 'crime' as officially defined, rather than other forms of social harm. Johnstone (2004), pp. 5–15.

In search of a common definition and identity, much of the literature constructs the value and purpose of restorative justice in terms of a series of binary oppositions: restorative justice is presented as ‘aboriginal’ and ‘traditional’, and criminal justice as ‘mainstream’ and ‘modern’; restorative justice is ‘informal’, based within the ‘community’, whereas criminal justice is ‘formal’ and owned by the ‘state’. Whilst restorative justice is shaped by ‘relationships’, it is ‘rules’ that govern criminal justice. Finally, restorative justice is concerned with ‘reparation’ and healing, whereas criminal justice is preoccupied with the infliction of pain and punishment. This dyadic model is too simplistic; not only because it fails to capture the rich realities and complexities of human experiences of justice, but also because it presents one ‘type’ of justice as essentially good, and the other as essentially bad (Van Ness et al 2001).

Consider the following passages:

Restorative justice...represents a return to concepts of justice that are ancient and deep-seated, but which have been overshadowed by other approaches. Its contemporary re-emergence, and the widespread interest it has provoked, offers hope for the future of justice (Van Ness et al. 2001).

In Western culture we have come to think of justice as an intervention to punish and correct wrongdoing. But justice has meant something quite different in other cultures and throughout most of human history. In many societies ‘justice’ has been understood as a state of balance – a system of social cooperation that supports and encourages peaceful coexistence (Sharpe 2004).

Whilst criminal justice asks: what law have been broken? Who did it? What do the offenders deserve? Restorative justice asks: who has been hurt? What are their needs? Whose obligations are these (Zehr 2014)?

These statements have a clear normative message and purpose; but the ideas and distinctions that they present may be ambiguous. Many authors have pointed out that the distinction between retribution and restoration is not always as clear-cut as it has been presented, either in theory or in practice. Some theorists, such as Duff, have argued that retribution in fact forms part of restoration, not to inflict pain as an end in itself, but to evoke the right sort of pain, including remorse and regret, “which crime makes necessary and can only be achieved through punishment” (Doolin 2007, p. 437; Duff 2002). Furthermore, whilst advocates of restorative justice processes anticipate that restorative measures will prompt victims to seek constructive and curative responses to offending, as opposed to punitive ones, there is no guarantee that they will do so: many victims may feel a need or desire to exact punitive retaliation and revenge (Braithwaite 2004; Daly 2002).

Creteny and Davis have argued that: “a victim has an interest in punishment not just restitution or reparation, because punishment can reassure the victim that he or she has public recognition and support” (Daly 2006 p. 6; Creteny and Davis 1995, p. 178).⁸ For this reason, some victims may even prefer the public and formal nature of a criminal trial. In a recent interview, a child victim of human trafficking for sexual exploitation spoke of her pleasure at seeing the man who trafficked her

⁸ Creteny and Davis as quoted in Daly (2006), pp. 134–137.

brought to justice in a Thai courtroom. When asked whether she would have preferred to have given her evidence via video, to avoid the stress and formality of court, she replied ‘no – I was so excited’, she explains that her ‘hands were trembling’ at the thrill of seeing him in court and knowing he was to be punished (Apland and Raoof 2014, p. 108). Furthermore, empirical research exploring the use of restorative practices in cases involving children has revealed that many victims demand “excessive penalties or measures which belittle or ridicule offenders” (Haines 1997, p. 106), and that many young offenders subjected to restorative processes view them primarily as a form of punishment (Daly 2001).

In contexts where there is an overwhelming cultural norm and practice of addressing offending outside of the formal justice system, and through methods of mediation and reconciliation, research has not revealed the perfect model of ‘social cooperation’, ‘mutual respect’ and ‘peaceful co-existence’ that restorative ideologues propound. Consider the following extracts from a recent child justice assessment conducted in Lao People’s Democratic Republic:

Village official: Every settlement needs to have a ceremony. If the offence is minor the offender will provide a chicken and alcohol. If it is a middle level offence a chicken and pig will be provided. If someone lost an eye for example, it will be a buffalo. The village authorities and elderly will attend... From then on they should not talk about the case again. [We] forget it. It is over from now on... When we do this it just ends and no one talks about the case again (Apland and Raoof 2014, p. 57).

Interviewer: Why do you prefer to solve cases at the village level?

Village official: The main reasons people prefer this is because of the cost [of dealing with the dispute formally], because they do not want people outside [the village] to know that bad things happen, and because it is our tradition.

Researcher: When you address a case involving a child offender, what is your goal?

Village official: there are two goals: to maintain public order and maintain the village status (Apland and Raoof 2014, p.17).

As these extract highlight, the primary goal of mediation practices and reparations payments and settlements may *not* be the pursuit of justice for those who have been harmed and a consideration of their needs, but the maintenance of public order, typically policed by people in a position of authority, such as adult, male family members, or the village elders and chiefs. Saving ‘face’, and maintaining the status and honour of the family and the community, are also issues of central concern (Apland and Raoof 2014). Consider cases of rape and sexual violence that are resolved through the payment of cattle (Coyle and Pun 2009); or cases of ethnic violence and conflict which are resolved through forced marriage to strengthen clan ties (Tadesse et al. 2010). Often these methods of dispute resolution are no more than coping strategies applied by communities to promote a rapid settlement; a desperate need to avoid the potentially violent repercussions of crime, in the face of a lack of alternative solutions. This begs the question as to whether development and human rights actors should really be focusing their energies on promoting ‘restorative justice’ practices in opposition to methods of ‘criminal justice’, or whether the real question should be how to promote access to any type of justice for the most marginalised and vulnerable people.

Braithwaite has expressed concern that restorative methods are susceptible to “capture” and manipulation by dominant groups, and may thus only serve to reinforce and reproduce existing power dynamics and inequalities (Braithwaite 2004). Haines also made this point with regard to the use of restorative justice for juvenile offenders, when he argued that when you strip away the “technical gloss and sophisticated justifications [for restorative justice]” all you are left with in practice is “a room full of adults. . . setting the agenda, determining what is relevant, leading the proceedings and coming to conclusions” (Haines 1997 p. 99). With their emphasis on informal process, community involvement and consensus decision-making, restorative practices may pose a threat to a number of fundamental legal principles and guarantees that protect the rights of young offenders, such as impartiality, proportionality, fairness and consistency in treatment (Haines 1997). This is of even greater concern when dealing with child offenders; due to their young age and relative lack of experience, children are especially vulnerable to maltreatment and abuse within justice systems (OHCHR 2013).

Therefore, whilst restorative justice has often been prioritised as a form of justice most appropriate for dealing with specifically *juvenile* crime (Shapland et al. 2006; Daly 2006), it is children who may be especially vulnerable when placed in the context of restorative justice processes. In fact, there is a subtle tension between restorative justice theory in its application to juvenile offending and child rights precepts that establish principles for the treatment of children in conflict with the law; a tension which has not always been acknowledged in the literature. Whilst restorative process are victim-centred (UNODC 1999); child rights principles call for a focus on the ‘best interests’ of the child offender in any justice mechanism, and have little, if anything, to say about the interests and wishes of adult victims in juvenile justice cases. Of course, balancing the concerns of victims and offenders is not a zero-sum game (a point which is central to understanding the values and logic of the restorative justice movement). Whilst child rights principles require that children have access to justice as both victims and offenders of crime; restorative justice calls for efforts to enable all those affected by a crime to come together to find a positive way forward for all parties. Nevertheless, it is not insignificant that, whilst much of the literature on restorative justice emphasises “satisfaction” and “healing” for victims, along with “accountability” and “responsibility” for offenders, children’s rights literature gives pre-eminence to the needs and interests of child offenders; notwithstanding the personal concerns of victims of juvenile crime.

The notion of restorative justice, therefore, should not be accepted uncritically. Restorative justice does not provide a new, ‘cure-all’ paradigm for dealing with juvenile crime. In the realm of theory, restorative justice is a highly contested and elusive concept; in the field of practice (as will be explored below) there may be a significant gap between people’s real experiences of these methods of justice, and the ideals that they propound (Daly 2006). Nevertheless, as Gerry Johnson has argued, restorative justice is perhaps best understood as a set of ideas and values which present a fundamental challenge to the way that “crime” and “justice” is defined: legally, politically, socially and personally (Johnstone 2003). It is in this

respect that the restorative justice movement has the most affinity with the child justice movement.

Like the restorative justice movement, the child justice movement, calls for a social response to crime as opposed to a punitive and individualised response. Child justice, like restorative justice, asks us to consider crime in terms of its human and relational context, to understand how criminal behaviour is embedded within social environments, and to find constructive solutions to offending, that heal harm and strengthen relationships between all those who are affected. Fundamental principles of international child rights law include: that rehabilitation and reintegration of the child should be the foremost aims of the justice system; that punishment does not address the root causes of offending, and does little to prevent reoffending; and that the formal justice system should only be for a small minority of children who have committed serious and persistent crimes.⁹ There is no doubt that these values resonate with the theory and principles of restorative justice.

3 Restorative Justice in Practice

Just as the meaning of restorative justice is contested at a theoretical level it is also contested at the level of practice. There is significant debate about how far the umbrella of restorative justice can stretch to include different practices and methods of dealing with the aftermath of a crime. Howard Zehr has argued that restorative justice is perhaps best understood as a “continuum” of practices, which “*take the principles of restorative justice and attempt to apply them as fully as possible.*”¹⁰ This section examines some of the most widely recognised methods of restorative justice, namely victim-offender mediation, family conferencing and (sentencing) circles, and provides a broad overview of some of the evidence on their potentialities and risks as methods for addressing youth offending in practice.

Most of the empirical evidence relating to restorative justice comprises evaluations of restorative measures that have been incorporated into formal criminal justice systems in high income countries. There is more evidence needed concerning the operation of restorative justice in middle and low income countries; and within informal, non-legal contexts in general (Duckworth et al. 2011).¹¹

⁹ UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“*The Beijing Rules*”) A/RES/40/33 of 29 November 1985, available at: <http://www.refworld.org/docid/3b00f2203c.html> [accessed 11 November 2014].

¹⁰ Zehr in Shuck (2014).

¹¹ See for instance, Ross, Duckworth, Smith, Whyness and Schoon, *Prevention and Reduction: A review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour*. Centre for Analysis of Youth Transitions DRF-RR111, 2011, UK and Review of Good Practices in Preventing Juvenile Crime in the European Union, European Crime Prevention Network, 2006.

As such, whilst, as discussed above, restorative justice practices and principles have been (and continue to be) demonstrated in situations of informal conflict-resolution in diverse contexts across the world, this review focuses its inquiry narrowly, exploring recent attempts to incorporate restorative justice measures into formal legal systems and processes; a trend which started in Canada, New Zealand and Australia in the mid-1970s, and has increasingly spread to other countries and contexts across the world (Maxwell and Morris 2001).

3.1 Victim-Offender Mediation

Victim-offender mediation is one of the earliest restorative justice initiatives to be incorporated into formal legal systems; first emerging in Ontario Canada in the mid-1970s (Umbreit 2001). It typically involves supporting the offender and victim of a crime to engage in a constructive dialogue about the offence, its impact, and its aftermath (Umbreit et al. 2004). Mediation can occur either through a face-to-face meeting, or through a ‘shuttle’ dialogue, where the facilitator acts as an intermediary between the victim and offender. In cases where a direct encounter between the victim and offender is not possible or considered unsafe or undesirable, mediation may also take place via proxy, through a victim ‘representative’. Victim-mediation is a strictly voluntary process, and can only take place once the offender has accepted responsibility for the crime.

In essence, the victim-mediation process provides the offender with an opportunity to hear first-hand about the harm their offence has caused, encouraging them to take responsibility for their actions. Meanwhile the victim is given the opportunity to express their feelings, ask questions of the offender, and, in some circumstances, they may have the opportunity to influence what happens with the case. As Van Ness writes, during mediation: “both victim and offender are confronted with the other as a person, rather than a faceless, antagonistic force, permitting them to gain a greater understanding of the crime, of the other person’s circumstance, and of what it will take to make things right” (Van Ness 2010, p. 84).

Often mediation results in a settlement of some kind, with the hope that this may provide reparation or closure regarding the offence. This settlement may take the form of: a written or verbal apology, financial compensation, delivery of a reparatory service, or a commitment on the part of the offender with regard to a specific undertaking or intervention in relation to their behaviour, such as counselling or treatment.

Victim offender mediation is one of the most dominant forms of restorative practice. Since its inception in Canada victim offender mediation (sometimes under different names and varieties) has been incorporated into the legal systems of a diversity of countries including: Australia, Austria, New Zealand, South Africa, the Czech Republic, Germany, Great Britain, Lao PDR, the Netherlands, Taiwan, the USA and others (SRSg 2013). The practice of victim-offender mediation has been most expansively delivered in Austria and Norway where it has been rolled out on a

systematic, national scale (Weitekamp 2001). Mediation programmes may be operated either by justice or social welfare government departments, or sometimes by not-for-profit organisations, and are delivered at various stages within the criminal justice process, including the pre-charge, pre-trial and post-trial stages. Where mediation occurs during the pre-trial stage it may lead to sentencing recommendations or provides a diversionary alternative to advancement through the criminal justice process. For example, in England and Wales, mediation typically takes place at the pre-trial stage, with a view to securing a negotiated packet of reparation along with a police warning or caution, with the case then being closed (Criminal Justice Review Group 1998).

Victim-offender mediation has typically been utilised in cases where the offender is a child, and in cases of a relatively minor offence, although the practice has also been applied in more serious cases such as murder or sexual abuse (McAlinden 2008). For example, in 1991 Texas prisons began arranging for victims of violent crimes to meet with the offender upon request, provided it was judged safe for them to do so (Van Ness 2010).

3.2 *Family Group Conferencing*

Family group (or community) conferencing was first developed in New Zealand and Australia in the late 1980s. Designed in the image of a traditional Maori practice—the ‘*whanau* conference’—this restorative approach was introduced into the New Zealand legal system in response to concerns that existing approaches to juvenile justice were having a disproportionately negative impact on Maori communities (Maxwell and Morris 2001a, b). Subsequently, in 1989, family group conferencing became the *principle* method of dealing with child offending nationwide through the passing of the Children, Young Persons and Their Families Act; and the practice was later extended to adults in 2002 (Maxwell and Morris 2001a, b). Variants on the conference model have since emerged in Australia, Brazil, Canada, England and Wales, Ireland, Lesotho, Northern Ireland, Peru, the Philippines, Thailand, Singapore, South Africa and the USA, amongst others. In different circumstances family group conferences have been used as a diversion approach as well as an alternative sentencing scheme. They have also been applied in non-judicial settings, such as schools and care institutions (SRSF 2013).

Similar to victim-offender mediation, family conferences are led by a trained facilitator, and intended to provide the victim and the offender the opportunity to relay their experiences of the offence and its consequences, with the aim of strengthening learning and understanding about the contexts and impacts of crime. Whilst participation in mediation is typically limited to the offender and the victim, however, conferences include a broader range of participants. These may include family, friends, and other support persons connected to either the victim or the offender, parties affected by the offence or concerned with its aftermath, and professionals who may be able to help with resolution of the harm

caused, such as social workers, teachers, coaches, employers, legal advocates, and members of criminal justice agencies, such as police. A typical conference may have around 12 or so participants, though conferences have also been conducted with many more attendants (Van Ness and Strong 1997).

There are two commonly recognised variants of the conferencing model: the New Zealand approach, which is delivered by the social welfare arm of the government and allows for considerable variation in procedure so that participants can opt for the 'style' and framework that they wish; and the 'Waga Waga' approach, which originated in New South Wales, Australia, whereby conferences are carefully scripted and police directed. The 'Waga Waga' style of conference is sometimes referred to as 'restorative policing', and has proved the most influential model globally, providing the basis for programmes reproduced in many other contexts around the world (Criminal Justice Review Group 1998).

Conferences may result in reparations payments, recommendations for sanctions to be imposed, or an agreement that the offender participate in a rehabilitative programme. In some contexts, a conference may proceed without the participation of the victim (or victim representative), and, more rarely, without the participation of the offender. Family group conferences are thought to be particularly effective at ensuring that offenders comply with the agreed reparations plans, because they involve a broad range of concerned persons who may be able to provide ongoing supervision and support to the offenders (McCold and Wachtel 1998).

Family group conferencing has been used as a measure to deal with cases involving children both as victims, including cases of child maltreatment and domestic violence, and as offenders, including arson, minor assault, drug related offences, and vandalism (SRSG 2013).

3.3 *Circles: (Sentencing Circles, 'Peacemaking' Circles, Restorative Circles)*

The restorative variant typically known as the 'sentencing circle' was inspired by conflict resolution mechanisms practiced amongst the First Nations people of Northern America. 'Sentencing circles' were first applied within the formal criminal justice system in Northern Canada by local judges, and formally introduced into the Canadian Criminal Code in 1996. In the same year, circle sentencing was also adopted into the criminal justice system in the USA through a project piloted in Minnesota (SRSG 2013).

Circles are open to an even more expansive set of participants than family conferences. The victim and offender, their families and supporters, may attend, as well as criminal justice personnel, including prosecutors, defence lawyers, police and judges. Additionally, any person in the community who has an interest in the case may both attend and actively participate in the circle. Participants sit in a circle facing one another, and all attendees are provided the opportunity to speak, if and as

they wish. Whilst all participants in the circle have an equal status and position in the process, one attendee will act as a 'keeper' of the circle, whose role is to ensure that the process is safe, relevant and orderly (Van Ness 2010).

Circle discussions need not focus narrowly on the crime that has been committed; participants may choose to explore other issues that may have relevance to 'resolving' the problem presented by the offence. In this way, circle processes are thought to strengthen community relationships and problem solving skills. Through the circle process, justice professionals share authority and decision making power with crime affected communities, meanwhile communities are encouraged to share responsibility with the offender for the crime and its resolution (SRSg 2013).

Usually the focus of the circle process is to develop consensus around a particular sentencing plan. Sentencing plans may include commitments on behalf of the offender, as well as others, including family members or other members of the community. Sentencing may include reparation payments, community service, a commitment to a rehabilitative undertaking, or even a period of incarceration. The circle may also be involved in supporting and monitoring responsible parties' compliance with agreed plans. Where circle sentencing is a formally recognised process within the criminal justice system, the decisions of the circle are typically submitted to the judge who is presiding in the case (who may or may not have participated in the circle). The decision of the circle is not binding on the court: the court must take the circle plan into consideration, but has the choice to adopt the plan, modify it, or reject it completely (Lilles 2001).

In the past, circle sentencing has typically been applied to adult cases. More recently, however, it is a method that has been applied to juvenile cases as well (UNODC 2006). There is relatively little research on the impact of sentencing circles compared to other restorative methods. Some studies have indicated that offenders subject to sentencing circles are less likely to re-offend compared to those who go through the criminal justice system (Umbreit et al. 2002), although others have revealed no difference in rates of reoffending for offenders who undergo circle sentencing as compared to criminal justice disposals (Fitzgerald 2008). A number of authors have further drawn attention to the risks associated with sentencing circles, especially where the offender is in a particularly vulnerable position, or the offence is of a particularly sensitive or taboo character (Cameron 2006).

3.4 Evaluating Restorative Programmes, Impact and Effectiveness

The diverse nature of restorative approaches and their application in different contexts makes it difficult to evaluate their relative benefits in a systematic fashion. Evaluations have been conducted utilising a variety of methodological approaches (with greater and lesser degrees of rigour) and different indicators and outcomes have been used to assess programme success, rendering it difficult to draw

comparisons and conclusions across studies (Rodriguez 2007). Nevertheless, there are some common themes that have emerged from a body of empirical research which has set out to explore and evaluate the effectiveness and impact of restorative programmes in practice.

3.4.1 Measuring ‘Success’

There are a number of key measures and outcomes that have typically been used as benchmarks for assessing the merit of restorative programmes. First, studies have examined the impact of restorative programmes at the micro or individual level; from the standpoint of those who have participated in restorative justice interventions. Studies have considered subjective indicators such as the level of perceived ‘fairness’ or ‘satisfaction’ with the restorative process from the perspectives of both the victim and the offender; or they have sought to identify the extent to which ‘restoration’ has been achieved in individual cases through analysing levels of remorse, shame and social reintegration displayed by the offender, and levels of ‘healing’ and understanding, demonstrated by both the victim and offender (e.g. Choi et al. 2011). This has typically involved considering: the degree to which the offender spontaneously expressed remorse, offered an apology, or demonstrated an understanding of the impact of their crime on the victim; the extent to which the process led to an agreement, and the payment of reparations or restitution to the victim (and whether this plan was subsequently completed and adhered to); and an assessment of psychological indicators, such as the levels of post-traumatic distress displayed by the victim and attitudes towards re-offending displayed by the offender both pre- and post-participation in the restorative programme (Daly 2006; Umbreit et al. 2002).

Second, the empirical research has considered the effectiveness of restorative mechanisms at a macro-level, for achieving systems-level goals, such as the desire to divert children out of the criminal justice system, reducing the overall levels of incarceration of children, saving time and costs in administering justice, and reducing overall rates of recidivism and crime within society (Haines 1997).

3.4.2 ‘Satisfaction’ with Restorative Methods

Empirical research has typically revealed positive results in terms of degrees of ‘satisfaction’ with restorative programmes and perceptions of ‘fairness’: consistently revealing higher stakeholder satisfaction with restorative programmes in comparison to conventional criminal justice (Doak and O’Mahony 2011). Victims who participate in restorative programmes often report feeling satisfied with the opportunity to express their feelings, to ask questions of the offender (and get answers), and (in some cases) to influence the outcomes of the justice process. Offenders often report feeling satisfied with the opportunity to make amends for their crime, and to tell their personal story (Umbreit et al. 2002).

A 2005 review of 63 empirical studies conducted in five countries concluded that reported rates of 'satisfaction' with restorative justice, and perceptions of 'fairness', have been found to be consistently high amongst victims and offenders who participate in mediation, across research locations, types of programmes, social contexts, and categories of offence; this was also found to be true (although to a lesser extent) in the case of family conferences and circles (Umbreit et al. 2002). In many cases the results have been strikingly positive. A study involving youth offenders in Minnesota, for example, found that as many as 89 % of children believed that they were fairly treated during the restorative process (Fercello and Umbreit 1999).

Significantly, research has often revealed a discrepancy between rates of victim satisfaction compared with offender satisfaction. For example, Latimer et al.'s widely cited meta-evaluation found victim satisfaction with restorative justice programmes to be higher than that of a comparison group (involved in mainstream criminal justice processes) in all but 1 of 13 reviewed studies. Differences in rates of *offender* satisfaction across different disposals, however, were too marginal to be significant (Latimer et al. 2005). Umbreit et al.'s review in 2005 also found higher rates of satisfaction amongst victims compared to offenders for those who participated in victim-offender mediation programmes. Interestingly, however, the results were reversed for family conferences, with offenders reporting higher levels of satisfaction than victims (Umbreit et al. 2002). This may be a consequence of the relatively diminished role for victims in conference processes, given that there are a number of participants present, most of whom are typically connected with the offender, amongst other factors (Umbreit 2000).

Rates of satisfaction amongst young offenders involved in family conferencing have often been associated with their ability to engage actively in the conferencing process and participate in reaching a constructive outcome for all parties. For example, one early study conducted by Maxwell and Morris concerning family group conferencing in New Zealand found that young people are able to play an active part in restorative justice mechanisms, and that many child offenders report feeling involved in decision making and coming up with recommendations (Maxwell and Morris 1993).

These findings have not always been reproduced, however. A study undertaken by Karp et al. in 2004 concluded that young offenders' willingness to participate in restorative programs was variable (Karp et al. 2005). A 2013 evaluation of four restorative programmes in Taiwan found that, contrary to expectations, there has not always been a great deal of space provided for the active participation of young offenders in restorative programmes, which, rather, tend to be dominated by parents, family, law enforcement personnel and judges (Huang and Chang 2013). Christina Stahlkopf's (2009) qualitative study exploring conferencing with young offenders in England concluded that presence at restorative panel meetings does not automatically guarantee meaningful participation in practice. "*I did what they told me;*" "*I had no say. I had to do what I was told,*" were typical ways in which children characterised their experiences (Stahlkopf 2009).

Overall the evidence suggests that participants in restorative programmes are more likely to feel satisfied, and fairly treated compared to those who experience formal criminal justice processes. Nevertheless, as many researchers have noted,

these results are likely to be prejudiced by a significant self-selection bias arising from the fact that participation in restorative justice disposals is almost always voluntary. As many commentators have pointed out, it is hardly surprising that participants are more likely to report being 'satisfied' with an activity in which they themselves have actively chosen to participate (Latimer et al. 2005).

Furthermore, as well as being voluntary, restorative meetings and conferences can only take place if the offender has acknowledged guilt for the crime. This is necessarily the case, because there is no fact-finding inquiry or mechanism for determining guilt included in the restorative process (Daly 2006). Thus as Elisabeth MacDonald has pointed out: 'many of those victims who profess satisfaction with restorative processes. . . would. . . not go through the experience of a full adversarial trial in any event;' she concludes: 'it may well be a case of comparing apples and pears' (McDonald and Tinsley 2013).

3.4.3 Achieving 'Restoration'

Empirical findings related to 'restoration' are more varied and complex than those that seek to measure 'satisfaction' or perceptions of 'fairness'. Where 'restoration' is measured through the identification of objective measures, such as the payment of reparation or restitution to the victim, restorative process appear (perhaps unsurprisingly) to be more efficacious than criminal justice proposals. Most meetings, conferences and circles do tend to result in agreement; which may take the form of a formal apology, the payment of direct compensation to the victim, work on behalf of the victim, community service, and other undertakings (Daly 2001).

More interestingly, studies have also demonstrated that agreements reached as a consequence of a restorative meeting tend to result in significantly higher rates of *compliance* compared to court-ordered restitution sentences (Gabbay 2005). For example, a 2004 meta-evaluation of 83 restorative projects in the UK found that 83 % resulted in the successful completion of agreed plans (O'Mahony 2012). Another evaluation found that children who participated in victim-offender mediation were over 40 % more likely to complete their programme compared to those who did not (Latimer et al. 2005).

On the other hand, more 'subjective' measures of restoration, including degrees of 'reconciliation', healing and remorse, displayed by participants in restorative programmes are harder to determine. Katherine Daly's research on restorative justice for children in Australia, found that, whilst over 80 % of participants (across different programmes) reported restorative processes as 'fair', indicators of 'restoration' were only present in some 30–60 % of cases, depending on the variable measured. Daly wonders whether restoration is particularly hard to achieve in *juvenile* cases, because of children's relative emotional immaturity, and reduced capacity to consider and understand the perspectives of the victim (Daly 2006).

Christina's Stahlkopf's qualitative research exploring the use of restorative panels for young offenders in the UK is particularly revealing in this respect. Her in-depth study conducted over a period of 17 months examined the functioning of

one of England's leading youth offending teams—the Oxfordshire YOT. Her research revealed that whilst young people may express the view that restorative processes are a 'good idea', and that they are 'fair' in the abstract, this does not necessarily mean that, from a personal perspective, they find them relevant or helpful, or that they are likely to have a positive effect on their behaviour. When asked if participation in the programme had helped them, the majority of young people responded in a neutral or negative manner, with most young people concluding that panel meetings had made no difference to their behaviour. One boy succinctly summarised the discrepancy between young people's general assertions of the 'benefit' of restorative programmes, and their assessments of their own personal experiences: "*referral orders are a good idea and they're better than court. ...but. ...well. ...it wasn't that helpful for me*" (Stahlkopf 2009, p. 236).

Despite these somewhat discouraging findings, there is some evidence of the 'restorative' effects of various programmes. A number of studies, particularly those conducted in the UK, have demonstrated that restorative encounters can reduce victims' levels of post-traumatic stress and help diminish levels of fear and anxiety (Rossner 2008). There may be psycho-social benefits for offenders as well. One 2009 evaluation of a restorative programme implemented in prisons in the UK found that subsequent to participating in the programme, prisoners demonstrated higher levels of 'victim empathy' (higher levels of awareness of the impact of their offending actions on victims). Interestingly, this positive change was found to be marginally greater amongst young offenders (compared with adults) and amongst female (compared with male) offenders (Feasy and Williams 2009).¹²

On the other hand, there is evidence that some participants may even feel *worse* after undergoing restoration (Gal and Moyal 2011). A study of restorative disposals for youth offending in New Zealand found that some victims felt worse after participating in a restorative process for several reasons, including that: they did not feel that the young offender was genuinely sorry; they did not feel able to properly express themselves during the encounter; and/or because they did not feel that their concerns had been appropriately listened to or addressed (O'Mahony 2012; Morris and Maxwell 1998).

Offenders, on the other hand, sometimes report that they feel that victims have sought to 'abuse' the process of restoration: using it as an opportunity to inflict punishment or exact revenge (Umbreit et al. 2002). There are concerns that conferences and circles expose young offenders to a lack of privacy, and arbitrarily subject them to existing conflicts and prejudices that prevail amongst family, friends and other connected persons (Haines 1997). These concerns are even more significant given that a substantial proportion of young offenders have been victim to violence and abuse, often perpetrated by those closest to them (Falshaw 2005). Existing roles, stereotypes, identities and power differentials delineated on the grounds of age, gender, race and class are sometimes reproduced and performed

¹² Since this study did not include a comparison group, however, it failed to establish conclusively that this change was the result of participation in the restorative programme.

in conferencing settings (Haines 1997), with the result that many young offenders are silent and withdrawn throughout restorative proceedings (Stahlkopf 2009). Christina's Stahlkopf's study of youth offending in the UK contains a number of troubling accounts of restorative panellists overstepping their boundaries and abusing their position of power during the restorative process. The following passage from her report is illustrative:

Jacob... did very well over the course of his order and managed to acquire a full-time job as a postman... However, rather than congratulating Jacob... the panel expressed disappointment in his decision to be a postman. [They] felt that he should have chosen... a more highly paid [position]... [They] proceeded to ridicule Jacob's job, implying that he was lazy and stating that maybe becoming a postman was the perfect job because he would be done by noon. As Jacob continued to talk about his job, he mentioned that he was hoping to transfer his route to work in the area in which he lived. [The] panel members [responded], *"Yeah, good luck trying to transfer before your first 40 years!"* The panel members' comments were inappropriate and only served to alienate the young person at a time when it was crucial to be as reintegrative as possible... Rather than focusing on the positive changes he had made in his life, the panel members instead chose to ridicule him (Stahlkopf 2009).

This evidence evokes Haine's and Braitewaithe's concerns that restorative processes are susceptible to reproducing existing power dynamics and inequalities, especially when children are involved (Haines 1997; Braithwaite 2003a, b).

3.4.4 Reducing Costs

There is evidence that the administration of restorative justice provides for a more proportionate and efficient use of resources compared to traditional criminal justice. Evidence on policing costs in the UK, for example, has found that restorative justice disposals are consistently cheaper and take up less police time compared to criminal justice alternatives (Shewan 2010), and Ministry of Justice research has reportedly estimated that restorative justice saves as much as £9 for every £1 spent on RJ (Restorative Justice Council 2011). Research in Australia has also demonstrated the cost-effectiveness of restorative justice disposals: research conducted by Webber in 2012 concluded that disposing of a youth offending case through conferencing is 18 % cheaper than processing it in court (Webber 2012); and a 2010 evaluation in Victoria found that conferencing is also less expensive than administering a community based order (Larson 2014). Furthermore, a study in Peru found that restorative justice programmes were almost four times cheaper than holding children in State-run closed detention facilities, and that in one research site the judicial system case load was reduced by 44.2 % as a result of implementing a restorative justice programme (SRSJ 2013). A review conducted by the National Commission in Northern Ireland in 2009 concluded that "despite the difficulty in comparing international data, there are clear indications that restorative justice measures are among the less expensive options open to the criminal justice system." (National Commission on Restorative Justice 2009).

3.4.5 Reducing Recidivism

The evidence concerning the effectiveness of restorative justice disposals for preventing juvenile crime and reducing rates of recidivism is highly varied and mixed, and it is difficult to draw general conclusions from the research that has been conducted. Numerous studies have demonstrated lower levels of recidivism for children and youth who have participated in restorative practices in comparison to those within mainstream criminal justice (e.g. Bergseth and Bouffard 2012; Evje and Cushman 2000). A number of random control trials and comparison studies have found that youth who participate in restorative mechanisms, particularly victim-offender mediation, reoffend at a lower rate than youths whose cases are disposed with through the criminal justice system, and where they do reoffend, they commit less serious crimes (Bradshaw and Roseborough 2005; Nugent et al. 2004). For example, a 2000 random control experiment in New Zealand found that young people who were assigned to conferencing were less likely to reoffend than those who attended the youth court (Sherman et al. 2000). Furthermore, research in Australia in 2002 concluded that young offenders who undergo conferencing are between 15 and 20 % less likely to reoffend compared to those who are sentenced in court (Luke and Lind 2002). Similarly a study on rates of reoffending amongst young, violent offenders in the USA found that those children who went through a restorative process were less likely to reoffend after a period of 12 months compared to those whose cases were processed through the criminal justice system (McCold and Wachtel 1998).

On the other hand, a considerable spectrum of research has failed to reproduce these results. Many studies have not detected any discernible impact on recidivism as a result of restorative practices, or have generated results that are too marginal to be significant.¹³

Furthermore, some studies have indicated that some children are *more* likely to re-offend after participating in a restorative process. A meta study in Canada comparing data across 22 studies found that overall restorative justice programmes led to a 7 % reduction in reoffending compared to criminal justice approaches; however, aggregating results across studies conceals vast differences in results; whilst some studies revealed reductions in reoffending of up to 38 %, other studies demonstrated *increases* in child offending subsequent to participation in restorative interventions as high as 23 % (Latimer et al. 2005). A body of research conducted in Australia has indicated that restorative justice disposals may not be as effective in preventing recidivism amongst aboriginal children, as they are amongst children

¹³ See for example: Niemeyer, M. & Shichor, D. (1996) 'A Preliminary Study of a Large Victim/Offender Reconciliation Programme'. *Federal Probation*, 60(3):30–34; Bradbury, B. (2002) Deschutes County Delinquent Youth Demonstration Project. Secretary of State Audit Report #2002-29 Salem, OR: Office of the Secretary of State; Roy, S. (1993) Two Types of Juvenile Restitution Programmes in Two Midwestern Counties: A Comparative Study. *Federal Probation*, 57(4): 48–53; Walker, L. (2002) Conferencing: A new approach for juvenile justice in Honolulu. *Federal probation*, 66(1), 38–43; Wilcox, A., Young, R. & Hoyle, C. (2004) An evaluation of the impact of restorative cautioning findings from a reconviction study. Research, Development & Statistics Directorate, Home Office: UK.

from dominant racial groups. For example, a 2011 study examining Australian Reintegrative Shaming Projects found that when data concerning the impact of restorative justice programmes on recidivism was disaggregated by ethnicity, significant differences were detected amongst reoffending rates for white and non-white children: whilst white children were found to be less likely to reoffend after participation in the programme, results were marginal for non-white youth (Kim and Gerber 2012; Centre for Restorative Justice 2011). There is evidence that in some situations the conference process may even be criminogenic for children from minority groups; particularly where conferences are organised by white police officers and/or involve white victims, which can expose children to stigmatisation and discrimination (Luke and Lind 2002; Strang and Sherman 2007). Some studies have indicated that white victims are less likely to agree to participate in a restorative process at all if the offender is from an ethnic minority (Umbreit et al. 2002), evidencing that racial biases do have an influence on the functioning of restorative programmes.

In an addition to ethnicity, other characteristics of offenders may influence rates of recidivism across different justice disposals (O'Mahony 2012). Research undertaken by Rodriguez in 2007 found that restorative justice programmes were significantly more successful in preventing recidivism amongst girls compared to boys. Furthermore, whilst children with no prior offence were considerably less likely to offend after participating in a restorative justice programme compared to the control group, this result was *reversed* for cases of children who had offended previously, as well as for those who had committed more "serious" offences (Rodriguez 2007). Similarly, a meta-analysis of 39 restorative justice studies conducted in 2006 found that associations between restorative justice and lower rates of recidivism were stronger amongst low-risk offenders (Bonta et al. 2006). In 2001 Maxwell and Morris conducted a study which demonstrated that amongst children who underwent a restorative justice disposal, those who experienced poverty and parental neglect were more likely to reoffend compared to others (Maxwell and Morris 2001a, b). These results indicate that restorative justice programmes might be less effective for groups of 'high risk' child offenders, who may require more intensive support (compared to 'low risk' offenders) (Kim and Gerber 2012). Interestingly, in 2013 Strang conducted a meta-analysis which found that restorative justice processes had more impact on preventing recidivism amongst *adults* compared to children. These findings contradict popular notions of restorative justice which often presume that restorative disposals are particularly (even only) suitable for children (Strang et al. 2013).

Restorative justice mechanisms may fail to prevent reoffending amongst the most vulnerable groups of children, because the restorative justice model is not oriented toward meaningfully identifying and addressing the root causes of *why* children offend in the first instance. Whilst restorative processes may result in an agreement that a child undergoes a rehabilitative programme to address their offending behaviour, this is neither inevitable nor the primary purpose of the restorative process, which is, rather, to repair the harm caused by the offence, most particularly to the victim. Furthermore, even when the restorative process

does result in a reparations plan, this is immaterial if suitable referral services are not in place (Haines 1997). Restorative panellists interviewed as part of Stahlkopf's research in the UK emphasised that adequate local facilities and resources are crucial to the success of reintegrating and rehabilitating child offenders, but explained that many panels had difficulty devising a suitable plan for children because necessary services did not exist (Stahlkopf 2009).

For these reason, Haines has argued that restorative principles and methods are "severely limited by their failure to take seriously the needs and troubles of child offenders, and to find constructive solutions to them" (Haines 1997). A succinct analysis of the situation was provided by Morris when he pointed out that even the most restorative of meetings cannot "magically undo the years of social marginalisation and exclusion experienced by so many offenders" (Morris 2002, p. 605; Stahlkopf 2009, p. 240).¹⁴ Even more concerning, there is some evidence that in particular contexts and circumstances the outcomes of restorative practices may not only fail to address a child's offending behaviour, but could even contribute to destabilising a child's situation further. For example, a recent assessment of the use of mediation in juvenile cases in Lao PDR found that: "for [poor] families, the compensation or other financial/material sanction [a typical outcome of mediation cases] was difficult to comply with... Some families had to borrow money, leading to family debt and [a] breakdown in relationships" (Barnes et al. 2013, p.4).

Poverty; poor parental practices (including the failure to provide boundaries, encouragement and support); lack of access to education or other opportunities; experiences of violence and abuse; learning and communication disabilities; mental health problems; social exclusion; and drug and alcohol addiction are some of the complex and challenging issues that underline child offending. Children who offend often require intensive and sustained support to achieve rehabilitation and reintegration into their families and communities. This is the point that perhaps presents the most serious challenge to the claims of the restorative justice movement. While it is argued that restorative techniques provide a rational, just and effective means of addressing and preventing youth offending, the theory and practice of restorative justice fails to grapple with and address the underlying vulnerabilities that drive many young people to offend. Restorative justice cannot address the structural and systemic cycles of disadvantage that so often pervade the realities and experiences of young offenders.

4 An Alternative Model: Family-Focused Programming

"On the basis of the available evidence one has to question whether [the] failure to draw and agree upon a definition of restorative justice justifies the claims for a foundation of a new theory and approach" (Haines 1997).

¹⁴ A. Morris as quoted in Stahlkopf (2009), pp. 231–251.

Whilst there is evidence that restorative methods yield positive outcomes for many children, in other cases restorative processes may be at best unhelpful and at worst positively alienating and damaging, especially for the most marginalised, disadvantaged and troubled groups of children. This begs the question as to whether, on the basis of theory and evidence, 'restorative justice' principles and practices, really do provide the most appropriate solution for dealing with cases of child offending.

This section reviews evidence regarding an alternative model for addressing youth offending; sometimes known as the 'family-focused' model, or the 'juvenile justice alternatives programme' (JJAP), which may have potential to address many of the drawbacks and weaknesses of restorative justice mechanisms. These types of programmes are essentially treatment-based: most particularly concerned with understanding and addressing the community, social and family contexts which drive young people to offend. Interventions are focused on tackling the reasons behind, and causes of, a child's offending behaviour; recognising that many children who offend have been affected by poor parenting, and/or have experienced problems in school; many children may come from families deeply affected by poverty; others are runaways or orphans, and may be homeless or vulnerably housed.

This model of justice prioritises rehabilitative work with families, and other caregivers, alongside work with child offenders themselves, to prevent and address youth crime. Interventions aim to restore a child's family stability at home, to build better familial and other relationships, and to improve parenting skills and to raise the child's self-esteem and sense of self-worth. Programmes may incorporate restorative actions, such as mediation and conferencing, but only so far as these measures are likely to serve the primary purpose of reintegrating the child into society. This model is sophisticated in the sense that it recognises that a child's offending behaviour is not simply a matter of individual choice, but the product of broader structural factors which have serious implications for social justice (Haines 1997).

This section draws on (albeit limited) evidence gathered through a number of evaluations of programmes conducted in Azerbaijan, Georgia, Kazakhstan, Tajikistan and Tanzania, to draw tentative and preliminary conclusions about the potentialities and risks of these models for addressing juvenile offending. The studies depended on primarily qualitative methodologies, including the use of semi-structured interviews with children, parents and carers, juvenile justice professionals, social workers and others, and 'participant observation' techniques, such as observing activities at the projects and participating in group therapy and counselling sessions. Where available quantitative data was also collected concerning the number and characteristics of children being referred into the centres (file reviews), and on rates of youth offending and re-offending (data gathered from police departments, justice and social welfare bodies and others).

It is important to acknowledge from the outset, that the evidence that can be drawn from these studies is limited in a number of respects. Firstly, evaluations were conducted only 1–3 years after the projects' inceptions, so there is no evidence

on the long-term impacts of the projects. Furthermore, in the light of the reliance on qualitative methodologies, the small samples used, and the absence of any control trials or comparison groups, the results of these studies cannot be used to make scientific claims that can be applied with precision to a broader population. Where relevant, however, reference is made to evaluations of other similar family focused models to determine likely outcomes.¹⁵

4.1 *The Family Focused Programmes*

“Work with families is very important, as improved family stability, the building of better familial relationships and improved parenting will lower the chances of a child re-offending” (Anderson 2010, p. 32).

In each country context, the programmes were developed in order to establish a mechanism for the diversion of children out of the formal criminal justice system prior to trial, or as an alternative sentencing measure for child offenders after trial, with the aim of reducing rates of imprisonment and institutionalisation of children. The programmes also admit children who engage in ‘anti-social’ behaviour, or who are ‘at risk’ of offending. In each country context the intention was to develop and refine a model that could ultimately be integrated into the national criminal justice system and replicated throughout the country.

The primary function of the programmes is to provide rehabilitation and reintegration support to children and their families to prevent reoffending, through community-based programmes. Initially developed to provide a community-based alternative to custody, the children remain at home, or in provided accommodation (for those who are without parental care) throughout the rehabilitative process. Each project provides individual programmes, based on the needs and interests of each child and their family, identified through a social work assessment. These family focused programmes aim to provide a diverse range of services to children and their families over a sustained period, typically lasting anywhere from 3 to 6 months or if necessary, even longer. These services may include: group and one-to-one counselling for the child, family counselling, family conferences, mediation services, parenting skills training, remedial educational support, legal assistance, vocational training, arts and cultural activities, sports activities, game therapy, and other support. Usually children are able to select which educational courses, vocational training and activities they want to do and their personal programme is developed around this. However, some work, such as counselling, family work and

¹⁵ See for instance, Ross, Duckworth, Smith, Whyness and Schoon, Prevention and Reducation: A review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour. Centre for Analysis of Youth Transitions DRF-RR111, 2011, UK and Review of Good Practices in Preventing Juvenile Crime in the European Union, European Crime Prevention Network, 2006.

life skills are mandatory. Parents, and other caregivers and guardians are viewed as key partners of the project workers, and their fundamental role in supporting the rehabilitation of the child is reinforced throughout the period that the child remains in the programme.

The programmes usually have a particular focus on supporting children to return to school, and improving their attendance and performance, as well as the child's self-esteem. In the case of older children, staff have endeavoured to link with local NGOs and services that support young people to find paid employment, or offer vocational training.

In each country, projects are being run by local civil society groups with support from local government authorities. All are located within either a youth centre or other similar activity centre. Referral to the projects may be made by police, prosecutors, by the courts, or by law enforcement or social welfare bodies, with a mandate for prevention and response with regard to youth offending.¹⁶ As is the case for restorative justice programmes, in order for a child to be referred to a programme, they must acknowledge their guilt for the offence, and consent to participating in the programme. Consent is also required of the parents or guardian(s) of the offending child. Subsequent to referral, children, parents and guardians must also agree with the programme prepared by the staff, and sign a detailed plan of action.

4.2 Evaluating Impact and Effectiveness: Family-Focused Model

The evaluations (reviewed in this section) examined the impact of JJAP programmes in several respects: firstly they explored participants' subjective perceptions, attitudes and experiences of the programmes; secondly they examined the impact of the programmes in terms of reducing rates of recidivism amongst children; thirdly they explored the potential of these programmes to reduce the numbers of children entering the criminal justice system, and being placed in detention, a process commonly known as 'diversion'.

4.2.1 Perceptions and Experiences of JJAP Projects: Children and Their Families

Similar to evaluations of restorative justice programmes, the evaluations of the JJAP projects indicate that young people, as well as other stakeholders (including families of offenders, and criminal justice professionals) are inclined to speak positively about the programmes. Children reported that they were able to

¹⁶ E.g. the Commission on Minors in Tajikistan and Azerbaijan, and social welfare staff Tanzania.

participate in the activities that were most interesting to them, and that that they were involved in developing programme plans; they also reported feeling 'listened to' and 'respected' by project staff. Parents also reported that they felt actively involved in planning the programme for their child and in the assessment process.

Significantly, during the evaluations participants not only expressed their satisfaction with the projects, but also typically identified a series of positive outcomes of the projects, which they directly related to their own feelings, experiences and behaviour. Benefits of the programmes, identified by children and their families, included: improved communication and relationships with others; greater family stability and cohesion; renewed interest in school and education and better performance in school; enhanced livelihoods opportunities through having gained new skills and developed levels of confidence; and overall increased levels of happiness and hope for the future. One child in Tanzania declared: "*when I am here, I feel like I might succeed. I have hope. When I was just at home, I felt like there was no hope*" (Anderson and Ross 2013, p. 38). Similarly another said: "*when I came to the project I gained a direction. Before I did not see a future and did not feel any hope for my life*" (Anderson and Ross, p. 39). As explored in the above sections, this is somewhat different to the evidence gathered from evaluations of restorative justice disposals. In the restorative justice programmes rates of reported 'satisfaction' with the process were typically high, but the research yielded less evidence that restorative measures are thought to actually benefit children on a personal level (Daly 2001; Stahlkopf 2009).

Children enrolled in the rehabilitative programmes were able to articulate clearly the ways in which the programme had a positive impact on their state of mind, behaviour and relationships with others. One boy in Azerbaijan described how having one-to-one counselling sessions had helped to relieve his stress and relax him (Anderson 2010, p. 35); a 17-year-old girl explained that talking to the psychologist 'comforted' her and helped her to 'understand things much better' (Anderson 2010, p. 36). A child in Tanzania told evaluators: "*I had an attitude problem. I was argumentative. Self-awareness classes helped me*" (Anderson and Ross 2013, p. 37), and another child engaged in conflict resolution classes claimed: "*I have changed a lot. . . now I don't have arguments with people at home, because we sit here and they teach us how not to argue*" (Anderson and Ross 2013, p. 37).

Many children expressed a reduced desire, or tendency to offend. For example, one 15 year old boy in Tanzania explained: "*when I was on the street I was doing nothing. I even stole from my parents and they took me to the police. I am changing my behaviour because I can now see what caused it, and now my environment has changed. I can see the difference in me. I want to get a job*" (Anderson and Ross 2013, p. 36); and another stated: "*I want to stop stealing and learn to read*" (Anderson and Ross 2013, p. 33). A child in Tajikistan described how the programme had made him "*kinder and more respectful of others*"; he said that he had learned how to communicate with others better, and how to make new friends (Ross 2008, p. 17).

Some children in Azerbaijan reported that an excursion to the juvenile colony, arranged by staff at the project, had helped them to understand the potential

consequences of any future criminal activity. These findings fit with a recent meta-evaluation study conducted by the Centre for Analysis of Youth Transitions which concluded that programmes which encompass a holistic range of interventions (applied to address a multitude of different ‘risk factors’) are more likely to be effective at reducing children’s offending behaviour than other types of justice disposals that adopt a more singular strategy (Ross et al. 2010, p. 3).

Many children referred to gaining new skills and education as a central positive outcome of the programme; and spoke of how this had led to a change in outlook and renewed positivity about the future: “[the project] has changed my behaviour and has given me skills. I make batik and handcrafts and I like tailoring” (Anderson and Ross 2013, p. 38). Children in Azerbaijan explained that the JJAP’s pedagogue had helped them to achieve better in school, and appreciated access to facilities like computers. One child reported he had been referred by the centre to a hairdressing apprenticeship and spoke favourably of this (Anderson 2010, p. 33). A child enrolled in the JJAP in Tanzania reported: “it is good here and I am happier. I am learning lessons that I did not understand in school and I have made friends;” (Anderson and Ross 2013, p. 38) and another told evaluators: “I used to be rude and I stole a radio, shoes and stuff like that. The project... has created a good environment for me to progress. I am now attending VETA to do a cookery course and I intend to build my future as a cook in a hotel” (Anderson and Ross 2014, p. 40).

These findings were also backed up from the testimony of parents, grandparents, guardians and others interviewed during the evaluations, such as law enforcement personnel. One police officer in Tajikistan insisted: “when you see the child after (finishing the programme at) the JJAP, you will immediately notice that this is someone else... someone different now. He visits school again and then he starts to attend school again. You see their intellect, how he behaves, how he or she treats the classmates, peers, teachers. It is very good” (Ross 2008, p. 20). Many parents reported that following referral to the programme their child had become more motivated to attend school regularly and complete their homework. A parent in Tajikistan explained that prior to referral his son was ‘not interested’ in school (Ross 2008, p. 18); following attendance at the programme, however, he became motivated to study and particularly developed his skills in writing and drawing (Ross 2008). One parent in Azerbaijan remarked that her son had been having a lot of difficulty at school, but after completing his plan at the programme, he was able to read and write and keep up in class. Another parent reported that her son had an increased understanding of the ramifications of his criminal actions, and his behaviour had noticeably improved (Anderson 2010, p. 35).

Parents also expressed appreciation for the support provided to them through the projects. They reported that social work inputs had helped them care for and communicate more effectively with their children, and learn new parenting skills. Parents receiving support from the programme in Tajikistan explained that they had a renewed understanding of the importance of giving their children regular attention and praise (Ross 2008). In Tanzania, parents reported that the project helped them establish more consistency in disciplining their children, and how to use less harmful disciplinary practices (Anderson and Ross 2013). In Azerbaijan, one

mother described the parenting advice provided to her through the programme as ‘invaluable’, supporting her to work together with her son to improve his behaviour, and strengthening the relationship between them. Another mother spoke of how the programme had helped her claim the social benefit support she was entitled to; whilst a third reported that the centre had helped her find a job. In general, parents reported that staff contact was regular and supportive, and that it helped them to understand their child better (Anderson 2010).

Children also noted a change in their parents’ and guardians’ behaviour, and confirmed that relationships at home were considerably improved. One child in Tanzania explained: *“my grandmother has changed. Before, if I refused to do something, she’d deny me food. Now she never denies me food - even if I disobey her”* (Anderson and Ross 2013, p. 35); whilst another reported: *“previously, sitting talking with my parents was difficult. They used to look down on me as a child who was worthless and with nothing to say. Now my parents are eager to spend time with me”* (Anderson and Ross 2013, p. 41). Similarly a child in Azerbaijan reported: *“my father has also changed [as well as me]. He doesn’t yell at me or beat me now. Because of the way the staff talk to him”* (Anderson 2010, p. 35).

Despite these encouraging findings, there is need for more evidence on the long term benefits of the programmes. Whilst children and parents may feel positively about the services that they have received whilst they are still enrolled in the programme, or shortly after leaving, it remains to be seen whether these positive effects will last, and what the long term opportunities for these children will be. Several young offenders in Azerbaijan, for example, appeared unsure about their future goals after leaving the programme, and did not appear to have received a good level of assistance in securing further education, vocational training or employment (although these children did speak favourably about the Centre) (Anderson 2010). Furthermore, the majority of programme professionals expressed the view that 3–6 months is not enough time to rehabilitate some of the children referred to the project, especially those with more complex needs, and a number of stakeholders expressed concern that there is little aftercare provided to children following their completion of the programme (Anderson and Ross 2013).

4.2.2 Rates of Recidivism

The evaluations conducted in Azerbaijan, Georgia, Kazakhstan, Tajikistan and Tanzania include information about rates of reoffending amongst children who have attended the programmes. In each case reported rates of reoffending are strikingly low. The evaluation report notes that in Tajikistan, most juvenile justice disposals (within and around the project areas) have a reoffending rate of between 30 and 40 % (Ross 2008) but less than 3 % of the children referred to the rehabilitation programmes were found to have reoffended at the time of conducting the evaluation (2 year after the start of the programme). In Azerbaijan, of the 102 children included in the evaluation, only 2 had reoffended subsequent to leaving the programme (Anderson 2010). Similarly only 2 of the 120 children

who participated the Tanzania programme had committed further offences after 2 years (Anderson and Ross 2014). Finally, according to the Kazakhstan evaluation of 150 children enrolled in the programme, *none* went on to reoffend; however, the evaluation report qualifies this finding by acknowledging that this data relies solely on the testimony of judges in the specialised children's court, who would not necessarily be informed about re-offending cases that were disposed with outside of court, or reoffending of children who turned 18 years subsequent to leaving the programme (Syidov 2012). The same low level of reoffending is evident in the programmes in Georgia.

Across all five studies, the evidence in relation to rates of reoffending must be treated with caution: it is incontrovertibly insufficient to draw reliable conclusions about the impact of family focused programmes on reducing recidivism amongst children. Aside from significant methodological limitations presented by the lack of a control trial or comparison group, and the limitations associated with the timings of the evaluations, it is also important to acknowledge that children enrolled in the programmes are not representative of a broader group of children who come into conflict with the law. In each country context, data concerning referrals and enrolment into the programmes revealed that children who attend these programmes are overwhelmingly those who have committed first time, minor offences, and in some cases had not offended at all, but were referred to the projects for being 'at risk' of offending. In Azerbaijan, a number of referring bodies reported that children who had already reoffended, and those who had committed a 'serious' offence would never be considered for referral to the programme; 'serious' offences appeared to be defined very broadly to include even cases of petty theft (Anderson 2010, p. 19). Similarly, the evaluations in Tanzania identified a number of barriers to referral into the project including (amongst others) that the child did not admit guilt, the child did not have a place to live, and that the child had committed an offence that was perceived as 'too serious' for referral to the scheme (Anderson and Ross 2013). This may indicate that those children who may be most likely to reoffend are also those who are least likely to be participating in the programme in the first instance. In other words, as with much of the evidence in relation to restorative justice programmes, there is a significant selection bias which underlies the results in relation to rates of recidivism amongst children participating in the programme. However, it should be acknowledged, that as the programmes have become more experienced they have increasingly taken children who have committed more serious offences, meanwhile, rates of reoffending have (to date) not increased.

4.2.3 Diversion of Children Out of the Formal Criminal Justice System

As with restorative programmes, one of the main goals and justifications for the family focused programmes is to provide a means to ensure that children in conflict with the law are directed out of the criminal justice system, and referred to

rehabilitative services; instead of being subject to the formality of an adversarial trial, and a potential custodial sentence.

In all country contexts, the research revealed some evidence that the programmes are playing an important role in this respect; mainly due to the fact that there are few alternative services. The evaluation in Tajikistan revealed that there are very few options that provide an effective response to child offending. Prosecutors and judges interviewed in all regions stated that the only real alternative to referral to the programmes is the imposition of an institutional sentence, including placing children in custody or in a correctional 'school'. The evaluation study concludes therefore, that: 'the lack of effective options for resolving cases of children who come into conflict with the law serves to highlight the importance of the programmes' (Ross 2008). In Tanzania professionals described the project as 'necessary', and noted that it filled a 'gap in the system', providing for children's rehabilitation in the community rather than in custody (Anderson and Ross 2013, p. 13). In Azerbaijan, interviewees reported that if the programmes did not exist, it was likely that 'unmanageable' children would be referred to a closed institution (Anderson 2010). There was also evidence of the project being used as a direct alternative to institutionalisation. For example, one 8 year-old boy, arrested for making a bomb threat to a local hospital, was initially recommended by the prosecutor for referral to a 'special school'. Due to intervention by programme staff, however, in the end a decision was made to refer the boy to the programme. The mother of the child expressed her gratitude for the project staff, and reported that since attending the centre her son had learned to read and write and had "*opened his eyes to the world*" (Anderson 2010, p. 43).

Despite the diversionary purpose of the programmes, it is important to acknowledge that in practice many children are enrolled in the project as a preventative measure, rather than as a means of diversion out of the criminal justice system. In Azerbaijan only 35 % of all children referred to the programme had actually committed an offence, and the majority of these were minor offences, a further 4 % of children had committed an administrative offence, whilst the majority of children (61 %) were referred for 'anti-social' behaviour, truancy from school, running away from home, or because of problems at home (Anderson 2010). Similarly in Tajikistan only 33 % of children referred to the project had committed an offence, with the majority of children, and as many as 80 % in one project site, were referred for 'anti-social behaviour', defined by referred bodies as including truanting or dropping out of school, working in the informal sector (e.g. washing cars or working at the market), children involved in conflict within the family, or children living on the street. Many of these 'at risk' children were affected by poor parenting and poverty and some had previously run away from home (Ross 2008). In this sense the projects are serving an important function: providing secondary and tertiary level preventive services to vulnerable and 'at risk' children to prevent them coming into conflict with the law.

Nevertheless, there is need for caution here: that this shift from a diversionary approach to an increasingly 'interventionist' (preventative) practice does not lend weight to the increasing problematisation, even criminalisation, of childhood and

adolescent behaviour. This is a critique that has similarly been levelled against the use of restorative justice for ‘at risk’ children, and those accused of committing minor offences. Haines has expressed concern that the targets of juvenile justice interventionist programmes are often not serious, ‘heavy end’ offenders, but minor offenders and those who may have not yet committed an offence; arguing that this approach feeds into narratives about youth criminality and can lead to culture of ‘zero tolerance’ policing (Haines 1997). There are concerns about whether these sorts of interventions are proportionate, and whether they might result in a ‘net-widening’ effect, drawing increasing numbers of children into contact with law enforcement agencies and the criminal justice system more broadly (O’Mahony 2012).

Of course this is not to say that vulnerable children should not be receiving services; but the question is whether it is appropriate for support services to be delivered through interventions primarily introduced as alternatives and ‘adjuncts’ to the criminal justice system (Haines 1997). As the evaluation in Tajikistan acknowledges, “Children referred [to the programme] for preventative work may benefit from referral to community centres rather than the programme”, and that ‘the programmes were established to deal with the complex needs of children who have committed criminal offences severe enough that they would normally be exposed to the formal criminal justice system’. Some stakeholders in Georgia expressed concern that: *“mixing convicted juveniles with children who have not even entered the justice system [is not necessarily] in the ‘best interests’ of both categories of juveniles.”*¹⁷ They also pointed out that such a perspective assumes ‘at risk’ children will not have access to services through horizontal services focused on delivering child protection services to vulnerable children (Anderson 2009). Finally the Kazakhstan evaluation notes ‘[there may be] a degree of unnecessary ‘problematizing’ of some of the children’ (Syidov 2012).

5 Conclusions and Key Questions for Policy

Restorative approaches to child justice have much to recommend them. A review of the theory and empirical evidence suggests that restorative justice practices do have the potential to provide positive outcomes for those affected by juvenile crime. Whilst there is a need for more evidence from middle and low income countries, a body of research in high income contexts has demonstrated that a range of restorative practices have in many circumstances provided a rational, fair and effective response to juvenile offending.

Nevertheless, these strategies are not without their limitations, particularly in their application to cases of juvenile offending. As Sect. 1 of this chapter explores, there is a subtle tension between the victim-centred character of restorative justice

¹⁷ UNICEF child protection specialist, December, 2009.

theory; and child rights precepts which establish that the best interests of child offenders should be a primary consideration in all decisions concerning the treatment of children in conflict with the law. (A tension which reflects a deeper contradiction contained within the discourse of restorative justice itself: that it draws upon the traditional concepts and values of criminal justice, whilst simultaneously rejecting them) (Johnstone 2004, 2011; Pavlich 2005). Section 2 expounds evidence which suggests that restorative disposals often fail to address the needs of some of the most vulnerable and disadvantaged children who offend; and that there is often considerable gap between the values and ideals of restorative justice, and their realisation in practice.

Section 3 presents an alternative model: which takes a holistic approach, to rehabilitating child offenders, focused on service provision, social work, and therapeutic activities with children, and (most importantly) with their caregivers and broader families. This model is more expensive than common forms of restorative justice and more labour intensive, requiring a far greater level of professional and community input; but it is arguably more useful for addressing the root causes of child offending and finding constructive solutions to these, compared to a typical restorative disposal or approach. The family-focused model is founded on the recognition that juvenile crime is not only a matter of individual choice, but also the consequence of broader social injustices and inequalities, and that these are vital considerations for any (new) model of justice.

The family focussed model of justice is still in its infancy. There are very few examples of these models, and few studies that have sought to evaluate their effectiveness and impact. Nevertheless, the early indications of the empirical evidence are highly encouraging. As international focus shifts towards prevention of crime rather than dealing with its consequences, now is the moment for a systematic study exploring the impact of a family focussed approach, and the extent to which it can complement, and address some of the drawbacks and gaps presented by restorative justice disposals.

Five Questions

1. Is restorative justice theory—with its focus on the needs of victims—an appropriate framework to apply to cases of juvenile offending? Does this framework have the capacity to address the types of offences most commonly committed by children, their causes and their contexts? For example, how would a child from a difficult background make reparations for using illegal drugs?
2. Are there any risks for children associated with the informal nature of restorative justice disposals, and how do we safeguard against these? What measures can be put in place to ensure that restorative disposals do not end up reproducing harmful power dynamics and inequalities between adults and children?
3. Does a ‘treatment’ based model, such as the family focused model, have more potential to address the root causes of juvenile crime, as well as rehabilitating juvenile offenders? Do we have enough evidence to roll out such a model on a wider scale? Given that these programmes are likely to be more expensive as they last for longer and are more labour intensive than restorative justice

disposals, what outcomes should be required to justify the costs? How do we measure these?

4. Is there likely to be political resistance to the idea of rolling out the family focused model more widely, particularly for children who commit more serious offences? Is there a chance that some actors could perceive these models as 'rewarding' and 'encouraging' criminal behaviour amongst children, especially where part of the programme is to ensure that children participate in activities, such as drama, cultural events and sports activities? If the family focused model is considered to be a rational and constructive means for addressing juvenile offending, how could the type of political resistance be overcome and addressed?
5. As international focus shifts towards the 'prevention' of juvenile crime, how do we ensure that this doesn't lead to an increasingly 'interventionist' approach to juvenile justice which problematises, and even criminalises, ordinary adolescent behaviour. Why are children who end up in alternative justice disposals (restorative justice as well as family focused programmes) so often children who have only committed very minor offences, or who have never offended at all but have been referred for (so-called) 'anti-social' behaviour, or for being 'at risk' of offending? What do we mean by these terms? Is this cause for concern? What are the implications of this, and are any risks (associated with this 'preventative' practice and approach) being seriously considered and addressed at the policy level?

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Peacemaking Circles, Their Restorative and Crime Prevention Capacities for Women and Children: Insights from a European Pilot Study

Beate Ehret, Dora Szego, and Davy Dhondt

Abstract Peacemaking or Healing circles are an approach to conflict resolution with long historical roots in many indigenous cultures going back to their so-called “talking circles.” Particularly the circle tradition of First Nation people of Canada has been further developed and cultivated for dealing with crime, leading to their use in juvenile and criminal justice as well as their spread across the border to Northern US, Hawaii and as far as Australia (often referred to as sentencing circles in these contexts). This chapter is based on an international pilot study (This research project took place during the period of September 1st, 2011 to August 31st, 2013 with the Criminology Institute of the University of Tuebingen as the project coordinator and was made possible thanks to the financial support of the European commission’s Criminal Justice Framework.) implementing circles for the first time in three European countries: Germany, Belgium and Hungary and offers further insights gained within this framework about their restorative capacities for victims and offenders as well as their crime prevention potentials. These insights are laid out and discussed with a specific focus on the potential benefits of Peacemaking circles for women and children as victims or offenders.

1 Introduction: What’s “New” or Different About Restorative Justice?

“Because crime hurts, justice should heal”. John Braithwaite (2004)

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Restorative justice constitutes a paradigm shift in the way societies are dealing with crime. It is based on a fundamentally different perspective on crime by focusing on the harm caused by it instead of the violation of the law and distributive responses to it. The term “harm” subsumes the physical, financial, or psychological consequences of crime for the victim and moreover for relationships between victims and offenders, between them and their communities as well as within the community at large. It is this primary focus that requires a substantially different response to crime by moving away from the adversarial “win or lose” logic of the traditional distributive justice system towards a “win-win” approach aimed at restoring harm and last but not least societal peace through the means of dialogue, conflict resolution, amends or redress. We would emphasize such “win-win” aspects of restorative justice considering that this approach, although initiated by victim’s rights movements of the Western world, can mutually benefit both conflict parties: victims and offenders.

Accordingly, in practice, restorative justice also marks a more “practical” shift regarding the responsibility for addressing crime. In the traditional justice system matters are “delegated to experts” such as police officers, lawyers, prosecutors or judges and it is even considered one of civilizations’ major achievements that citizens are not taking the law into their own hands for regulating their serious conflicts such as those caused by crimes by themselves considering multiple risks of vigilantism and escalation this would be bearing.

In a restorative justice process, those directly or indirectly affected by a crime are considered to be the ones *best suited* for addressing the harm caused by it, as they are the ones who know best what happened, what consequences it had and what they need to move on or to take responsibility for it by repairing it. Thus they take an active role in its resolution by engaging in dialogue for finding ways of reparation, restitution or making amends which best meet the needs of those harmed and which all conflict parties involved can agree upon. It is this specific trait that has earned restorative justice approaches to crime the recognition for strengthening people’s *access to justice* as opposed to demoting them to a subsidiary role by not letting them fully participate in decisions that concern them.

Peacemaking circles, as a specific approach or model of restorative justice, are taking this aspect of granting access to justice to the people harmed by crime into account in the most congruous and coherent way. Compared to other models of conflict resolution such as victim-offender mediation or family group conferences, Peacemaking circles are granting access to justice to the largest extent and on several different levels: First of all by extending the victim-offender mediation process by “widening the circle of participants” through including family members, friends, support persons as well as affected or concerned community members with a sincere interest in repairing the harm caused by a crime. Secondly, Peacemaking circles do so, by applying several methodological techniques for enhancing the degree of equal inclusion of everybody into all phases of the dialogue, the actual decision-making process, as well as the development and support of the resulting resolution or “action plan.” These circle traits and their subtle ways of warranting inclusivity and equality are described in more detail below.

How can women and children benefit from restorative justice approaches to crime? Considering the title of this international handbook “women and children as victims and offenders” one might ask the question: Why are these two being put together? What is it in relation to crime that they have in common?

Thinking of women and children as *offenders* one of their “shared” traits is the much observed and prevailing fact that they are to a much lesser degree involved in crime than adult males, that is to say the more offending of the two genders is male and has left his childhood behind. Interestingly, for both women and children rising dynamics regarding their prevalence and frequency of offending have been registered which seem at least partly due to their increased freedom and autonomy compared to more defined and limited roles even decades ago.¹ It does not seem far-fetched to argue that these two groups commit offenses for other reasons and may require a different response than the “typical” criminal offenders: adolescent or young adult males.

When thinking of women and children as *victims of crime*, more commonalities seem in place. At first glance a contrast comes to mind between crime as something threatening or harmful on the one hand and the perceived vulnerability or need for protection of children and (perhaps) women on the other. It seems fair to assume though that many women would disagree with this assertion and may even perceive this notion as an attempt of patronizing them. It seems nevertheless to be part of our mindset related to gender roles within society and has long historical roots as well.

“Women and children first” a phrase, coined in relation to a historic code of conduct from ship evacuations, comes to mind most famously associated with the sinking of the *Titanic*² and a maxim to act upon that might have been the exception rather than the rule even in the old times.³ Aside from the fact that most women do not want any special treatment of this sort or special protection by someone allegedly superior to them, the question remains, why do women and children afford our attention regarding their risk of victimization through crime?

It is an unsettling but nevertheless still present truth that women and children are by far the most common victims of violence around the world.⁴ Perhaps more surprisingly but no less unsettling is the realization based on findings of a recently published EU study⁵ showing that not even the vast achievements of the women’s rights movement towards more gender equality, as indicated for example by higher labor market participation rates of women or efforts towards equal pay for equal

¹ Discussing potential reasons for these dynamics would be too far a stretch considering the framework of this chapter but nevertheless an interesting endeavor.

² It refers to a historic code of conduct according to which the lives of women and children were to be saved first in a life-threatening situation such as a ship wreck.

³ A Swedish study analyzing data on ship wrecks by counting survivors could not find supporting evidence of this notion such as many more wrecks with more female survivors than male ones: Elinder and Erixson (2012), *Every man for himself: Gender, norms and survival in maritime disasters*, Uppsala Universitet, Sweden (Archive).

⁴ See for example: UNICEF Annual Report (2014).

⁵ FRA, European Union Agency for Fundamental Rights, and Study (2014).

work within western welfare states led to much of an improvement regarding this disturbing fact. On the contrary, findings of this EU—wide survey on violence against women, which is based on face-to-face interviews with 42,000 women and funded by the European Union’s Agency for Fundamental Rights suggest the opposite: the more equal women are compared to men in these respects the higher the reported victimization rates regarding physical or sexual violence committed by their partners (or other persons). This is reflected by particularly high rates (above the EU average of 33 %) in countries with very well-established welfare states and particularly high gender equality levels such as Finland, Denmark, or Sweden.⁶

These prevailing facts can be so disturbing and unbearable to face that for some it results in a tendency to suppress related facts or turning a blind eye to the pain they do not want to see.

We will leave it up to other contributors of this handbook to shed more light on these issues and will focus on Peacemaking circles in the following, but would like to express our appreciation to the initiators and editors of this handbook for bringing together scientists from different disciplines around the globe to explicitly focus on women and children as victims and offenders for the sake of gaining more insights into these phenomena as well as for developing ideas further for their prevention.

2 What Are Peacemaking Circles?

Peacemaking circles are a restorative justice approach to conflict resolution that is inclusive and non-hierarchical with long historical roots in indigenous cultures going back to their so-called “talking circles.” Particularly the circle tradition of First Nation people of Canada has been further developed and cultivated for dealing with crime, leading to their use in juvenile and criminal justice as well as their spread across the border to Northern US, Hawaii and as far as Australia (often referred to as sentencing circles in these contexts). They are applied as a restorative justice model aiming to repair the harm done by crime through focusing on the effects crime has on relationships between victims, offenders, their families and their communities.

This basic philosophy and restorative approach is shared by all three of the most commonly applied models: circles, conferences, and victim-offender mediation:

- “Models of restorative justice can be grouped into three categories: circles, conferences, and victim-offender mediations. Though somewhat distinct in their practices, the principles employed in each model remain similar.”⁷

⁶ Ibid., p 28.

⁷ Latimer et al. (2005), p 128.

Similar to victim-offender mediation or family-group conferencing, the conflict parties come together in a Peacemaking Circle with the goal of resolving their conflict and making amends by talking to each other with the help of a mediator. While this basic idea seems rather simple there is a lot of wisdom in the method or way it is realized and translated into practice by Peacemaking circles. It seems obvious, depending on the seriousness of the crime, that one cannot just put the offender and his or her victim(s) together and they will find a way to work things out. The task at hand is a lot more sensitive and challenging and bears plenty of risks for unwanted escalations, confrontational talking styles, or even re-victimization if not implemented in an informed and careful way.

Interestingly, the First Nation philosophy of “oneness” with our communities, as practiced in their talking circles, comes in nicely for informing us about how to tackle these challenges or avoid such pitfalls by teaching us how to create a safe and comfortable space for walking on the path of peacemaking. It does so by offering plenty of basic but nevertheless rich ideas for facilitating open conversations that enable everyone involved to reach the desired outcome: a resolution everyone can agree with and eventually even “peace,” the kind of peace perhaps best translated into German as “Rechtsfrieden”. This path is also referred to as the path “from crime to community” by circle proponents (Pranis et al. 2003) since Peacemaking circles, compared to other methods or approaches to conflict resolution make the highest effort of including *everyone* affected by the crime at stake, the victim(s), the offender(s), members of their families or other support persons as well as members of their communities.⁸ In our view, Peacemaking circles have the potential to fulfil the aims of restorative justice even more effectively and all-embracing than other RJ approaches for this and several additional reasons. This chapter will focus on such, more general circle traits and their potentially more sustainable crime prevention effects due to select circle qualities.

We set out to conduct a research study⁹ for developing a “best practice” model of Peacemaking circles which should fit the conditions of the European legal and institutional framework by exploring its implementation in criminal justice. In doing so we were explicitly taking into account that Peacemaking circles were developed and applied in common law countries whereas Germany, Belgium and

⁸ Originally, even judicial representatives such as police officers, lawyers, prosecutors or judges are included in the circle process to represent the legal perspective on the crime at stake. However, considering that our pilot study took place in countries governed by the principle of legality, the German and Belgian teams refrained from this idea. In our view, judicial representatives can be included but are not a requirement for implementing circles. We would even argue that they can pose additional risks to the circle dialogue such as their higher status positions as legal experts violating the equality of the circle participants. In addition their legal perspective applies a “win or lose” logic to the process, which was seen as counterproductive for a successful circle dialogue, etc. Our Hungarian colleagues found ways of integrating some judicial representatives in some of their circles. For more information please see the full study report: Weitekamp (Ed.) (2015).

⁹ This research project took place during the period of September 1st, 2011 to August 31st, 2013 with the Institute of Criminology of the University of Tuebingen as the project coordinator and was made possible thanks to the financial support of the European Commission.

Hungary are governed by the principle of legality, which required careful consideration and some adaptations of the original model.¹⁰

According to Bazemore and Umbreit, circles are a flexible “tool” that can be adapted to the needs of the local community (Bazemore and Umbreit 2001). Thus, there is not one clearly defined model that would apply to all methods that could fall under the term “peacemaking circles”. Moreover, circles are also more than just a tool. The essence of circles does not lie in their methodological aspects, such as sitting in a circle or using a talking piece (see below), but is embedded in the reasoning behind their use, the circle philosophy. As such, although the uses of circles may differ somewhat depending on the issue at hand and the community in which they are implemented, there are some common elements that can be found in all circles; For the purpose of this handbook, we will focus on two key aspects: *inclusivity* and *equality*. Regarding typical methodological techniques which distinguish peacemaking circles from other models of conflict resolution and serve these two key aspects, we chose to also discuss the use of a talking piece and consensus-based decision making.

2.1 *Inclusivity*

One of the basic ideas of Peacemaking circles is that you cannot come to a good solution for a conflict, including crime, if you do not *include* everyone who is responsible for and/or affected by it. Thus, circles try not to individualize the conflict by limiting its resolution to victim-offender mediation, hence a meeting between the victim, the offender and a mediator.¹¹ On the contrary, Peacemaking circles are considering the setting and context of the conflict. In case of crime this means that not only the offender is expected to take responsibility for his or her actions, but this kind of responsibility taking is also expected on the part of the community—both of the offender and the victim and moreover of the broader community. Consequently, “circles invite not a few but everyone to participate” (Pranis et al. 2003, p. 17).

This basic idea is translated into practice by expanding the mediation dialogue through inviting members of these communities to participate in the circle. They are *included* and addressed by asking questions along the lines of: what did the community do or fail to do to let such a crime happen and how can the community contribute to the reparation of the harm caused by it? In doing so, the focus is not on

¹⁰ For this reason, all three study sites included law/legal experts in their implementation teams. For Germany, this was the role of Hans-Jürgen Kerner, for Belgium, Stephan Parmentier, and for Hungary two representatives of the National Institute of Criminology (OKRI), Tünde Barabás and Szandra Windt joined the local team as legal experts and research partners.

¹¹ While these can certainly also be “extended” to some degree and additional support persons can be added, it is not an explicit goal of the method to aim for such an extension or to even reach out to the community.

blaming or pointing fingers at anyone, rather, the circle dialogue is forward looking by aiming at finding new ways of taking more responsibility in the future and for preventing similar crimes from happening again.

For those readers, who may perceive this idea as too theoretical, abstract or too idealistic, we can provide further insights into the more practical ways community members actually contribute to the conflict resolution process by describing the “added value” of *including* them the way we experienced it. Sometimes it is as simple as them providing additional information about the victim or the offender, such as their skills, interests or personality traits, which can be helpful for developing more holistic, creative and individual ways of repairing the harm done and increasing the potential of more sustainable crime prevention effects. Even specific knowledge about the setting of the crime, such as security gaps, a perceived lack of control or supervisors, or the presence of bad role models displaying undesired behaviours can be helpful in this respect. In addition, our experiences with circles revealed across the three countries that community members contribute their perspective and more neutral positions to the circle dialogue, which helps absorbing or preventing confrontational discussion or escalations.

Furthermore, *including* the community can help making progress because of the outside perspective on the conflict at stake community members are adding to the dialogue. Their contributions can even increase the longer term positive effects of circles; they can do so for example by offering emotional or practical support to the offender for making amends, for remaining strong in future conflicts or simply by giving them additional reasons to care about their community. Of course the victim(s) can benefit from such community support as well, helping them cope with the consequences of the crime.

These community aspects set circles apart from other restorative methods, such as victim-offender mediation (VOM) or conferencing, which both have a more individualising approach to crime. In VOM one can certainly invite others to the dialogue, such as parents or support persons but this is not their explicit goal. While conferencing approaches are more open to this idea, they focus more on strengthening the families of the conflict parties and do not consider the community aspects as much as circles would.

Furthermore, *inclusivity* is also a goal of high importance during the circle dialogue itself and several methodological aspects of circles such as sitting in a circle, using a Talking Piece and the (different and more moderate) role of the circle mediator, or “Circle Keeper” which is what mediators facilitating a circle meeting are called, aim at giving *everybody* a voice as well as granting equal participation rights together with empowering all circle participants to express themselves and their needs. These more methodological means are strongly and closely aimed at

making *inclusivity* possible or even taking it to a new level that has not been reached by other RJ methods.¹²

Moreover *inclusivity* refers to the content of the circle dialogue. A conflict brings imbalance to our lives; to restore the balance a holistic perspective is needed that looks at the conflict as one aspect among others of the people concerned and their lives. Phil and Harold Gatensby, two experienced First Nation circle keepers, stated that in Western society too much attention is paid to the *mental* and *physical* dimensions of people and their conflicts (during a training Workshop at the University of Leuven, October 2011).¹³ In order to create more balance, more attention is needed for their *emotional* and even *spiritual* dimensions—which are fundamentally part of Peacemaking circles, more so than of other restorative methods. In a way, this more holistic approach *includes* more of us as well as more dimensions of the conflict, which can pave the path to a deeper understanding of the conflict, its causes, and eventually to a more satisfying resolution based on these deeper insights everybody can live with.

2.2 Equality

Another important aspect closely related to inclusivity is that in circles all participants are equal and interact as equals. Everyone participates in the circle dialogue as a human being; titles and professional positions are “left at the door,” as it were. This means that no one has more of a right to speak or more decision power in the circle than others, including the circle keepers or judicial representatives if present. While the circle keepers may have some power of “leading the way” or initiating circle rounds by setting the subject or suggesting the question as a starting point, these are all just suggestions and it is up to the circle participants to accept them or to place a different emphasis on certain matters. They can even change the subject if they find other aspects or issues more important. The Keepers remain open and flexible enough for following the circle “flow” as long as the circle ground rules and values are respected. The circle keeper(s) primary role is the preparation of the circle meeting. Once the circle has started, they share the responsibility for the

¹² The main author of this chapter, Dr. Beate Ehret was personally participating in a training program about *Restorative circles*, the way Dominic Barter has developed and implemented them with great success in the *favelas* of Brasil. As a more critical assessment, I learned that while they also strongly adhere to the basic principles of Restorative Justice, they do not use a talking piece and the approach does not make as much of an effort to arrive at full inclusivity and equality as Peacemaking circles would. When applying Barter’s approach, a lot more responsibility is in the hands of the mediator, who is in charge of carefully balancing everything out.

¹³ While Phil and Harold Gatensby are acknowledged experts of Peacemaking, healing and sentencing circles they did not publish about them. They prefer the traditional First Nation way of spreading the word about these restorative justice models in face to face encounters, by telling stories, and by facilitating circles as role models as well as by providing plenty of opportunity for participants for learning about them via role plays.

course of the dialogue with all circle participants. Hence, their role comes closer to humble guardians of people's needs and the circle philosophy than to superior or privileged participants with more rights than the others. For example, in case participants wander too far off topic or jump ahead without respecting the circle phases by pressing for a solution in a too premature stage, the keepers serve as reminders and may signalize or express this by giving participants the opportunity to remain focussed. They do not impose solutions either, as the solution is found by the circle and developed by all its members applying consensus-based decision making techniques. Though this level of equality may be an aspiration of many restorative methods, it is ensured and warranted in circle meetings by adhering to the circle groundrules, by using the talking piece (as explained in more detail below) and consensus-based decision-making processes. As a result, this increases their *inclusivity* as well.

3 Overview of the European Research Project

Research institutes from each of the three member countries (Germany, Belgium and Hungary) collaborated for this pilot study. For Germany the project initiator and coordinator was the University of Tübingen, the Belgium partner was the Katholieke University of Leuven, and for Hungary two research institutes cooperated closely as the Hungarian partners: Foresee Research Group together with the National Institute of Criminology, OKRI. At all three sites, the research institutes formed partnerships with a mediation service provider, with professional training and experience in victim-offender mediation: for Germany this was Handschlag, Reutlingen, for Belgium: Suggnomè VZW, and for Hungary, the National Probation Service joined them respectively. Together they formed action research teams to get trained in circles, practice what they had learned in mock circles, and then implement Peacemaking circles together based on a multi-method approach using participatory observation, qualitative interviews and questionnaires for documenting and evaluating what they accomplished.

It should be mentioned beforehand, that this European pilot study was not designed and conducted to analyze potential differences in outcomes for specific groups of interest. Rather, its main goal was to implement Peacemaking circles and learn through action research, in a step-by-step approach, which adaptations or changes to the original conceptual model might or might not seem necessary for the European context. The legal system of all three partner countries is dominantly ruled by the principle of legality as opposed to the common law countries of origin of the Peacemaking circle model or other countries where they have been adopted so far. Given that this was the first time Peacemaking circles were introduced in the three countries involved, this constituted pioneering efforts, which tend to come with the risk of not knowing right from the onset what kind of obstacles or challenges we would have to be facing along the way. Not only were there restrictions from the research point of view, we established minimum criteria to

count a circle meeting as an actual peacemaking circle, but it was also a challenge for both the mediators and victims and offenders to leave the known route of victim-offender mediation and explore the possibilities of peacemaking circles. In other words, we did not know how many actual Peacemaking circles we would eventually be able to conduct and how generalizable our observations and experiences would ultimately turn out to be in terms of representing the country they were being implemented in.

What we did not know though, was that this restorative justice model or method deserves to be introduced to the European context and has a highly restorative potential together with promising benefits for everyone involved. Based on our research approach of conducting a pilot study for their first implementations, we did not make efforts to arrive at matching samples between the three countries for comparisons, but took the chances we had during the financed implementation period of about a year, to conduct as many circles as seemed suitable and feasible during that timeframe to learn from them as much as we could. Therefore, we arrived at so-called “convenience samples”¹⁴ that were not pulled randomly from a general population. These were not of a representative size or composition, but built up during the process instead. Therefore, we cannot offer final conclusions about circles or their outcomes.

In this light, we are proud to have achieved a total of 30 circles during this research project, spread over the three countries. These peacemaking circles handled a variety of offenses, among them vandalism, assault and battery, and theft. The context of these offenses was also diverse: peacemaking circles were conducted following a crime in a family context, between neighbours or between total strangers. And most importantly, in all of these settings we succeeded to include (a part of) the community, which, as we have described above, was one of the most prominent aims of peace-making circles.

Methodologically, our action research approach permitted us to learn from the data “on the way” and compare our experiences and newly gained insights within our local teams and across the three sites on a regular basis. The following observations and interpretations are based on these experiences, comparisons and reflections and are therefore nevertheless empirically founded and substantiated.

Thus, the goal of this pilot study was to experiment with circles in the three countries. For doing this, a conceptual methodological model for conducting Peacemaking circles was developed, based on information from the pertinent literature in combination with a training provided by the Canadian, First Nation brothers Phil and Harold Gatensby, two experienced Peacemaking circle “keepers”, which is what mediators of a circle are called. As background research for collecting data about the “research field”, explorative expert-interviews were

¹⁴ Such convenience samples do not provide justifiable grounds for testing hypotheses or drawing generalizations for the population at large. And the small sample size does not warrant any further split of the general sample of participants into specific groups of interest such as men versus women or children versus adults.

conducted with experts from the field of VOM, such as mediators or other closely related relevant stakeholders including but not limited to: youth service providers, mediators, police officers, lawyers, judges, etc. in each country. During the course of the project this conceptual “circle model” was further refined and adapted to the specific needs and conditions of the three European countries. This further developed more refined model consists of two main parts: the *selection/preparation* of cases and the *facilitation* of circle meetings.

3.1 *Selecting and Preparing Circles*

This was a pilot study and no criteria have been established yet for distinguishing which types of crimes are eligible for Peacemaking circles. In countries where sentencing circles are used, the cases handled vary from alcohol abuse to domestic violence and even sexual abuse cases (Johnson 2010; Lilles 2001; Rieger 2001). In our view, any case suitable for VOM is also suitable for circles and there are no fundamental objections or impediments against this. However, in accordance with our project goal of providing guidelines for circle keepers we started off by outlining basic case selection criteria for finding cases deemed *most suitable* for circles in order to gather as much practical experiences with their implementation as possible. The resulting list of “suitability” criteria can be summarized as follows:

Cases where the conflict affected multiple victims and/or offenders, or happened within or between groups, or involved people who were not “officially” or “judicially” considered an offender or victim, or the people affected seem emotionally extremely attached to the case, and where they were likely to interact or see each other again in the future.

These circle suitability criteria were applied to cases that had already been preselected and considered for VOM. Thus, other general case selection criteria had already been met, such as voluntary participation of the conflict parties, offender(s) who are willing to take some responsibility for their actions that have led to the crime (conflict), and victim(s) who feel willing and able to meet the offender in person and talk to him/her (otherwise a circle would not make much sense). Moreover, our mediators carefully assessed the risk of re-victimization for the victim and accepted cases for any type of mediation only if this risk could be regarded as limited or bearable, etc.¹⁵

For preparation, we deemed the following steps crucial for a successful circle meeting: (1) examining if the case was suited for a circle process, (2) informing every participant of the values, goals and basic ground rules of the circle process in personal talks, and (3) giving the conflict parties personal time and space during these preparatory talks to “vent” by listening to them, offering empathy, and preparing them for the actual circle meeting by talking and reflecting about their needs and expectations.

¹⁵ For Germany see TOA Standards (2013), English version.

3.2 *The Circle Meeting*

The circle meeting is the tip of the iceberg of Peacemaking circles; it is the most visible and apparently the most important aspect of the whole. However, a lot of what is going on is a lot less visible as everything is built upon a set of values and ground rules that resonate from the preparation phase into the circle meeting and its outcomes. Pranis et al. (2003, pp. 33–47) refer to this as the inner framework of circles which consists of the core values agreed upon and practiced in circle of love, respect, honesty, humility, sharing, courage, inclusivity, empathy, trust and forgiveness.

The typical model for a circle meeting delineates four stages:

- Meeting and introduction;
- Building trust;
- Identifying issues; and
- Developing an action plan.

These stages provide a basic orientation to circle participants and help everyone to remind themselves of the goals of the specific current phase, remaining focussed on them as well as preventing them from getting distracted or too far “off track” by jumping ahead or talking about other issues. Our developed model places a high importance on starting the circle through connecting as human beings by not referring to each other based on victim and/or offender roles or going into detail or depth about the conflict at hand during the first two stages. In doing so, all circle participants have the opportunity to speak and listen to each other and a safe setting is developed. By first paying attention to the act of speaking and listening itself, before looking at the conflict, a space is created to then talk about this conflict in a more genuine, respectful and constructive way.

Hence, this lays the foundation for phase three, when the issues, the conflict or crime as well as the harm it caused are identified and reflected upon. Only by understanding all the main dimensions of this harm, an action plan for its repair can be developed that takes these into account.

What matters in this regard is that the action plan is not pre-set. In this last stage, the goal is that all circle participants try to find a way of dealing with the conflict and overcoming it, which may include how to prevent similar conflicts in the future. As mentioned before, all circle participants (and not only the offender) can take the initiative themselves regarding ideas or actions they may want to carry out or support in order to change the circumstances leading up to the conflict or those created by the conflict. Particularly the victim(s) are encouraged to express their needs, give feedback regarding suggestions and ideas or develop their own.

In the circle meeting itself, this “inner” framework is translated into roles and rules, namely the “outer” framework, which consists of five main methodological aspects for the realisation of peacemaking circles (Pranis et al. 2003, pp. 81–125):

- The use of ceremonies;
- The setting of ground rules;

- The role of the circle keeper;
- The use of a talking piece; and
- Consensus-based decision making.

It would take us too far to go into detail about each aspect listed here. For the purpose of this chapter, two of them are selected due to their relevance for our developed model and their potential of increasing participant *equality* and circle *inclusivity* as well as their potential crime prevention effects: the *talking piece* and *consensus-based decision making*.

Firstly, the *talking piece* is an object of symbolic meaning that is used in each circle meeting to maintain the order of speaking and making it visible at the same time. It is passed on in the circle clockwise from person to person and only the person holding it may speak. All the other participants—including the circle keepers—have to listen attentively and wait until the talking piece reaches them before it is their turn to say something. Besides other advantages of using a talking piece and perhaps foremost it is an *invitation* to all participants to speak when it is their turn while at the same time it obliges all other participants to *listen*. As such, it prevents imbalances caused by only the verbally strong getting a chance to speak and others, only listening without paying full attention while waiting for a moment of silence to interrupt for bringing forward their own points of view. Furthermore, the talking piece teaches everyone to remain silent, patiently awaiting their turn and yielding to the circle as a group on its way of finding its own wisdom instead of trying to push their individual thoughts or opinions through.

A much observed response to using a talking piece and the circle experience as a whole during our implementation experiments was that people became a bit impatient wanting to express themselves because they considered something very important and wanted it to be integrated in the conversation. Interestingly, most of them found it though to be a valuable experience to observe how many times other participants expressed rather similar thoughts as the discussion evolved, and addressed their issues/topics just as well—without them having to force it. This can even be a relief or at least an experience that they do not have to take care of everything by themselves but that the group may work some things out for them.

From the perspective of the researchers and our experiences in conducting circles with our mediators, we found this circle aspect particularly valuable as it has trust-building and even community-building capacities if the circles are implemented the right way. However, these capacities take time and effort to be dedicated to the process, which is often limited due to limited resources of mediation providers or due to limited time of the circle participants, who have other interests and obligations as well.

Moreover, the talking piece draws everybody into the circle dialogue by repeatedly inviting them to express their views, needs or concerns. There is no obligation to speak but in a way this repeated invitation has an *including* effect on circle members. Interestingly, it also raises everybody's awareness regarding persons in circle, who do not say much or continuously pass on the talking piece without saying anything. The talking piece and repeated circle rounds not only help noticing

these persons, who often remain invisible or even ignored in other conversation settings, but also opens up chances for attempts at integrating them by other participants or the circle keepers.

To provide an example, one German circle faced this particular problem, the keeper expressed his concerns about it and asked if maybe the conversation was not going the “right way” from this particular person’s kind of view or if there was anything else that might have made her feel uncomfortable or misunderstood. This way, the circle was able to pay attention to a rather silent person and make additional efforts at integrating her by asking her specific questions and offering her additional support. One solution we found this way was the offer of a community member of trying to express her thoughts and perspective on things for her and asking her for her confirmation for this each time she did to make sure she felt represented by it.

Fortunately, most of the time such additional efforts are not necessary and participants benefit from the circle format and the talking piece just by itself, as it is an empowering tool which was noticeable from an observant perspective and was perceived as such across circles and across the three different countries.

Secondly, concerning the conflict resolution process, circles are setting the stakes very high by striving for *consensus-based decision-making*; the overarching goal to be achieved in circle is finding a solution *everybody can live* with, leaving nobody behind in disagreement. To be clear, this does not mean everybody has to be *happy with it* and considering the seriousness of the offense or the damage and harm it may have caused, this would indeed be an overambitious or even unrealistic goal. Particularly from the victims’ point of view this may simply be too much to ask for in regard of the harm they suffered or are still suffering from. This could even bear the risk of overwhelming or offending them or could negatively affect their motivation and willingness to be there.

Nevertheless, circles are aspiring to reach consensus. In theory, consensus is reached by adhering to the circle ground rules and values as described above as the inner and outer framework. Concerning circle conduction and facilitation, this translates into giving everybody a voice, hearing them out, listening to their doubts, fears or any other objections they may have. The role of the keeper supports this high aspiration by being attentive to everybody and remaining “all-partial” regarding conflicting views or arguments. Most importantly, they empower everybody in the circle to become a “co-keeper” by putting these values into practice and gently reminding others to do the same if they fall short of the rules and values agreed upon at the onset of the circle.

The goal of consensus-based decision-making is translated into practice by taking all points of disagreement into account, considering them carefully and the motivations behind them, spending sufficient time on them by initiating additional circle rounds in case they remain an obstacle for finding a solution and by working them out until nobody disagrees anymore. It is important to note that disagreement is welcome and everybody is encouraged to express it in circle. Circle keepers even ask explicitly if there is anybody in the circle who would disagree with what has been suggested as a potential path towards a solution or action plan. The Gatenby

brothers strongly emphasized that “it is o.k. to disagree!” Regarding the goal of consensus this may seem surprising but only at first glance. Upon deeper reflection it becomes obvious that a consensus can only be shared by everyone, if everyone was heard and their objections or doubts were truly considered. After all, it is such objections or doubts that are the barriers or obstacles to finding a solution everybody can live with. Even more so, these barriers can be the source of future conflict or failure of the action plan, and a sustainable peace can only be reached when tackling them.

On the other hand, it becomes clear that on this path to consensus, it is an absolute “no go” to put anyone under pressure for accepting something they are in disagreement with, and this kind of authoritarian behaviour would not be in adherence with circle values. Finally, the difference to majority based decision-making becomes clear, in circles a majority cannot “overrule” a minority because everybody matters and their potential disagreement is considered important and taken into account.

While there are more interesting methodological aspects relevant for circles that contribute their share to their overall restorative impact, we conclude this rather technical discussion at this point in order to remain within the framework of this handbook. The interested reader can find more of this wealth of material in our comprehensive research report at the University of Tübingen.¹⁶

4 What Are Specific Circle Benefits or Drawbacks for Women?

This work has a specific focus on women and children and the search for alternative responses of dealing with crime and delinquency for succeeding generations. Regarding women, gender would better serve here as the unit of analysis in our view, considering its capacities as a structuring category of society leading to inequalities, differences in social status as well as differential treatment. It is this difference or discrepancy in power relations when comparing the two genders that is of analytical interest and not a limited perspective on women alone. However, as contributors of this work, we can offer the following reflections and thoughts on potential benefits of restorative justice and Peacemaking circles for women in particular as it is the thematical framework for this collection of articles. What should be added from our viewpoint though, is that the benefits outlined in the following can be valid for anyone in a disadvantaged or underprivileged position in society independent of gender or age. For the sake of clarity we will present and explain them with a specific focus on women.

¹⁶ Weitekamp (Ed.) (2015). *Developing Peacemaking Circles in a European Context*. Results of a joint research project in Belgium, Germany and Hungary. University of Tuebingen. The main authors of this report are Ehret, Beate; Szego, Dora, and Dhondt, Davy.

Mediation has been widely criticized by feminist researchers and members of the women's rights movement as being ill-suited or even potentially harmful for women as a means for handling their matters in mixed-gender conflict constellations. The main concern was based on the notion that in a male dominated society, mediation dialogues bear risks of putting women in a disadvantaged position. The main points of criticism of this broad discourse were focussed on concerns that mediation bears potential risks of:

- Perpetuating power imbalances between women and men that are inherent in Western society.
- Providing opportunity for (more powerful) men to coerce or pressure women to settle for "less" than they should or could (without legal safeguards protecting them from it).
- Guiding women towards giving up moral or legal rights for vindication by setting more practical, future oriented priorities (as these are typical goals of mediation).
- Reinforcing the stereotype of the "bad angry woman" by discouraging expressions of anger and placing a higher value on cooperation (as would be common practice in mediation).

Interestingly, this debate was "stirred up" by an article by Grillo (1991) addressing potential dangers for women in case of court-ordered mediation for divorce issues explicitly focussing on this very specific kind of involuntary mediation. However, she stirred up a broad and long-lasting debate about all kinds of mediation in general and this critical perception prevailed over a long period of time.¹⁷

Domestic violence can be seen as particularly challenging in this regard as these cases represent an extreme form of male domination culminating into violence against women in form of physical or sexual abuse. We know from our national teams of mediators that some practitioners take a strong stand against mediation as inappropriate for dealing with any kind of family/domestic violence cases for this reason. It has been argued that you cannot ensure sufficient safety for these women and that the risk of them becoming re-victimized either during or after the mediation is too high. Considering that prior victimizations can cause psychological damage or even trauma on the part of the victim it seems reasonable to protect them from any risks related to new contact with the perpetrator. However, respecting the fact that cases differ and so do the women involved, their needs may differ too and some may not wish to be "protected" in this way or may even perceive this as paternalistic. They may even need this kind of dialogue in a protected environment and setting to leave things behind and move on with their lives.

¹⁷ See for example in 2004: Acorn, Annalise. *Compulsory Compassion: A Critique of Restorative Justice*. Vancouver: UBC Press.

During our pilot study we did not conduct circles in domestic violence cases but know from our Belgian colleague, Kristel Buntix,¹⁸ that it has been done successfully and does not put women in additional dangers when applied carefully. In her point of view, it is the women's decision and your role as a mediator is to prepare them, make them aware of potential risks, discuss what they can expect and clarify what they cannot. This way they can make this decision on their own and it remains their choice.

In our view, most of the alleged dangers of mediation for women in general do not apply to victim-offender mediation, particularly not when adhering to basic standards, as participation has to be voluntary, the accused is expected to show some degree of willingness of taking responsibility for his or her actions even to be considered suitable for mediation, and the mediator is specifically trained for "leveling the playing field" by ensuring that everybody is heard and their needs are carefully considered and met.

However, some of these risks may prevail as long as power imbalances between men and women continue to exist, since during mediation these can take on subtle forms that may not always be detected or detectable by mediators. And even if they managed to detect and address them, there comes a time after the circle where they are not there to protect the woman or children and fears or concerns in this regard are beyond their control. Overall it seems difficult to assess the degree or potential harm for women, children or other people in disadvantaged, underprivileged or even subordinate positions.

However, taking victim's matters completely out of their hands and delegating them to legal representatives is not a particularly empowering or satisfactory way of handling this either and completely deprives them of the possibility of finding their voice and asserting their needs. The restorative justice approach grew out of a victim's rights movement that was explicitly aimed at giving them their voice back and addressing their needs in a more holistic way than our traditional justice system would.

Peacemaking circles in particular, take a number of precautions to prevent power imbalances from affecting the mediation dialogue by levelling them out. In addition, several techniques are applied to empower all of their participants. We think that women as well as children can benefit greatly from circles. Some reflections and observations from our pilot study can highlight these benefits and explain some reasons for them, which became clearer during the process. This will be summarized in the following paragraphs:

We agree across all three sites that the *egalitarian* nature of Peacemaking circles, as it is a fundamental dimension of their philosophical background and translated into practice by the circle set up and their inner and outer framework, as described above, has many effects that are leveling the playing field, which can be beneficial for everyone involved and of particular benefit to those in disadvantaged,

¹⁸ Presentation during the concluding workshop at the university of Tuebingen, August 2013. Confirmed through personal conversation between her and the main author of this chapter.

weaker or even intimidated positions such as women or children. It should be noted, that males can certainly be in such positions as well depending on the circumstances, and the following arguments seem just as valid for them in these cases.

First of all, circle *equality* has empowering effects on their participants. What do we mean by this? The egalitarian circle set up and use of the talking piece enables everybody to speak when it is their turn and express their needs and, even more importantly, to get heard. This way, they have the opportunity of stepping out of potentially subordinate or suppressed positions and getting more space for expressing their thoughts and feelings about the conflict at hand, the harm it has caused to them and others and asserting their resulting needs.

Moreover, this egalitarian set-up manifests itself in several additional ways: the use of the *talking piece* also helps limiting the speaking time of those who may otherwise be dominating the dialogue.¹⁹ Immediately from the very beginning of the circle, participants are made aware of the fact that everyone should get their turn and has a right to expect this. As a second step, the talking piece is introduced to them as a means of providing everybody equal opportunity to speak. In addition, the circle keeper assists the circle in adhering to these rules and the circle participants agree by consensus during the starting phase of the circle that this is a rule they want to follow. This agreement in turn serves as an informal means of social control in this regard ensuring a balanced circle dialogue because everybody can count on each others' awareness of it and can claim it based on this.

A good *circle keeper* empowers everybody in the circle to become a circle keeper him- or herself as well. Thus, they can all fill the role of a servant of the circle by reminding others of the groundrules or the circle's agreement made at its onset and to adhere to these rules. We experienced several times across sites and circle cases that participants took over this role and found their own individual ways of strengthening these rules by reminding each other of them or by pointing them out again and explaining them. They also did not do this in an authoritarian or rule "enforcing" kind of way but in a collaborate manner, which adhered to the circle values as discussed during the early stages of each circle and was adapted by participants during the process. This keeper role, which differs from the role of the mediator in other mediation settings, reflects a different, more modest and collaborative attitude as a servant of the circle, and the keeper(s) set an example for it by translating it into practice.

Furthermore, circle *inclusivity* affects the circle dialogue and can have equalizing effects as well. These effects are a lot more difficult to assess, considering that we cannot know how the circle dialogue would have or could have gone without this aspect. However, we can agree across all three sites, that the *widening* of the circle by including additional support persons and/or members of the community

¹⁹ It has been empirically proven in numerous studies that male domination over women can lead to women's speech getting talked over, women getting interrupted more often than men and women getting less time to speak (see for example: Campbell et al. (2001); James and Clarke (1993); Smith-Lovin and Brody (1989)).

creates more **transparency** about the underlying conflicts than more private settings such as in VOM. Additional participants from different levels of the community can serve as agents for increasing the degree of informal social control and accountability. This can also help identifying and leveling out power imbalances as more eyes and ears see and hear more.

We also noticed that **widening** the circle by including additional persons can lead to **“buffering”** effects regarding the conflict at stake. Given that these additional persons are less involved in the conflict or less affected by its consequences than more immediate or direct victims or offenders, they can offer an outside perspective and bring more emotional distance with them. This can affect the dialogue in many positive ways and can even help prevent escalations. Considering that these persons can be seated between members of the conflict parties and the talking piece is generally used by being handed over from one person to the next, a circle can be planned in a way that direct talk between victim and offender is excluded completely if necessary. This way, immediate spontaneous reactions can be avoided and a slower pace of talking is reached. In escalated or angry discussions or arguments, power imbalances play a much more important role than in mediated talks and therefore these mechanisms help equalizing circle participants in this respect as well.²⁰

These additional participants can also **increase support** for women (or children). Supporters can be included from personal and institutional levels upon their request and depending on their needs. They can be intentionally brought in to strengthen the women (or children) and assist them with representing their interests in the circle and beyond. This decision can be based on the victim's expressed needs, on supporters who make additional suggestions who else could be included in the circle, or on the mediators. The German mediators established the rule of always asking the victim during the preparation phase for their consent regarding the invitation of additional people in order to prevent them from being afraid or worried about who they are going to meet and also to make sure they are comfortable with it.

Successful circles can even lead to the creation and strengthening of a supportive network that extends its support beyond the mediation process and assures the follow up of the agreement as well as a supportive kind of control over it after the circle. If needed, this support can even continue after the fulfilment of the action plan. Additional supporters, either community members or social professionals create a bridge between the circle and the time after the circle. They ensure that taking care of the situation is extended and continues on after the circle.

²⁰ In a way, the circle rhythm teaches patience and the more participants are included, the more patience it takes to go through the motions. However, some participants also voiced criticism about this aspect and were unhappy with the slow pace and the long waiting times before you get your turn to speak. However, in most circles they noticed later on, that the circle managed to make progress and solutions could be generated even if the process of getting there was perceived as too slow.

5 What Are Specific Circle Benefits or Drawbacks for Children?

Our study was implemented within the juvenile or criminal justice system and we did not conduct many circles with children at all. Thus, we cannot offer very specific insights for children or generalizable findings, only a few rather basic or general observations.

One rather basic but nevertheless fundamental child-related aspect of Peacemaking circles to begin with, was that in juvenile or criminal cases child offenders—even if below the age of legal culpability and therefore not officially charged—can be included. Peacemaking circles make it possible to involve child offenders if they wish and therefore provide them with the opportunity of hearing and learning about the consequences of their actions, letting them face other people affected by them, and enabling them to take some level of responsibility. Of course this participation has to be voluntary and the decision has to be made with the informed consent of their parents or legal guardians. This opportunity of involving child offenders is contrary to common mediation practice and seems more likely or feasible in case of Peacemaking circles because circles manage to create a safe environment and atmosphere, they do not privatize the conflict at hand, are open to including additional support persons if needed, or role models the kids can look up to or learn from, peers to balance age differences between participants in addition to all the other safeguards and empowering capacities as they have been discussed in this chapter at length already. Furthermore, children can benefit greatly from their participation because this experience of so many people coming together to listen to them and each other, pay attention and respect and resolve matters together in a circle can have an educational impact on them.

One interesting observation we made concerning PMC and children was that the method itself was picked up easily by children. They seemed to feel comfortable during the circle and they intuitively followed its groundrules. We would even hypothesize that this was easier for them than for adults, since they were more used to following some conversation rules (e.g. in school settings) than adults.

There was a further aspect of circles that fit children very well: circles provide a wide range of opportunity for non-verbal expression. Emotional gestures or signs such as hugs, or even crying are ways of expression in circles that are as equally legitimate as talking. Children were very good at non-verbal expression and helped adults as well to express emotions.

In the few circles with children, the *egalitarian* approach of circles and their capacity to create equality between participants by balancing out power discrepancies deriving from differences in maturity, psychological, intellectual and/or communicational skills or different levels of social status was even more tangible and noticeable than in other circles. Observations and reflections by several circle participants and keepers made after the circle, confirmed this notion. For example, they were astounded by the strength of the children, both regarding their position in

the circle as well as regarding their contributions to the circle dialogue and what they shared with the circle.

Again, the *talking piece* was particularly helpful for achieving this. By providing the possibility to children of expressing themselves as equal members of the dialogue together with adults and, in addition, acknowledging the importance of non-verbal expression of feelings allowed children to participate in a way that differed substantially from their “normal” or everyday experience. Children were truly given an opportunity to speak, while everyone else, including the adults, had to grant them as much time as they wanted or needed, with no possibility to interrupt them. And they actually listened to them. To provide one example, in one of the Belgian circles this seemed to feel so liberating to one of the children, that she talked more than any of her support persons would have ever imagined beforehand.

Of course, a certain degree of social inequality and differences in skills and status will always remain and for children the sheer presence of adults can be intimidating by nature, but Peacemaking circles provide them with an equal opportunity to speak and we were able to observe that the circle experience altogether had an empowering effect on them as participants that seemed helpful for resolving the conflict at hand, no more but no less either.

The *community* aspect of circles also mattered greatly for children. Addressing the community is one of the main features distinguishing circles from other restorative justice or mediation methods for conflict resolution. According to the community justice approach of circles, whenever a conflict emerges, micro- and macro-communities are affected by it. However, circumscribing, finding and addressing these communities around the crime, meaning the communities affected by it, associated with it or with other connections to it or the conflict parties was a great challenge for the research and mediation partners at all three sites (in Germany, Hungary and Belgium) to face and take up.

According to the Hungarian and German teams, they experienced that in cases where children were concerned either as victims or as accused, it was easier to make out connections between people, *find the community* around the case, and do so on more levels compared to other cases. Especially mobilizing the community of care such as family members, school workers and responsible social services, family supporters, or child protection authorities, etc. seemed less challenging compared to mobilizing supporting communities in other circles concerning conflicts between more grown up or adult parties. Even people who did not have an official obligation to support the child by participating in the circle were more ready to join in and find their role when children were among the victims and/or harm-doers.

The Hungarian analysts formulated the conclusion that social structures of either individual or institutional actors, who are related to each other through a wide range of formal or informal ties are better built and more developed in case of children than in case of adults. Based on this experience they found the PMC method especially useful for handling cases in schools, families (e.g.: physical assaults, abuse) and other forms of child “communities” such as playgrounds (e.g.: vandalism, theft).

The *inclusion of the community* of care in circles with children seemed to matter in two major ways. First of all, as emotional support *for the children* themselves: The support persons were able to acknowledge what the child had said, compliment or affirm him or her for daring to say it and as such they helped creating a safe environment for the children. In one case, the support person also spoke on behalf of a child, when it was not possible for him to speak for himself.

Secondly, the presence of the support person *broadened their view of the child* as a person. During the circle, as mentioned earlier, support persons were at time astounded at what the child said. One support person (a teacher) said for example of a child, who was able to powerfully express her feelings and thoughts: "I do not recognize the shy, little girl from my classroom". Overall, the restorative goal of healing or simply strengthening relationships was noticeable as crime puts a strain on these relationships as well, not just on those between victim and offender.

The presence of members of *more distant levels of the community*, in cases where children were involved did not seem to be fruitful, especially if they were from the macro-community. At least, it was not perceived as that by the children themselves. This observation was made based on a Belgian circle. One of the children even wrote in the survey after the circle: "they talked too long". This could be linked to the fact that most of the macro-community members in these particular circles tried to remain rather neutral and stay on the middle ground concerning the crime and conflict that was talked about and still going on during the circle. This led to the fact that their contributions tended to be rather nuanced and more at length. This was in stark contrast with the short, but very powerful messages expressed by the children.

6 Conclusion: Peacemaking Circles Have More Sustainable Crime Prevention Effects

Interestingly, the distinct features of circles setting them apart from other models or approaches of restorative justice mediation, such as VOM or conferencing are also additional contributors to more sustainable crime prevention. Given the nature of our project as a pilot study implementing circles for the first time in three European countries, we were not able to collect sufficient data for evaluating crime prevention effects based on an outcome evaluation using indicators such as the level of offending during a follow-up period of time or indicators for an improved social integration or stronger ties (commitment, involvement, attachment, belief) to the community.

What we can offer though, are our shared reflections among the researchers of the three teams on the potential prevention effects of circles.

First of all, and probably the most distinct difference is the strong effort circles make to *include community members* who feel affected by the offence (directly or indirectly) or are otherwise interested. This has been discussed at length above as a

strong trait of circles that is of benefit for the conflict parties as well as everyone else involved. Assessing these benefits, it becomes clear, that all levels of added value gained by including the community members can also lead to a more balanced dialogue, conflict resolution, and action plan. Particularly in case it has accomplished to include community members into the action plan, the chances of its successful implementation are raised, which can increase victim and offender satisfaction with the outcome, teach the offender a lesson of accountability and may also open their minds for ways they can actively show that they take responsibility and are also capable of making positive contributions to the community and to society as a whole.

Circles also differ from other models as they can *include representatives of the justice system* such as police, probation officers, or lawyers. This additional option has the potential of improving the mutual perceptions of victims, offenders and their communities on the one hand and members of law enforcement and criminal justice on the other. One could hypothesize that these changed perceptions through personal contacts of a different quality as they are possible in circles could potentially increase the legitimacy of the justice system and the law in general. However, this idea remains speculative at this point.

Considering that circles are geared to addressing *broadener levels of harm* (harm to secondary victims, to community, including potential causes of crime) than the other models, they also provide more of an opportunity for repairing different levels of harm. Thus such positive outcomes as outlined above become more likely and can potentially be reached on more levels as well. For example, the action plan of one German circle was to repair the harm to the community caused by the repeated vandalization by juveniles of a city fence, by cleaning up a littered city creek close to a playground and a nearby skater park²¹ heavily frequented by children and adolescents. This solution did not just address the broken fence but the whole community affected by it and, beyond that, it gave juveniles a chance to make amends for their silly behavior, take responsibility for it, make a contribution to the community and set a good example for others. While this was only a small contribution or attempt of giving back to the community, it exemplifies the rich opportunities Peacemaking circles can help to create for addressing the harmful effects and “ripple” effects crime can have on communities. This way, potentially vicious cycles of harm producing more harm can be interrupted and positive messages and actions can be held against it.

The foundational circle aspects of choosing *peacemaking values* as guidance for interaction (respect, trust, honesty, etc.), using *circle structure and ritual* to create a safe space for dialogue and last but not least applying *consensus-based* decision making processes to arrive at a conflict resolution everybody can live with have much potential of creating more sustainable crime prevention effects. If everybody feels included and heard they are more likely to accept, go along and support the solution with their minds, hearts and actions.

²¹ A designated site for skaters as well as skateboarders with a half-pipe and jumping ramps, etc.

Five Questions

1. What defines *communities* regarding harmful effects of crime and wrongdoing? In other words: Who is affected and who should be considered for invitation to a Peacemaking circle? (Think of different types of offenses as examples.)
2. How can members of the community/communities be found, reached, approached, and involved in circles and who's responsibility is this?
3. What are potential risks and benefits of involving judicial representatives such as police officers, lawyers, prosecutors, or judges in Peacemaking circles?
4. To what extent should persons who are not legally concerned in criminal cases be involved in decision making processes?
5. Are there any types of crime or wrongdoing where you would deem Peacemaking circles as not suitable or appropriate and why?

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Part V
Crime Prevention: Proactive Strategies

Justice, Faith, and Interfaith: The Relevance of Faith and Interfaith Relations to Crime Prevention

Thomas G. Walsh

Abstract The concept of justice is both simple and intuitive, and yet also highly complex. In the latter context, this chapter explores the relevance of religion to justice and crime prevention. Among 7 billion human beings, the majority identify themselves as belonging to a particular religious tradition, such as Christianity, Islam, Hinduism, Buddhism, Sikhism, Judaism, Jainism, indigenous traditions, etc. With a global resurgence of religion, along with an increase in religiously plural societies, there is growing awareness of religion as a significant factor—sometimes positive, sometimes negative—in the lives of individuals, families, societies and nations. As such, increased awareness of religion as it functions in society and the world is needed. This is occurring in a variety of fields, such as international relations, conflict mediation, peace studies, and criminology. In addition, there is widespread recognition that interreligious dialogue and cooperation are necessary if we are to build social capital and establish a “radius of trust” on both local and global levels. The UN has become increasingly appreciative of interreligious dialogue, recognizing its relevance to peace, security, human development and the quality of life for succeeding generations.

1 Introduction: The Social Significance of Religion

As has been the case for millennia, religion is a significant force in our world. Despite anticipations that religion might wither away as modernization moved forward, we see no evidence that religion is on the wane globally. Billions of people continue to identify themselves as Christians, Muslims, Hindus, Buddhists, Jews, Sikhs, Jains, mystics, or as members of any number of newer religions and spiritual groups. Such affiliations, for many, are not merely nominal, and are not without substantial relevance to their everyday lives.

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Many of the classics in the field of social science have understood the significance of religion, both in terms of its meaning and its function in society. Max Weber (1905/1958), Emile Durkheim (1912), and others were appreciative of religion as an important factor in the lives of many, if not most individuals and societies. While some, such as Durkheim and Marx (1848), understood religion as an outgrowth of social or material forces, others, most notably Max Weber, saw religion as more of an independent force that shaped ideas, worldviews and, consequently, the course of history, including the political and economic spheres.

For millennia, religion was not studied scientifically. However, as an outgrowth of the European Enlightenment, scientific method was developed and the social scientific study of religion distinguished itself from theology. Religion came to be studied objectively and dispassionately, applying principles of “methodological agnosticism”, which essentially requires the researcher to try to set aside any positive or negative predispositions toward religion. In this way, the scientific study of religion developed as a discipline, distinct from theology, and a researcher by no means needed to be, although certainly could be, a believer (Eliade 1987; Otto 1923; Smart 1989; Smith 1958).

Despite the development of the scientific study of religion, there has been a slower awakening to an understanding of religion’s relevance to other fields of study, for example, political science, international relations, and criminology. Whether a consequence of indifference, illiteracy or an aversion to the subject matter, the religious factor should not be lost in a methodological blind spot. It is simply too relevant. Fortunately, such lacunae are increasingly being overcome.

One obstacle, perhaps, is related to conventional secularization theory, a theory which predicted the decline of religion as human beings developed economically, socially, and intellectually, i.e., secularization is a natural outgrowth of modernization (Berger 1999). However, this theory has been widely called into question by historical developments (Inglehart and Norris 2011). While religion may be on the wane in some highly developed countries, it continues to make its presence felt in most of the world, developed and undeveloped alike (Berger 1999; Taylor 2007; Habermas 2010).

The evidence of religious vitality has been especially pronounced in the post-Cold War era. Consider the devolution of the former Yugoslavia in the post-Soviet era. Cultural roots, ethnicity, and religion were indisputably relevant in the national independence movements in Bosnia, Serbia, Croatia, Montenegro, Macedonia, Kosovo, etc. These forces continue to be relevant in many other regions, often contributing to conflict situations around the world, from Israel and Palestine, to the Philippines, Sri Lanka, Kashmir, Myanmar, Syria, Turkey, Nigeria, the Central African Republic, etc. Religion is a factor in global affairs. Consider terrorism, from the Tamil Tigers in Sri Lanka to Al Qaeda in Afghanistan. Can we understand these phenomena without some appreciation for the role of religion?

This empirical reality has fostered a growing awareness of the relevance of religion to international relations. Political scientists and international relations experts who, even 20 years ago, would have seen religion as deserving of only a minor footnote in discussions of contemporary geopolitical affairs, are increasingly aware of the need to take religion seriously. Religion, after all, is deeply rooted in

human cultures, civilizations, and ethnic groups (Huntington 1993; Albright 2006; Thomas 2005; Johnston 1994). As a result, it is one of the primary factors that inform and shape human attitudes and actions.

Along with a global religious resurgence, often manifested in conflict situations, there is also a growing appreciation of the need for interreligious dialogue and cooperation. In other words, religious resurgence, coupled with a tendency toward conflict, has led to the recognition that interreligious understanding and cooperation are necessary if we are to achieve global peace.

These two trends—religious resurgence and interreligious dialogue—are relevant to the wider discussion of the significance of religion *vis-à-vis* society. Religion impacts a wide range of social issues related to marriage, sexuality, violence, war, conflict, crime, economics, justice, humanitarian care for the needy, etc. Hospitals, charities, soup-kitchens, homeless shelters, emergency relief agencies, prison ministries, etc., are often linked to religious organizations. Muslims, Christians, Buddhists, Hindus, and all religions have theological reasons for serving others. Once conceived as entirely “otherworldly” and concerned only with the after-life, religions everywhere are increasingly activist and “socially engaged”.

At the same time, religions, more than governments and non-governmental organizations (NGOs), provide a framework of meaning and value for believers, overcoming the sense of alienation, on the one hand, and providing a vision and coherent worldview, on the other hand. As Emile Durkheim (1897) explained, religion often functions to overcome the *anomie* or normlessness that otherwise may characterize modernity. Stated a bit differently, religion’s strength lies in its potential to strengthen affective ties with others, civic-mindedness, moral direction, impulse restraint, and a basket of virtues that contribute to empathic and harmonious relations with others.

As is well known, and widely reported, religion has a checkered history. While on the one hand, it may function in ways that uplift, liberate and restore the best virtues and practices of human beings—forgiveness, compassion, unselfish service, care, philanthropy, justice, human rights, etc.—it also may, and often does, function pathologically, giving rise to conflict, violence, and oppression (Kurst-Swanger 2008).

But what does this have to do with crime prevention and criminal justice?

Let’s first take a look at the meaning of justice.

2 Theories of Justice: Philosophical and Theological Perspectives

There is a long and lofty history of discussions about justice that can be found throughout the history of philosophy, literature and theology (Sandel 2007; Rawls 1971; MacIntyre 1988; Lebacqz 1986). Plato’s *Republic* is often cited as the classic, early philosophical discussion of justice, a tradition carried forward by his student Aristotle and a long line of philosophers, including J. S. Mill, Immanuel Kant, Georg W. F. Hegel, Karl Marx, and John Rawls. Justice is also widely discussed in

the scriptures of the various religious traditions, for example, Judaism's Torah, Christianity's New Testament, Hinduism's Bhagavad Gita, Islam's Qur'an or Buddhism's Dhammapada.

The concept of justice is both simple and intuitive, and yet also highly complex. Often justice is described as "treating similar cases similarly" or "giving to each what is due to him or her". The call for justice may seem to be straightforward and simple at first glance. Upon closer inspection, however, one can find a nest of complications.

The Greek word *dikaioisune*, is translated as justice or righteousness. Justice in the classical period was understood as a virtue; moreover, one that would be supported by a family of complementary virtues, such as courage, temperance, generosity and prudence. To be just was to be virtuous in relation to other citizens, giving each what is due to them, what they deserve. In this sense, justice is clearly "distributive" in nature, having to do with giving to others what they deserve. Injustice occurs when one gives or takes from another what they do not deserve to receive or have taken from them. When injustice occurs, some correction is required.

According to Alasdair MacIntyre, in an exposition of Aristotle's conception of justice, good judgment based on wisdom, or *phronesis*, is a prerequisite for justice, that is, for understanding what each is due, according to the situation. MacIntyre writes, "The virtue of justice, like any other moral virtue, cannot be exercised without *phronesis* also being exercised. For truths about what is just are a subclass of truths about what is good, and the ability to embody them in action is the *phronetic* ability to embody these truths in action in the requisite way in particular cases" (MacIntyre 1988, p. 116).

Justice is largely about giving or paying tribute according to what is due, according to a principle of distribution. Closely allied with the concept of justice is the concept of fairness; that is, treat similarly situated persons similarly. The Golden Rule itself, do unto others as you would have them do unto you, is an expression of the essence of justice.

Two central pillars of mainstream theories of justice are the concepts of distribution and retribution. Distributive justice concerns itself with the ways and measure in terms of which to provide or withdraw benefits or goods. Theories of distributive justice are debated in accordance with other principles, namely, equality, liberty and merit. For some, distributions should aim toward equality, while for others the distributions should reward those who are more deserving, or lucky, and not reward those who are undeserving. The principle of liberty suggests that distributive justice is a minimal duty that does not override an individual's freedom to earn what they can and dispose of it as they choose.

Retributive justice is more concerned with re-establishing a lost balance and/or a violation of law. One form of retributive justice is exemplified in the "eye for an eye, tooth for a tooth" theory. What you take from someone unjustly, by committing a crime, must be paid back through some repayment to the victim and to society, through various fines, penalties and other forms of punishment.

The philosophical foundations of modern theories of justice are often linked to two schools of moral philosophy: utilitarianism, based on the ideas of John Stuart Mill (Mill 1863) and Jeremy Bentham (Bentham 1789), and deontological or duty-based ethics, based on the ideas of Emmanuel Kant (Kant 1785). In the case of the former, theories of justice are grounded in an argument that has utility as its primary value or end. If a particular law, rule, principle or punishment yields a “greater good” or “the greatest good for the greatest number,” then it is morally legitimate. Mill and Bentham both thought their theories of ethics applicable to the area of crime and punishment, deterrence, and the development of a system of rewards and punishments that would encourage good social behavior that would lead to increased social utility (Sandel 2007, pp. 9–47).

Bentham’s first major work, published in 1789, was entitled *The Principles for Morals and Legislation*, and concerned itself with the penal code. Bentham aspired to have a more scientific ethical system guided by a calculus of pleasure and pain, something known as a “hedonic calculus”. John Stuart Mill, who published *Utilitarianism* in 1863, also sought to develop a similarly rational system of ethics, based on the principle of utility and the “greatest happiness principle”, which affirms an action as morally good if it produces the greatest happiness, or utility, for the greatest number. This approach to ethics is often referred to as consequentialism, owing to the centrality of outcomes in assessing the moral worth of an action.

In contrast to utilitarianism, Kantian theory argues that predictions of the future, that is, anticipating the consequences of actions, are not reliable enough to serve as a foundation for morality. Instead, he argued, we must appeal to those universal principles that any rational person would accept. Discussed in his *Groundwork of the Metaphysic of Morals*, of 1785, Kant’s “categorical imperative” yields such maxims as “do not lie unless you can will that all people lie”. Moral principles, in other words, are universally applicable and do not admit exceptions. In the Kantian system moral obligations are absolute even when they may possibly or probably yield consequences that seem unacceptable or abhorrent. For example, suicide is wrong because it cannot be universally applied, even though the prospect of continued life for a particular individual may be filled with pain and misery.

John Rawls, author of *A Theory of Justice* (Rawls 1971) is the most prominent advocate of a theory of justice that calls for re-distribution of wealth, insofar as that redistribution yields a greater overall good. Rawls developed the concept of the “veil of ignorance” to represent a realm where rational agents were relieved of knowing anything about their own personal circumstances—wealth, talent, intellect, physical state, age, gender—leading these agents to conclude that the goods of society should be distributed in such a way as to always benefit the least advantaged in some way. Rawls calls this the “difference principle” (Rawls 1971, pp. 52–57).

Justice has not only been of concern to moral philosophers, but also to theologians. Theology is a field of study and inquiry that reflects on the sacred texts and teachings of a religion. It has been referred to as “faith seeking understanding”. Many sacred texts refer to justice as a necessary part of a truly spiritual way of life and/or as a divine command.

One of the central concerns of religious thinkers or systematic theologians is the topic of *theodicy*, literally, the justice of God. The discussion of theodicy is related to the question of evil, and, more specifically, the following question: How can a loving, good and all-powerful God create a world with so much suffering and evil? For Max Weber, this was the overriding question that all the great civilizations tried to answer comprehensively and rationally (Weber 1963, pp. 138–150). Within Hinduism, the answer was formulated as the law of karma. Judaism, Christianity and Islam, each in unique ways, developed a doctrine of the Fall of Man. Within Protestant Christianity, and especially Calvinism, the answer was formulated in the doctrine of pre-destination. The concept of justice and fairness is an essential part of the world's religions. Consider the following passages from various scriptures, each speaking to the topic of justice:

"I hate, I despise your feasts, and I take no delight in your solemn assemblies. Take away from me the noise of your songs; to the melody of your harps I will not listen. But let justice roll down like waters, and righteousness like an ever-flowing stream" (Torah, Amos 5:23–24, Judaism).

"Beware the plea of the oppressed, for he asks God Most High only for his due, and God does not keep the one who has a right from receiving what is due" (Hadith of Bayhaqi, Islam).

"O he who believes! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it concerns rich or poor, for God can best protect both. Follow not the lusts of your heart lest you swerve, and if you distort justice or decline to do justice, verily God is well acquainted with all that you do" (Qur'an 4.135, Islam).

"Someone said, 'What do you say concerning the principle that injury should be recompensed with kindness?' The Master said, 'With what will you then recompense kindness?' Recompense injury with justice, and recompense kindness with kindness" (Analects 14.36, Confucianism).

"Here is my servant whom I uphold; my chosen, in whom my soul delights; I have put my spirit upon him; He will bring forth justice to the nations. . . He will faithfully bring forth justice. He will not grow faint or be crushed until he has established justice in the earth; and the coastlands wait for his teaching" (Isaiah 42.1-4).

"What does God require of you but to do justice, and to love kindness, and to walk humbly with your God?" (Micah 6:8).

"Unless your justice exceeds that of the scribes and Pharisees, you shall not enter the Kingdom of Heaven" (Matthew 5:20).

In Mathew's chapter 25, Jesus calls his disciples to "Love the Lord your God with your whole heart and your neighbor as yourself". He speaks of the two primary commandments, namely, to love God and to love one's neighbor. His "love command" exhorts his followers to go beyond what justice may require, namely, giving what is due, and to practice a higher, sacrificial love, giving more than one owes.

As mentioned previously, within Hinduism there is the doctrine of karma which indicates that every action has its own reward or punishment, and these accrue over a lifetime to determine one's destiny in the next life. Karma is the law of cause and effect that functions as an integral part of a cosmic system of justice; similar to "reaping what you sow". Swami Vivekananda says, "Everything we do, physical or mental, is Karma and it leaves its mark on us" (Vivekananda 1955, p. 5).

The concept of justice is pervasive in religion, from the Book of Job to the Bhagavad Gita, from Isaiah to the Gospels, and from socially activist Christianity, to socially engaged Buddhism.

Of course, religions most often highlight justice in a wider context of other virtues and values, some superior to the call for justice; these include practices such as love, mercy, forgiveness, charity and reconciliation. While most religions affirm the need for justice, it is not the ultimate moral command, and must be understood and practiced in a wider framework of spiritual ideals. Hence the religious path often calls us beyond justice alone, toward a higher calling of forgiveness, self-sacrifice, generosity and “turning the other cheek”.

Having endured a bloody and divisive civil war less than 100 years after America’s founding, President Abraham Lincoln, in his second Inaugural Address, in March of 1865, stated, “With malice toward none, with charity for all; with firmness in the right, as God gives us to see the right; let us strive on to finish the work we are in; to bind up the nation’s wounds; to care for him who shall have borne the battle, and for his widow, and for his orphan; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations” (Lincoln 1865). These words exemplify a theory of justice that is tempered by “charity for all”, and “care” for the downtrodden.

2.1 *Forgiveness*

Forgiveness is a virtue and a practice extolled in most religions. For example, Jesus’ “Our Father” prayer, taken from the New Testament’s Book of Matthew, encourages believers to reach out to God, saying “forgive us our debts as we forgive our debtors” (Matthew 6:11–12). The Qur’an teaches, “If you efface and overlook and forgive, then lo! God is forgiving, merciful” (Qur’an 64.14); and in Confucianism’s *I Ching* 40, we read, “The superior man tends to forgive wrongs and deals leniently with crimes.” The *Adi Granth* of Sikhism states that “Where there is forgiveness, there is God Himself.” The *Samanasuttam* 236 of Jainism exhorts us to “subvert anger by forgiveness”.

Jesus taught, “Do not resist one who is evil. But if anyone strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well; and if anyone forces you to go one mile, go with him two miles” (Matthew 5:39–41).

2.2 *Restitution*

Restitution—to repair or restore what has been damaged, taken, or brought out of balance—is also a well-developed theological concept found in most sacred scriptures. Consider the following:

“O dweller in the body, make reparation for whatever you have done!” (*Garuda Purana* 2.35. Hinduism).

“Whoever by a good deed covers the evil done, such a one illumines this world like the moon freed from clouds” (*Dhammapada* 173 of Buddhism).

“If one has, indeed, done deeds of wickedness, but afterwards alters his way and repents, resolved not to do anything wicked, but to practice reverently all that is good, he is sure in the long run to obtain good fortune—this is called changing calamity into blessing” (*Treatise on Response and Retribution* 5, Taoism).

“If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe” (Exodus 21:23–25.).

“And we prescribed for them: ‘A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation.’ But whoever forgoes it in the way of charity, it shall be expiation for him” (Qur’an 5:45).¹

2.3 Problematic Aspects of Religion

Of course, the moral guidance found in scripture is at times problematic. For example, in Proverbs 13:24 we read, “He that spareth his rod hateth his son.” In Ephesians 5:22–24 we have passages that endorse subordination of women: “Wives be subject to your husbands, as to the Lord. For the husband is the head of the wife as Christ is the head of the Church . . . As the Church is subject to Christ, so let wives also be subject in everything to their husbands.”

Polygyny was espoused and practiced by early Mormon believers, and is affirmed in Islam as well. Christian Scientist believers have withheld medical treatment from children. In 1978, in Jonestown, Guyana, 900 members of the Peoples Temple committed mass suicide. Christian fundamentalists have blown up abortion clinics and assaulted practitioners. Jihadists engage in suicide missions, leading to the deaths of innocent children, women and men, guided by a belief in eternal bliss in the after-life. The Catholic Church has been plagued by sexual misconduct among priests who sexually abused children, followed by years of inaction and cover-ups. Suffice it to say that religion is prone to all the evils that plague human beings in general, though the sins of the believer stand out against a background of ideals and aspirations that make them appear all the more deviant and disturbing.

Are religious believers more highly inclined toward evil and crime than non-believers, or governments, business professionals, or philosophers? There is no simple answer. Secular governments, and militantly anti-religious governments have also done great damage to humanity. Nevertheless, crimes fostered by or associated with religion are evident throughout history and cannot be ignored. At

¹For a substantial and useful anthology of passages from scriptures of all religions, and on a variety of topics, see Wilson (1991).

the same time, the regrettable facts of crimes committed in the name of religion should not lead us to throw the baby out with the bathwater.

2.4 *Religion and Restorative Justice*

One theory and practice of justice that has gained ground over the past several decades is known as “restorative justice”. Restorative justice stands in contrast to theories of justice and systems of justice that emphasize retribution, adversarial courtroom protocols, and the interests of the state. Restorative justice has roots in indigenous tribal cultures, such as Native Americans, the Maori of New Zealand, and peoples of many of the small island states of the Pacific. These cultures are invariably religious in their worldviews. Certain pacifist Christian groups—Mennonites and Quakers—also advocate practices of restorative justice. In recent times, we can conceive of the Truth and Reconciliation Commission in South Africa as an example of restorative justice at work. The approach is much less adversarial and more focused on human relationships, with dialogical engagement between victim, offender and other stakeholders.

In giving emphasis to mediation between victim and offender, restorative justice often utilizes group processes, “circles of support and accountability”. Some argue that restorative justice leads to lower rates of recidivism (Johnson 2011, pp. 105–116).

Practices of restorative justice are generally not sectarian in nature, even though informed and inspired, in many cases, by spiritual ideals, such as honesty, responsibility, repentance, forgiveness, atonement, apology, etc. According to Michael Hadley, the restorative model [of justice] regards crime as a violation of people and relationships; it is concerned with healing the wounds of victim, community and offenders alike (Hadley 2001, p. 9). He adds that restorative justice, with its principles of repentance, forgiveness, and reconciliation, is instead a deeply spiritual process (Hadley 2001, p. 9).

Restorative justice has roots in the spirituality found in indigenous traditions. Roots are also to be found in religions such as Buddhism. David Loy says Buddhist justice grows out of compassion for everyone involved when someone hurts another (Loy 2001, p. 95). According to Howard Zehr,

Restorative justice is based upon an old, common-sense understanding of wrongdoing . . . Underlying this understanding is an assumption about society: we are all interconnected. In the Hebrew scripture, this is embedded in the concept of *shalom*, the vision of living in a sense of ‘all-rightness’ with one another, with the creator, and with the environment. Many cultures have a word that represents this notion of the centrality of relationship: for the Maori, it is communicated by *whakapapa*; for the Navaho, *hozho*; for many Africans, the Bantu word *Ubuntu*. Although the specific meanings of these words may vary, they communicate a similar message: all things are connected to each other in a web of relationships. (Zehr 2002, pp. 19–20).

Zehr underscores the point that restorative justice employs a process that is more collaborative, participatory and inclusive than conventional retributivist or utilitarian models. Outcomes, in turn, are based more on consensus than the legalistic imposition of sentences. One might say that restorative justice fits more with a communitarian social model, in contrast to both state-centered and individualistic models. Hence, the emphasis on “circles”, victim-offender conferences, family group conferences.

Charles Colson, the Christian evangelical founder of Prison Fellowship International, speaks of restorative justice as a kind of relational justice, one rooted in a biblical worldview. He states that restorative justice grounds justice in the peace of God’s created order. Both relational and restorative justice, therefore, offer aspects of the biblical view of shalom, a peace that is intrinsically relationship and righteous (Colson 2001, p. 114). Colson identifies core elements of restorative justice as involving prevention, wise sentencing, judicious use of prisons, community involvement, reintegration programs for offenders, and involvement of crime victims (Colson 2001, pp. 121–143).

Restorative justice offers an approach to criminal justice with potential to benefit from best practices found in many spiritual and religious traditions. Belief that a righteous solution may be found outside a corrupt formal justice system must be one of the reasons why the United Nations in its *Handbook on Restorative Justice Programmes* notes the role of NGOs and faith groups in restorative justice (UNODC 2006, p. 31).

3 Religion, Social Capital and Crime

As stated earlier, the data on the relationship or correlation between religion and crime are not entirely conclusive. Rodney Stark’s and Travis Hirschi’s landmark hellfire and delinquency research indicated no overwhelmingly positive or negative correlation between religiosity and delinquency (Hirschi and Stark 1969). While religion is clearly a motivating force in the lives of people, and whereas religion counsels a wide range of virtues and principles that lead believers away from criminal activity, human beings do not always act consistently or rationally.

Many times religious people do bad things. As previously mentioned, history is littered with religiously inspired conflicts, crusades, inquisitions, militant jihads, and terrorist acts; not to mention instances of sexual abuse, child neglect and abuse, and other anti-social pathological actions that may be guided by deranged religious inspirations. On the other hand, religion is also often a force for good.

One of the challenges in empirical verification of correlations between religion and crime is that the root causes of crime are themselves complex and plural in nature. Factors such as poverty, parenting, education, involvement in group activity, personality, biology, environment, ideology, etc., are all relevant factors (Ellis and Walsh 2000, pp. 95–99).

A publication of papers presented at the American Society of Criminology in 2010 includes a series of essays on crime and religion. Byron R. Johnson and Sung Joon Jang argue in *Crime and Religion: Assessing the Role of the Faith Factor* that criminologists should be interested in religion not only because it may be useful in explaining why people do or do not commit crime, but because religion may be helpful in understanding why people engage in prosocial activities, something criminologists have tended to ignore (Johnson and Jang 2012, p. 117). Johnson and Jang reviewed 270 religion and crime studies between 1944 and 2010 and conclude that the vast majority of studies report prosocial effects of religion and religious involvement on various measures of crime and delinquency (Johnson and Jang 2012, p. 120). They also cite the work of Durkheim and Bentham, who, as mentioned earlier, saw correlations between religion and pro-social behavior. The authors conclude their essay stating that, “Failure to consider religion variables will cause researchers to be needlessly shortsighted in estimating models designed to explain its direct and indirect influences on antisocial as well as prosocial behavior” (Johnson and Jang 2012, p. 129).

The avoidance of religion within the field of criminology may be attributed in part to the dominance of structural and economic explanations that underscore, for example, the poverty factor. Attention to religion may seem to require a discounting of these social scientific explanations. However, this seems not to be a necessary conclusion, and an anti-reductionistic openness to the religious factor would seem to be called for by a scientific approach. Jeffrey Ulmer argues that, “religion is likely a fundamental and nearly ubiquitous cultural institution that, when present in individual or group life, can shape and condition socialization, identity, learning and opportunity structures, relationship and social bonds, social capital, and coping mechanisms in the face of strains” (Ulmer 2012, p. 168).

In addition to research related to the correlations between religion and crime, it may also be helpful to consider the concept of social capital. There is also compelling evidence suggesting a negative correlation between “social capital” and crime.

The concept of social capital is relevant to our consideration of crime and justice, as scholars such as Robert D. Putnam (Putnam 2000) and Francis Fukuyama (Fukuyama 1999) have indicated, arguing that social relationships and networks may be significant assets in establishing social stability. As M. K. Smith has put it, “There is now a range of evidence that communities with a good ‘stock’ of ‘social capital’ are more likely to benefit from lower crime figures, better health, high educational achievement, and better economic growth” (Smith 2013).

According to Fukuyama, “Social capital can be defined simply as a set of informal values or norms shared among members of a group that permits cooperation among them. If members of the group come to expect that others will behave reliably and honestly, then they will come to trust one another. Trust is like a lubricant that makes the running of any group or organization more efficient” (Fukuyama 1999, p. 16).

While there may be many positive outcomes associated with a rise of social capital in a particular social context, there are also potential problems. Social

networks that include and bring people together may also lead to forms of exclusion, or “in group” and “out group” tendencies. This is the problem of tribalism, or, within religion, various forms of sectarianism and fundamentalism. While solidarity is established for some, those who are either not welcomed or who simply do not fit may become alienated. For example, the so-called “digital divide” suggests there is a vast difference, even an inequality, between those who are “wired” and those who are not.

Joshua Greene has addressed this problem in his book entitled *Moral Tribes: Emotion, Reason and the Gap between Us and Them*. In discussing tribalism, Greene writes, “Biological accounts of the evolution of cooperation with non-kin involve favoring one’s cooperation partners (most or all of whom belong to one’s group) over others. Indeed, some mathematical models indicate that altruism within groups could not have evolved without hostility between groups” (Greene 2013, p. 69). In other words, tribal solidarity tends to affirm the members of the tribe and disaffirm those outside of the tribe. Thus, concepts of fairness and justice are often biased in favor of one’s tribal affections. Therefore, moral decisions are linked to in-group and out-group mentalities. For this reason, moral philosophers and theologians have sought to universalize the application of moral principles to include all human beings.

If the concept of tribe or community of empathy, trust and cooperation can be expanded, it would seem that a reduction in crime and an increase in prosocial behavior would follow. Fukuyama speaks about the “radius of trust” that may be small and narrow, or large and broad (Fukuyama 1999). He says, “Virtually all forms of traditional culture-social groups like tribes, clans, village associations, religious sects, etc., are based on shared norms and use these norms to achieve cooperative ends” (Fukuyama 1999, p. 3). Thus, there are certain disadvantages to in-group solidarity with a small radius of trust.

However the radius can be extended. International trade and commerce is a good example. While rule of law and contracts are essential for trade and commerce, there are a wide range of informal aspects to cooperation and productivity. Social capital makes such cooperation possible. In other words, social capital helps make commerce and economic transactions work well, perhaps suggesting something of the “invisible hand” or the “moral sentiments” that Adam Smith believed to be the infrastructure of a growing economy (Smith 1993, 2002).

Social capital also applies to the political sphere, and is believed to be an essential ingredient in a successful democratic system. Many have suggested that a thriving civil society is an essential prerequisite for democracy. Quoting Fukuyama, “In the absence of civil society, the state often needs to step in to organize individuals who are incapable of organizing themselves. The result of excessive individualism is therefore not freedom, but rather the tyranny of what Tocqueville saw as a large and benevolent state that hovered over society and, like a father, saw to all of its needs. Low levels of social capital lead to a number of political dysfunctions” (Fukuyama 1999, p. 5). Fukuyama offers the following suggestions to increase social capital (Fukuyama 1999, pp. 11–12):

1. States cannot easily create social capital, for social capital is largely a byproduct of religion, tradition, shared historical experience;
2. Education is the primary area where government can help create and nourish social capital, for example, through moral education, civic education, etc;
3. States can help by protecting property rights and public safety, essentially a safe and secure environment;
4. States should not overstep their legitimate and necessary realm of authority, and should respect the subsidiary authority and value of civil society and the private sector;
5. States should respect the value of religion as an essential source of social capital;
6. Globalization can be a source of growing social capital, through the spread of ideas, innovative, cultural values, etc.

Traditionally, we know that factors of ethnicity, race, class, gender, etc., create not only opportunities for belongingness and trust and solidarity, but also opportunities for racism, ethnocentrism, sexism, classism, etc. Some argue that economic inequality is the decisive factor in creating a decline of social capital and trust for the poor. In this respect the concept of “fairness” is relevant. As populations, minorities, sub-cultures, etc., who are marginalized, alienated or trapped in poverty lose their bonds of affection and trust toward the wider society, social capital declines.

With that caveat, nevertheless, we can also understand the value of communities and relationships which can be characterized by fairness, reciprocity, trust, mutual respect for laws and traditions and values, involvement, interconnectedness, empathy, and pride about one’s identity and place in the world. One can easily see that when these factors decline, problems will easily follow.

3.1 *Civil Society*

One indicator of a higher balance of social capital is the presence of a strong civil society component within a given society or nation. The idea of civil society has classical roots, dating back to Aristotle, and the rise of the concept of a *res publica*, a public thing. It took on its modern understanding with Hegel, whose Philosophy of Right speaks about civil society as a realm that stands in between the family and the state, associated with the rise of capitalism. Marx drew on Hegel’s understanding of civil society. Alexis de Tocqueville, in his commentaries on the American and French Revolutions, attributed the relative success of the American Revolution to its robust civil society institutions, including churches (de Tocqueville 1945, Vol. 1, pp. 198–204 and 319–326).

De Tocqueville said, “Americans of all ages, all conditions and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. . .

Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.” Continuing, he states, “Among the laws that rule human societies there is one which seems to be more precise and clear than all others. If men are to remain civilized or to become so, the art of associating together must grow and improve in the same ration in which the equality of conditions is increased” (de Tocqueville 1945, Vol. 2, p. 114).

Robert Putnam, a Harvard political scientist, published an article in 1995 called “Bowling Alone: America’s Declining Social Capital”, and later, in 2000, the book-length version, titled *Bowling Alone: The Collapse and Revival of American Community*, arguing that there was a breakdown of the tradition of voluntary associations, civic associations, etc., including bowling leagues (Putnam 2000). The concept of “social capital” suggests the assets that come with human capacities, strengths, traits, etc., are needed in order to strengthen a nation’s capacity to develop a vital and dynamic democracy characterized by the rule of law.

Bernard Lewis, writing in *What Went Wrong: The Clash between Islam and Modernity in the Middle East* (Lewis 2002), argues, in his chapter on “Secularism and Civil Society”, that there has been a decline in social capital in a number of Middle Eastern countries which has contributed to instability and a weakness of democratic institutions.

For some the concept of civil society is a neo-liberal or neo-conservative concept that has a built-in anti-state bias. However, it is possible to view this concept without seeing it in a politicized way. For example, some view civil society as a superstructural or consequent factor in social affairs, unrelated to “root causes” such as poverty, class, or race, etc. However, theoreticians on both the left and the right have affirmed the importance of civil society. Non-governmental organizations, for example, represent what we might call both left-wing and right-wing positions and causes.

Citing Fukuyama again, social capital is the “*sine qua non* of stable liberal democracy” and “an instantiated informal norm that promotes cooperation between two or more individuals” (Fukuyama 1999, p. 1). Social capital is cultivated through social networks, civic engagement, and bonded relationships characterized by trust and manifested in some institutional setting, clubs, NGOs, associations, leagues, parties, etc. One way to state the thesis of social capital theory is that “relationships matter”. Stated a bit differently, we can say that “civil society matters”.

Civil society is often described as a kind of “third sector” distinguished from the realm of the state or government and the realm of the market or the private economic center. Jürgen Habermas, whose work has been focused on the concept of a “public sphere”, distinguished between the “system” characterized by bureaucratic rationality and the “lifeworld”, where discourse of communicative practices was unfettered by instruments of money and power (Habermas 1984, 1987).

A society with strong civic institutions stands in a better position to both prevent and resolve social epidemics.

3.2 *Social Capital and Mediating Institutions*

In 1977 Peter Berger and Richard John Neuhaus published a small volume entitled *To Empower the People: From State to Civil Society* (Berger and Neuhaus 1977). At a time in America when there were significant economic problems, rising crime rates, and what President Jimmy Carter called a national “malaise”, this volume struck a chord among many, and especially those who had grown skeptical of state-centered solutions to social problems. They called for more focused attention on medium-sized social institutions, particularly family, neighborhood, voluntary associations, and churches or religious affiliations. These institutions are often taken for granted, but serve what Roman Catholic social thought would call essential subsidiary functions. Richard Neuhaus writes, “The several communities to which we each belong require discriminations in moral judgment. . . Church, family, friendships, professional associations, neighborhood, maybe even town or city—these are real communities, made up of touchable face-to-face connections” (Neuhaus 1984, p. 63).

Charles Murray’s most recent book, *Coming Apart*, argues that the white population in the USA between 1960 and 2010 experienced a dramatic decline in marriage, down 36 %, an increase in out-of-wedlock births, and growth in dropping out rate of the work force (Murray 2013). Simultaneously crime increased proportionately. Along with these developments, religiosity also declined and secularization rose. Murray points out, in an essay published in *The Wall Street Journal*, “Whatever your personal religious views, you need to realize that about half of American philanthropy, volunteering and associational memberships is directly church-related, and that religious Americans also account for much more nonreligious social capital than their secular neighbors” (Murray 2012).

The white elite have increasingly segregated themselves in what Murray calls “super zips” [ZIP or postal codes], an upper-class culture that may have little if any regular contact with the “lower classes”. Murray states, “Changes in social policy in the 1960’s made it economically more feasible to have a child without having a husband if you’re a woman or to get along without a job if you were a man; safe to commit crimes without suffering consequences; and easier to let the government deal with problems that you and your neighbors formerly had to take care of” (Murray 2012).

Jean Bethke Elshtain speaks of the loss of our “social ecology,” attributing this to the deterioration of mediating institutions. “Children”, she argues, “bear the brunt of these negative trends,” such as growing distrust, individualism and privatization. She says, “Where neighborhoods are intact, drug and alcohol abuse, crime, teenage childbearing, and truancy among the young diminish. But because neighborhoods are less and less likely to be intact, all forms of socially and self-destructive behavior among the young are on the rise” (Elshtain 1996).

3.3 An Upsurge of NGOs and Civil Society Institutions

Beginning in the last century and continuing in this century there has been an explosion of non-governmental organizations, NGOs, sometimes called “civil society” institutions. The term “NGO” emerged at the time of the founding of the United Nations, as a way to differentiate “governmental organizations” from “non-governmental organizations” or NGOs.

We can think of NGOs as non-state actors, and increasingly their voices are being heard and affirmed in many instances. In some respects, NGOs represent more the voice of “we the people” than governments. And, unlike governments, NGOs are easily transnational and unconstrained by the diplomatic traditions and political compromises that limit governments.

But NGOs are not without their critics. Indeed, many NGOs are highly politicized, and behind apparently humanitarian concerns are special interests, or even corrupt or criminal intentions. Indeed NGOs are also not accountable to an electorate in the way that governments are. Moreover, they have often been granted sympathies of which they are not all deserving; for, alongside the many truly humanitarian, authentic NGOs are many unscrupulous and ill-intentioned NGOs.

All things considered, however, NGOs seem to be well suited for generating social capital for many millions of people around the world, fostering solidarity, trust, a sense of belonging, shared values, and the kind of engagement with others that offsets many alienating aspects of post-modern society.

Moreover, efforts to prevent or address destructive social epidemics can be enhanced through NGOs. In turn, there has emerged a term to describe individuals who have made a dramatic impact on society through their NGO efforts. They are called “social entrepreneurs”. David Bornstein says, “Social entrepreneurs are uniquely suited to make headway on problems that have resisted considerable money and intelligence. Where governments and traditional organizations look at problems from the outside, social entrepreneurs come to understand them intimately from within...Because they do not have armies or police forces behind them, they work to elicit change rather than impose it, so they build human capacity rather than encouraging dependency. In developing countries where they have engaged at top levels with governments, the results have been impressive” (Bornstein 2007, p. xii).

3.4 Family: The Primary Mediating Institution

The traditional family is another underutilized resource for the development of social capital. Some have coined the term “family capital”, arguing that we need to appreciate the multiple ways in which the family is a social asset. It is almost axiomatic, a truism to say that where marriages and families are happy, healthy and harmonious, there is increased potential for stability and prosperity in society.

We know that children, and that includes each one of us, are shaped in profound and irreversible ways by our family experiences, both genetically and socially. For example, just consider religion and the 5 billion believers in our world, and the way in which family has set the course for our religious and spiritual journeys in life.

As with the institutions that foster social capital, the family cuts both ways. It can be a great enhancer, and it can be also the greatest destroyer or damager of human hearts and minds. Families can transmit both the highest ideals to the next generation, or the most tribalistic and regressive ideals. Both can be done by parents or relatives with equal pride and conviction, though with very divergent results.

The Doha Institute for Family Studies and Development published a volume entitled *The Family and the Millennium Development Goals: Using Family Capital to Achieve the 8 Millennium Development Goals* (Roylance 2012). This volume includes articles that cover each of the 8 Millennium Development Goals (MDGs), showing how the family serves as an instrument that has great potential to help in the achievement of the MDGs. The MDGs, outlined by the UN in 2000, are:

1. Overcoming poverty and hunger
2. Universal primary education
3. Gender equality
4. Child mortality
5. Maternal health
6. Combat HIV/AIDS and other diseases
7. Environmental sustainability
8. Global partnerships

In the introduction to the volume, Richard Wilkins says, “Social science data demonstrates two nearly incontestable conclusions: (1) Stable families, founded upon marriage, provide significant benefits for men, women and children, while (2) The breakdown of stable marital structures imposes substantial costs upon individuals and society at large. The family, in short, plays a profoundly important social role. Absent healthy family life, individual and social development suffers” (Roylance 2012, p. iii). The family can and should be a strong bulwark against crime.

Nearing the 2015 conclusion of the Millennium Development Goals, with mixed results, the United Nations community has begun the process of refining, benchmarking, and identifying a set of Sustainable Development Goals, or SDGs, to be launched in 2015. As with the MDGs, the family can and should be seen as a resource and an ally in the effort to promote human development, broadly conceived.

4 Interfaith and the United Nations: Toward an Expanded Radius of Trust

Religion is often described by many as essentially judgmental in nature, continuously pointing out sins and failings of believers and non-believers alike. Religion is also often accused of being largely pathological and a destructive force in the world, citing evils such as religiously inspired terrorism, oppression of women, bigotry, child abuse, intolerant attitudes toward non-believers, fanaticism, and ethnocentrism. This list goes on. One might also add the long list of conflicts which have, in addition to political, economic, social, and ethnic causes at play, a religious component: Israel and Palestine, Sri Lanka, India and Pakistan, Ireland, Mindanao in the Philippines, Syria, Lebanon, Nigeria, Central African Republic, etc.

At the same time, religion is also quite capable of playing a role as an agent of peace and conflict mediation. As we have seen, religion plays a significant role in building “social capital”, and while there is not an absolute correlation between religious affiliation and moral uprightness, there are a number of positive associations, evidenced in religious schools, charities, service organizations, disaster relief organizations, hospitals, mentoring, prison ministries, hospice ministries, not to mention religiously inspired social activism that focuses on human rights, women’s rights, children’s rights, non-violence, hospitality to immigrants, etc.

It is safe to conclude two points about religion. First of all, religions, in ways similar to businesses, NGOs and governments, are capable of doing both great harm and great good. The evils committed by governments over time are enormous, even governments that are militantly anti-religious. Likewise, NGOs, as well as businesses, are prone to various forms of corruption, self-serving agendas, and abuse of public trust. Secondly, religion has great potential and capacity for good. It is this capacity that should be encouraged, strengthened and affirmed.

In this light, I underscore one of the leading developments in the religious sector that has emerged and established positive momentum over the past century. I refer to the interfaith dialogue movement. While there are passages in most of the sacred scriptures of the world’s religions that affirm hospitality, generosity and respect toward people of other faiths, these directives have generally not been given adequate emphasis. The focus of most religions, historically, has been on expanding and securing the community within a given territory. However, as the world has grown smaller, and the plurality of the religious landscape—both locally and globally—has become more and more apparent, there has been a corresponding recognition of the need for better understanding and cooperation between, within and among the religions.

The 1893 Parliament of the World’s Religions, convened in Chicago, was a turning point in the history of interfaith dialogue, drawing delegations from religions throughout the world (Braybrooke 1992a, pp. 5–42; Sultan 2004, pp. 167–168). A variety of interfaith organizations emerged over the next several decades. Noteworthy among them are the International Association for Religious

Freedom, the World Congress of Faiths, the Temple of Understanding, Religions for Peace, the Council for a Parliament of the World's Religions, the United Religions Initiative, and the Universal Peace Federation (Braybrooke 1992a). Recently, in 2011, a new interfaith institute was established in Vienna, with the backing of Saudi Arabia, together with Spain and Austria, and known as the King Abdullah bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue. These are some of the major interfaith organizations that operate on a global level. There are, at the same time, thousands of interfaith associations and NGOs that serve at the national, metropolitan, local and neighborhood levels.

In addition to the dialogue between or among religions, there is also a growing awareness of the need for intra-faith dialogue. After all, many of the fiercest conflicts have not been between religions, but within religions. Such has been the case within both Christianity—with divisions among Catholics, Orthodox and Protestant traditions—and Islam—with divisions among Sunni, Shiite, and Sufism. Virtually all religions have their divisions, splits and schisms, and these often lead to acrimony and even at times violence. Likewise, most religions have extremist elements, some of which may have a strong tendency toward violence. Thus, as much as interfaith dialogue is important, *intrafaith* dialogue is also urgently needed.

The interfaith dialogue movement is not merely an academic movement or a theological movement. It is closely associated with the ideal of peace. Moreover, it is guided by principles that lie at the heart of most religious traditions, including respect, generosity, hospitality, compassion, and service. While religion has often been a source of conflict and bad, even anti-social behavior, it has also given rise to moments of greatness and sparks of genius. The interfaith dialogue movement works to underscore religion's virtues and its potential to be a source of peace, cooperation, mutual understanding and reconciliation.

The United Nations has taken notice. Various resolutions have been passed in recent years by the General Assembly, including the decision to set up a focal unit within the UN Secretariat for interreligious dialogue. The Economic and Social Council offers NGO consultative status to a number of interfaith NGOs, and the Department of Public Information has many interfaith NGOs on its roster. In 2004 H.E. Jose Luis Rodriguez Zapatero, then president of Spain, proposed to the General Assembly of the United Nations the formation of the Alliance of Civilizations. H.E. Recep Tayyip Erdogan, prime minister of Turkey, joined with President Zapatero as co-sponsor of the initiative, which was presented to the 59th session of the General Assembly. Secretary General Kofi Annan welcomed the initiative and in 2005 the UN Alliance of Civilizations (AOC) was formed.² While the Alliance of Civilizations is not exclusively dedicated to interfaith dialogue, it seeks dialogue among peoples around the world, recognizing that civilizations are most often rooted in worldviews that have emerged from and been sustained by religious insights and ethical systems. The UN sense of that dialogue is a religious plurality

²For historical background on the United Nations Alliance of Civilizations, see <http://www.unaoc.org/who-we-are/history/>.

with an attitude of neutrality to the relative claims of religions concerning their priority of one over another.³

At its forthcoming 2014 Global Forum, the AOC has sessions dedicated to interfaith dialogue. Religious freedom is also a consistent area of concern. The Vienna Declaration, an outcome of the 5th Global Forum convened in Vienna, recognizes “that all cultures, civilizations and religions contribute to the enrichment of humankind” and stresses the importance of “respect and understanding for cultural and religious diversity” (Alliance of Civilizations 2013). At the center of the AOC vision is the concept of dialogue, a process of bringing people together across the barriers of culture, language, tradition, religion and civilization. The practices of interreligious dialogue have been instrumental in creating a broader culture of dialogue as an alternative to both a lack of civility and an intensification of conflict and distance.

In 2010 the UN General Assembly adopted resolution A/65/5 to dedicate one week each year to the promotion of interfaith dialogue and cooperation; this is known as the World Interfaith Harmony Week (Walsh 2012).

The efforts to promote interfaith dialogue and global ethics are grounded in the premise that there are underlying values and principles that all people share, as human beings with emotion, intellect and will, and regardless of their background or worldview.

These developments are of immense importance, for, through dialogue, they contribute to building a foundation for mutual understanding, respect, and cooperation among people of diverse religious backgrounds. This has the effect of expanding the bonds of trust among the people of the world. As the “radius of trust” expands globally, it impacts positively the relations among nations.

Interfaith efforts aimed at preventing or resolving conflict are often associated with “track two diplomacy”. According to Joseph Montville, “. . . track-two diplomacy is unofficial, informal interaction among members of adversarial groups or nations with the goals of developing strategies, influencing public opinion, and organizing human and material resources in ways that might help resolve the conflict” (Montville 1992, p. 262). We also often hear the use of the term “soft power” to refer to those efforts to improve relations among nations which are focusing on such methods as education, dialogue, people-to-people relations, and civil society activism.

Religion, like other social institutions, has its struggles to avoid polarization. At the opposite end of the spectrum to interfaith and ecumenism lies fundamentalism and sectarianism. These movements are analogous to the contrast between internationalism or cosmopolitanism, on the one hand, and nationalism and identity politics, on the other hand.

³ See Clark 1997, pp. 141–146 for the balance of the preceding philosophical aspects of the interfaith dialogue.

5 Toward a Global Ethics for a Global Society

There has long been an aspiration among theologians and philosophers alike to establish universal principles grounded in logic and rationality that yield an ethic that can be affirmed and practiced by all people. In recent years, this aspiration has been described as the quest for a global ethic. Moreover, it has been a focus of the interfaith movement in recent years, with an effort to underscore the common ground of morality that characterizes the teachings of the world's religions. The Swiss theologian Hans Küng was an early advocate for a global ethics, and in 1993, at the time of the Parliament of the World's Religions in Chicago, faith leaders from a wide variety of traditions reached consensus on the need to establish a global ethics. At that time the Declaration toward a Global Ethics (Braybrooke 1992b) was produced and affirmed as a statement that illustrated the shared moral values of the world's religious traditions. Values such as non-violence, tolerance, equal rights and justice were upheld.

The attempt to establish a global ethics aims to address issues of human dignity and human rights, the value of the environment, poverty and inequality, and liberty and justice. Hans Küng, a Roman Catholic theologian, has been a strong advocate for both interfaith dialogue and the development of a global ethics. Küng writes, in "The Need for a New World Ethic", that "Constructive engagement with the other religions of this world for the sake of peace in the world is vitally important for survival" (Küng, in Kittrie et al. 2003, p. 1044). He continues:

It has become clear from beginning to end that a new post-colonial, post-imperialistic, postmodern world constellation is in the making, and thus a polycentric world which is being bound ever closer together by new communication technologies. But at the same time this polycentric world must be a transcultural and multireligious world. In this polycentric, transcultural and multireligious world ecumenical dialogue between the world religions takes on quite a new importance; for the sake of its peace this postmodern world needs more than ever the global religious understanding without which a political understanding will in the last resort no longer be possible (Küng, in Kittrie et al. 2003, p. 2047).

Küng envisions a new ecumenical paradigm, a vision that he sums up as follows: "No human life together without a world ethic for the nations; no peace among the nations without peace among the religions; no peace among the religions without dialogue among the religions" (Küng, in Kittrie et al. 2003, p. 1049).

According to Küng, "The Global Ethic project is based on four fundamental convictions: no peace among nations without peace among religions; no peace among religions without dialogue between the religions; no dialogue between the religions without global ethical standards; no survival of our globe without a global ethic, supported by both religious and non-religious people" (Küng, Global Ethic Foundation, 2008). Küng's proposal was widely affirmed at the 1993 Parliament of the World's Religions, and two core principles were highlighted: first, "the principle of humanity", indicating that each and every human being must be treated humanely; secondly, the "golden rule of reciprocity", namely, "what you do not wish done to yourself, do not do to others" (Küng, Global Ethic Foundation, 2008).

Marcus Braybrooke, in his “A Heart for the World”, identifies the four core principles articulated in the declaration that emerged from the Assembly of the 1993 Parliament of the World’s Religions:

- Commitment to a culture of non-violence and respect for life.
 - Commitment to a culture of solidarity and a just economic order.
 - Commitment to a culture of tolerance and a life of truthfulness.
 - Commitment to a culture of equal rights and partnership between men and women
- (Braybrooke 2005, p. 90).

Braybrooke also quotes the recently sainted Pope John Paul II, who stated in 2001, that “As humanity embarks upon the process of globalization, it can no longer do without a common code of ethics . . . It is within man as such, within universal humanity sprung from the Creator’s hand, that the norms of social life are to be sought . . . In all the variety of cultural forms, universal human values exist and they must be brought out and emphasized as the guiding force of all development and progress.” Pope John Paul II, Address to the Pontifical Academy of Sciences, on April 27, 2001 (John Paul II 2001).

6 Conclusion

The field of criminology has only very recently begun to appreciate the relevance of religion, recognizing that religion remains a powerful social force in our world. In a variety of fields, such as international relations, political science, peace studies, and business, an awareness of the ongoing relevance of religious ideas and practices is increasingly appreciated. This is most appropriate, given that the conventional theories of secularization as an automatic accompaniment of modernization have been called into question.

One does not have to be a theologian or a believer to appreciate religion’s impact on society. Of course, even those who are convinced that religion is necessarily regressive and socially destructive see religion as a social force, albeit one to be marginalized and contained. Others take an affirmative view of religion and its social significance. Still others observe religion non-prejudicially as a social fact. After all, imagine trying to understand Indian society, and its 1 billion plus population, without knowing something about Hinduism; or consider the societies of North Africa, the Middle East and Central Asia without knowing Islam. Therefore, the case can be made for increased attention to religion within the field of criminology.

This is not to suggest that religion is always a decisive or dominating factor in society. Rather, it is simply to suggest that it is an important factor.

We have seen that there is an association between religion and the broader concept of social capital, and that religion can often contribute to the expansion of the radius of trust that defines community. Of course, religion is prone to corruption in the same way that governments, civil society and private sector

institutions, and professional communities are. Its ideals and aspirations may be higher, but its practices are sometimes lowly and shameful.

The ideal of a global ethics that is rooted in interfaith dialogue and the search for common ground has promise as an enterprise that can build a strong sense of global community and solidarity. Such ideals are gaining ground within the United Nations, as it also comes to an increased awareness of and appreciation for interreligious dialogue and understanding.

Five Questions

1. What are some of the social effects of religious commitment?
2. To what extent should a “religious factor” be considered in the broader effort to understand the root causes and lasting solutions to crime?
3. Do principles and practices of “restorative justice” have relevance in modern, industrialized, urbanized social environments?
4. Are there any social benefits, such as reduced crime, to be gained through the promotion of interreligious dialogue and understanding?
5. Is a global ethics possible in a highly pluralistic and multi-cultural world?

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Crime Reduction, Reduction of Imprisonment and Community Crime Prevention Programs: Risk Factors and Programs Implemented to Reduce Them

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Abstract A growing body of research has described and documented the risk/protective factors associated with serious/violent offending and victimization. While these two streams of criminology were originally investigated as separate entities, the amassing research in both fields revealed clear overlap in risk factors, leading to the conclusion that the offender is also typically the victim and vice versa. The current chapter seeks to describe this literature and map the conceptual overlap between the offending and victimization of women and children. Specifically, this chapter: (1) describes the typical victim profile; (2) outlines the risk factors associated with serious/violent offending and victimization, and their distinct developmental pathways; and (3) reviews current intervention programs that have successfully reduced serious/violent offending and victimization.

1 Introduction

There has been an extensive increase in the understanding of serious and violent young offending in the last 30 years. In the academic and, later, the United Nations world, there has been an upsurge of victim-centered research and policy recommendations. While there have been few novel theories of these types of crime, existing theories have been elaborated and key hypotheses validated utilizing impressive research designs and statistical analyses. One important theme that continues to be important both theoretically and for policy is the overlap in risk

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factors for serious offending and serious victimization. This chapter reviews the general research on this theme with a focus on three topics: (1) the typical victim profile; (2) factors associated with serious/violent young offending and victimization, and their distinct developmental pathways; and (3) key examples of current intervention programs that have successfully reduced serious/violent youth offending and victimization.

2 Risk Factors for and the Overlap Between Youth Offending and Victimization

Although the majority of young people today who commit crimes are responsible for committing non-violent offences (Perreault 2013), this population is one of the most likely groups to be involved in serious-violent crimes either as the perpetrator or as the victim (Baum 2005; Finkelhor et al. 2009; Perreault and Brennan 2010). According to the routine activities theory (Cohen and Felson 1979), youth who have been the victim of a serious crime may be more likely to commit a violent offence, and, conversely, offenders are more likely to become victims. This theory postulates that this victim-offender cycle occurs based on routine social interactions among delinquent individuals particularly in certain public settings without the supervision of responsible adult supervision. Another related theory, social control/low self-control asserts that youth caught in this cycle characteristically have low self-control and lack pro-social bonds to key pro-social neighbourhood institutions (Gottfredson and Hirschi 1990; Schreck 1999; Schreck and Fisher 2004). There are several other risk factors such as early and persistent school problems, early onset use of alcohol/drugs and anger/aggression that are associated with serious-violent offending and serious victimization (Chen 2009; Lauritsen et al. 1991; Mustaine and Tewksbury 1998; Shaffer and Ruback 2002). The key theme that has emerged from both theories and research is that adolescent offenders and victims are overwhelming similar in demographic factors, especially age, and ethnicity, as well as in the profile of individual, family, and neighbourhood risk factors that increased the likelihood of serious offending and victimization substantially (Gottfredson 1984; Osgood et al. 1996). Yet regarding the most serious offence and victimization, while youth comprise a very small minority of homicide offenders in advanced industrial countries such as Canada, more than half of young people responsible for homicide in 2011 in this country had a co-accused and the victim was an acquaintance (Perreault 2012). Moreover, and very importantly, youth homicide offenders were associated with a criminal organization or gang in one-third of all of these cases. Although youth crime and victimization rates have declined significantly beginning at the end of the twentieth century in North America (Osofsky 2001), there has been a very small group of young offenders that has continued to commit serious-violent offences and some of whom became serious-violent chronic offenders and victims (Baglivio et al. 2014; Vaughn et al. 2014). Again, even for homicides, there was a high likelihood that the

perpetrator and the victim knew each other. The victim experience, therefore, very likely is best explained by the risky lifestyle construct, i.e., both youth and adults who routinely engage in social interactions with peers, usually in public places (e.g., entertainment, transit, parks, school locations), who also use/misuse alcohol and drugs and are part of informal or formal crime-involved groups, are at the highest risk for the most serious victimization (Corrado and Cohen 2014). This construct also involves the theoretical focus on the developmental perspective of serious offending. This entails the identification of the earliest risk factors for and protective factors against involvement in aggression, violence, and other more serious offending, as well as the accumulation of these factors during successive age development stages, e.g., conception to late adulthood across the entire life course. It is important, therefore, to focus on the far greater research available concerning the development of the serious young offender profile in order to better understand both the victimization dynamic for this age group and interventions to reduce this likelihood.

Four key themes have emerged within the developmental criminological perspective: first, the identification of risk and protective factors for serious offending involving individual, neighbourhood, and larger political geographic jurisdictions, e.g., cities and country/nation levels; second, the identification of separate or distinctive pathways of these factors leading to the same serious offences; and, third the identification of specific intervention and treatment programs to reduce the initiation of serious offending or to reduce the likelihood of its continuation, i.e., recidivism; these developmentally based risk factors are also associated with serious and prolific offending into adulthood (see Baglivio et al. 2014; Blumstein et al. 1986; Corrado and Freedman 2011; Farrington 2002; Vaughn et al. 2014; Wolfgang et al. 1972). To begin, youth most at-risk for crime and victimization have been exposed to genetic and prenatal risk factors, and are born into families where there is heavy parental substance use, poor nutrition and health, mental health problems, and high-conflict relationships marred by violence and abuse (Farrington et al. 2008; Lacourse et al. 2002; Lussier et al. 2011). Frequently, the high-risk family consists of a single parent, most commonly a single mother, who either works several low paying jobs, or is unemployed as a result of disability or other health/mental health needs. Youth from single-father families also were at an increased risk for delinquency, likely as a result of lack of supervision and discipline (Demuth and Brown 2004). Another key risk factor involves youth removed from their families because of various forms of abuse who are placed in the care system either temporarily or permanently (National Crime Prevention Centre, Public Safety Canada 2012). Multiple placements because of incompatibilities between the youth and host families often occur for multi-problem needs youth (Smith et al. 2013). Importantly, therefore, early externalizing behaviours in children, such as aggression, are highly predictive of future delinquency and serious violence as well as victimization (Farrington et al. 2008; Nagin and Tremblay 2001). For example, homicide consistently has been the leading risk factor for the death of African American youth (Dahlberg and Mercy 2009).

Several neighbourhood factors including social disorder/low social cohesion and neighbourhood economic disadvantage are strongly associated with the increased

risk for serious delinquency or victimization, and even later onset offending (e.g., Sampson et al. 1997; Morenoff et al. 2001; Wikstrom and Loeber 2000). These neighbourhood risk factors also are overwhelmingly predictive of the emergence and persistence of major youth gangs and adult criminal organizations. As mentioned above, both informal and formal gangs are disproportionately the cause of serious victimizations (Esbensen and Huizinga 1993; Esbensen et al. 1993; Huff 1996). Certain urban neighbourhoods, such as those near entertainment and business districts, are also associated with homeless youth. These youth typically have histories of family abuse and rejection, school problems including a high drop-out rate, serious and largely untreated health/mental health needs, poly-substance misuse, and low job skills (Barnaby et al. 2010; Tyler and Johnson 2006; Worthington et al. 2008). Homeless youth are disproportionately at a higher risk of being victimized (Baron 1997, 2003; Cauce et al. 2004; Gaetz 2004; Public Health Agency of Canada 2006). Importantly, though evident for only a minority of youth, many of the risk factors for serious-offending and victimization are precursors to homelessness (Roebuck 2008). The developmental dynamic or process can begin with children raised in multi-needs and problem families who then experience social relationship challenges during elementary and intermediate school. These include peer rejection (Nelson and Dishion 2004), bullying, low academic achievement, which is sometimes related to a learning disability (Sundheim and Voellere 2004), school dismissal or drop-out due to these risks and strains (Nishina et al. 2005; Wolke et al. 2000), and high involvement in a wide range of antisocial behaviours (Hemphill et al. 2006). Youth who drop out, leave home, and associate with high-risk lifestyle peers (i.e., alcohol and drug misuse, property and drug distribution, pimping, fighting) are also at a much higher risk of substance misuse, offending, victimization, and informal criminal groups, including gang involvement (Esbensen and Huizinga 1993; Howell 2010). This high risk lifestyle has been explained partially as a means of coping and the basic human need for a sense of primary group belonging, e.g., providing a family and family substitute. Other than for the latter gang involvement risk, while this dynamic is evident in many neighbourhoods with different income levels, it disproportionately affects youth from the above-described socially disorganized and economically disadvantaged neighbourhoods (Farrington et al. 2008; Henry and Huizinga 2007; Howell 2005; Kempf-Leonard and Johansson 2007).

While it is beyond the scope of this chapter to fully review all the numerous risk factors and multiple pathways identified in the extensive research on serious offending and the related victimization lifestyle cycle, it is important to mention the central role of trauma (Perry 1997). Trauma most obviously has been associated with various forms of abuse including both physical and sexual, as well as neglect. It is only more recently, though, that the enormously complex genetic and epigenetic interactions with environmental risk factors for abuse and its potential causal effect on aggression and violence have been identified. While still largely speculative, the initial theorizing has focused on changes in brain morphology, i.e., brain substructures such as the amygdala and neurological circuits, paralimbic, and executive functions that increase the likelihood for both aggression and violence, but also victimization. Essentially, serious trauma can alter either the brain

structures and/or neurological processes involved in prosocial and normative responses to perceived threats and risky behaviours in several ways. Predominantly, however, the two patterns of concern here are characterized by externalizing/fight and internalizing/flight responses. The former simply involves routinely aggressive, including physical, reactions to threats and the former consists of withdrawal or avoidance of the threatening behaviour. Both patterns can involve use of substances and antisocial peers to cope with threatening social environments. In addition, depending on whether fetal alcohol spectrum disorder and/or attention-deficit/hyperactivity disorder are present, trauma can further affect the two basic response patterns. However, the important theme is that both violence and victimization can involve highly complex and multiple developmental patterns that increasingly are being taken into consideration in interventions directed at reducing these extremely harmful and often tragic phenomena (Corrado and Freedman 2011; Corrado and Lussier 2011).

3 Child and Female Victimization: The Risks and Consequences

Though it is unclear why, crime and victimization have been declining in most western countries for almost a decade (Finkelhor 2011; van Dijk et al. 2012; Waller 2011). Nonetheless, women and children remain both particularly vulnerable to violent victimizations and in need of programs to protect them (Edleson 1999). The following section describes types of victimization, their prevalence, risk factors, consequences, and future directions for related research and policy.

3.1 Child Victimization

3.1.1 Definition

Child victimization, child maltreatment or child abuse consists of an act(s), or the omission of an act(s), by any caregiver that results in the actual, potential, or threat of harm to a person under the age of 18 (Leeb et al. 2008). This definition has been expanded beyond a “caregiver” focus to include *any* type of victimizer, e.g., peers or siblings (Finkelhor 2011). Given that peer-on-peer aggression is so common among youth under 18 years of age (Smokowski and Kopasz 2005) the more recent conceptualization of child victimization now includes severe bullying (Finkelhor 2011; Hawker and Boulton 2000). Nonetheless, research has focused overwhelmingly on victimization, such as neglect, physical abuse, sexual abuse, and emotional abuse perpetrated by parents or caregivers (Edleson 1999).

Because children are particularly vulnerable (more often than not, dependent on the offender) this discussion focuses on child victimization (i.e., that perpetrated by

caregivers). Family, adults, and older sibling offenders have easier access to a vulnerable victim, and the child victim, typically, is less likely to report the victimization. This non-reporting tendency is associated frequently with: not wanting a close family member arrested; fear of family disruption and conflict; and skewed perceptions of victimization as normal. Similarly, aware adults can choose to “keep it within the family” and not report officially. While not common, child victimization, on average, is not reported until early adulthood, and, consequently, the attrition of evidence over time often reduces the likelihood of police intervention (i.e., arrest and charges), prosecution, and sentencing (Lamb and Edgar-Smith 1994).

There are four main child victimization types: neglect, physical abuse, emotional abuse, and sexual abuse (Edleson 1999). Neglect involves the failure to meet the basic child needs including proper nutrition, supervision, nurture, and basic, as well as emergency, healthcare (Appleyard et al. 2011; Hildyard and Wolfe 2002). Physical abuse is the actual, or threat, of physical violence, such as hitting, kicking, shaking, choking, burning, or stabbing (Kaplan et al. 1999). Emotional abuse includes verbal cruelty or other psychological punishment (Kaplan et al. 1999). Sexual abuse, the least common type, involves forced sexual contact (Finkelhor 1991).

3.1.2 Prevalence

Prevalence estimates of child victimization have varied substantially for several reasons. First, as explained above, child maltreatment reporting is extremely low and unreliable (Krug et al. 2002). Second, different measures (operational indicators of abuse) and methodologies (e.g., self-report surveys and official criminal justice statistics) have been utilized in abuse studies. Very importantly, official statistics and self-report data generate discrepant findings (e.g., LeBlanc and Fréchette 1989; Lussier et al. 2011; Lussier and Mathesius 2012; Mathesius and Lussier 2014). Regarding operational measure equivalency across studies, several validity issues are common (Finkelhor 2011). Specifically, does “child” victimization occur either before pubescence (<13 years), according to the medical conceptualization of “child,” under 18 or within the widely varied maximum legal definition of child across jurisdictions (>16 to >21). For example, a UK study reported a prevalence of 8.9 % under 11 years versus a 21.9 % between 11 and 17 years (Radford et al. 2013). Third, some studies focus on one type of child maltreatment instead of global measures of maltreatment, thus making cross study comparisons difficult.

Nonetheless, there are general themes that have emerged in the studies of the prevalence of child victimization, primarily because of the more recent availability of large-scale victimization surveys and the meta-analytic methodology. For example, global estimates by the World Health Organization (WHO 2006) reported that 40 million children under the age of 14 were victimized. Rates for overall child maltreatment in certain developed countries were 49 per 1000 children in the

U.S. and 90 per 1000 children in the United Kingdom (Jones 2008). In Canada, there were approximately 22 cases of victimization per 1000 children (Trocme et al. 2005), while in the Netherlands, the rate is 30 per 1000 (Euser et al. 2010). Specific types of child victimization, though, were often not available.

However, where included in the studies and, as expected, neglect was the most common form of child victimization with rates as high as 52.7–73.1 % of the child population (Gaudiosi 2005). Yet, neglect is the least detectable and most unreported abuse (Price-Robertson et al. 2010). The widely disparate physical abuse rates range from 29 to 75 % (Krug et al. 2002), while emotional abuse rates only ranged from 70 to 85 %, depending on the type of reporting (Krug et al. 2002). Sexual abuse is the least frequently reported type of child victimization because it frequently occurs in the privacy of a home (Radford et al. 2013). Sexual abuse is most common among females: 20 % of women versus 5–10 % of males (Stoltenborgh et al. 2011; Krug et al. 2002). Valid cross national sexual abuse rates are difficult to obtain primarily because of the varied cultural norms involving secrecy and honor concerning sexuality, homosexuality, promiscuity, and respect for parents (Stoltenborgh et al. 2011). One global estimate of combined prevalence of 11.8 %, though, was ascertained from a meta-analysis of studies of sexual abuse. Self-reporting rates were as high as 127 per 1000 (Stoltenborgh et al. 2011).

3.1.3 Risk Factors

While risk factors for child victimization vary by the type of victimization, there are commonalities primarily involving the family domain. Other risk domains include the individual and the neighbourhood levels. Childhood victimization is substantially more prevalent in impoverished and socially disorganized neighbourhoods, i.e., areas that have high levels of minor street crime, such as graffiti, activities related to the sex trade, and vandalism, along with youth gangs, informal and formal, and adult gangs as well. Parents, often single mothers, experienced greater routine emotional stress including depression related to: lack of employment; inadequate housing; inaccessibility of health care; poor quality schools and child recreation facilities; and inability to rely on extended family and friends to assist in the supervision of their children, particularly in public spaces dominated by anti-social and criminal peers (Leventhal and Brooks-Gunn 2000; Sampson et al. 1997; Morenoff et al. 2001, UNODC 2010). This serious and persistent stress affects parenting (McLoyd et al. 1994) even causing mothers' neurological damage that limits their prosocial child rearing practices and increasing child victimization risks (McEwen 1998).

The focus of theories and research on child victimization traditionally, therefore, has been on the familial-level domain risk factors, especially the access to social capital themes mentioned above. However, these same risk factors, historically, have been central to serious and violent offending too. Single-parent households; poverty; lack of parental employment; low levels of parental education, such as not completing high school; being born to a young mother; lack of paternal

involvement; large family size; parental mental health problems; and low parental self-control have all been included in the dominant theories of serious crime, especially street located offending, as well as persistent and intergenerational domestic violence (Brown et al. 1998; Euser et al. 2010; Fantuzzo et al. 2011; Hussey et al. 2006; Straus et al. 1990; Thornberry et al. 2014). Furthermore, risk factors have a compounding effect, i.e., the risk of victimization increases exponentially with each additional risk factor (Brown et al. 1998). For example, the risk for sexual abuse increases often because family disruption or lack of parental supervision results in opportunities for misconduct with low risk of intervention (Brown et al. 1998). Furthermore, while females are more at risk than males, males who have been physically or sexually abused as children are at an increased risk of becoming sexual offenders later in life (Seto and Lalumière 2010).

3.1.4 Consequences

There are a multitude of short- and long-term negative consequences to childhood victimization. Most notably, childhood victimization has been linked to childhood externalizing behavioural disorders, including the development of child sexuality (Beitchman et al. 1992), poor academic achievement (Fantuzzo et al. 2011), substance abuse (Appleyard et al. 2011), as well as poor mental health outcomes. The negative mental health outcomes appear to have a gendered effect in which females are more likely to present internalizing disorders (e.g., anorexia [Wonderlich et al. 1997]), while males are more likely to exhibit externalizing behavioural disorders (e.g., sexual offending [Seto and Lalumière 2010]). Critically, these negative outcomes are also key risk factors of serious and violent young offending. This notion that childhood victimization represents one pathway toward serious and violent young offending has been put forth recently by Corrado and Freedman (2011). In addition, early childhood victimization not only places the child at-risk of being incarcerated, but also places them at risk of future victimization via peers, siblings, and by their intimate partner (Radford et al. 2013; Renner and Slack, 2006; Thornberry et al. 2014). Importantly, recent empirical research reveals a link between childhood victimization, the subsequent development of substance abuse, and, finally, culminating in the maltreatment of one's own children as a parent (Appleyard et al. 2011). This finding is critical as it demonstrates the intergenerational transmission of victimization, and, further, suggests the need for proper intervention and support to break the "cycle of violence" (Egeland et al. 1988; Thornberry et al. 2014; Widom 1989).

4 Female Victimization and Intimate Partner Violence

4.1 *Definition and Prevalence*

Intimate Partner Violence (IPV) is characterized by any physical forms of assault (e.g., pushing, punching, beating, sexual assault) between two intimate partners (Johnson, 1998). Over time, however, definitions of IPV have been extended to include psychological abuse and stalking (American Psychological Association 2002; World Health Organization 2006). IPV is commonly understood as the victimization of women by men. Studies show rates as high as 50–70 % of women being victims of IPV in their lifetimes (Krug et al. 2002; Thompson et al. 2006). More recently, men and women are considered relatively equal in terms of IPV victimization, with lifetime prevalence of 19.3 and 23.1 % respectively (Desmarais et al. 2012). However, women tend to suffer more physical injuries than men, including hospitalization and homicide (Archer 2000; Cunradi 2010; Janssen et al. 2005; Straus 1999; Tjaden and Thoennes 1998; Tjaden and Thoennes 2000). In fact, almost 50 % of female homicides in the United States are a product of IPV compared to less than 5 % of male homicides (Bachman and Saltzman 1995; Kellerman and Mercy 1992). As such, most of the research focuses on the victimization of women by men, in heterosexual intimate partner relationships and will be the focus of this piece.

4.2 *Risk Factors*

Studies of IPV often emphasize the role of individual-level factors, such as the disposition of the offender or the characteristics of the victim. Consistent individual level risk factors for IPV are membership in a racial/ethnic minority group, lower levels of education, and, consequently lower income levels (Cunradi 2007, 2009; Cunradi et al. 2002; Field and Caetano 2004; Fox et al. 2002; O'Campo et al. 1995; Sorenson et al. 1996). In regards to racial/ethnic minority groups, while collectively all members of minority groups are more likely to experience higher levels of IPV, non-Hispanic blacks experience the highest rates of IPV, followed next by Hispanics (Cunradi 2007, 2009). Young women, between 18 and 30 years of age (U.S. Department of Justice 1994; Wolfner and Gelles 1993), as well as women who are in cohabitating rather than married relationships (e.g., Stets and Straus 1995), are at an increased risk of IPV.

Alcohol misuse is strongly associated with increased IPV. For example, in the United States' 2000 National Household Survey on Drugs and Abuse sample of married or cohabitating Hispanic men ($n = 1148$) and women ($n = 1399$), females who abused alcohol were ten times more likely to have experienced IPV than those who did not abuse alcohol (Cunradi 2009). In an earlier study, women from a drug treatment program had a significantly higher rate of lifetime severe IPV (i.e., hitting

with a fist, beating, choking, threats with a weapon), compared to a matched sample on socio-demographic characteristics, without alcohol or drug problems (Miller 1998). There are several explanations of this important relationship. First, alcohol/substance abuse causes IPV (i.e., self-medication to cope with traumatic experiences). Second, according to the indirect effect model, alcohol use leads to marital discord and subsequently IPV. Third, the direct effect model states that chemical properties of the substance produce a psychological/emotional state that causes IPV. To date, the direct hypothesis has had the most empirical support (Cunradi 2010; Klostermann and Fals-Stewart, 2006).

Ecological and structural factors, particularly at the neighbourhood level, have been related to IPV. The most important construct is collective efficacy, which is derived from the classic neighbourhood social disorganization theoretical perspective of crime. Accordingly, the lack of social cohesion and informal social controls among families in chronic socially disorganized and highly concentrated economic disadvantaged neighbourhoods promote all crimes (Sampson et al. 1997). Social cohesion consists of neighbours sharing common values, goals, aspirations, and cooperative interactions. Informal social control refers to the neighbourhood's residents' ability to regulate the antisocial behaviour of residents or visitors, particularly youth. In effect, communities with high collective efficacy reduce all delinquent and criminal behaviours and violent victimizations (e.g., Morenoff et al. 2001; Sampson et al. 1997) by mediating (i.e., lowering) the relationship between individual antisocial propensity (e.g., low self-control) and crime (Zimmerman 2010). Lower levels of collective efficacy were associated with higher rates of IPV, as well as intimate partner homicide (Browning 2002). Collective efficacy is hypothesized to have both a direct and indirect role in moderating the risk of IPV. The direct association involves intervention "at the site" of the IPV, i.e., a bystander witnessing IPV steps in to prevent or stop it. The indirect association involves the community providing social and protective support to the IPV victim that reduces further likelihood of IPV. Benson et al. (2003) utilized neighbourhood-level U.S. Census data to demonstrate that neighbourhood economic deprivation was positively associated with IPV. Earlier, Miles-Doan and Kelly (1997) similarly found that neighbourhoods with severe economic disadvantage had higher rates of IPV. Critically, poverty and neighbourhood disadvantage had increased levels of social isolation within a community (Lee 2000; Lee et al. 2003; Parker and Pruitt 2000), which was related to increased IPV. This relationship was evident previously in the National Survey of Families and Households consisting of cohabitating ($n = 500$) and married ($n = 5000$) couples. Specifically, less frequent ties to groups/organizations, family/friends, and to spouse/partner significantly predicted IPV (Stets 1991).

4.3 A Brief Note on the Male Perpetrators of IPV

Several of the male individual-level risk factors for IPV are the same as the key risk factors for the life-course persistent offender. This is a central developmental criminological theory construct. The individual level IPV predictors include impulsivity (Cunradi et al. 1999; Schafer et al. 2004), high levels of anger (Eckhardt et al. 2002), and alcohol/substances abuse (Cunradi 2007, 2009, 2010; Cunradi et al. 1999; Cunradi et al. 2002). Approval of marital aggression is an additional important risk factor (Caetano et al. 2000). These adult antisocial characteristics typically have been associated with an early criminogenic family environment (e.g., unemployment, criminal behaviour, poor parenting skills) and subsequent IPV (Capaldi and Clark 1998; Farrington 1994; Simons et al. 1998). Critically, this early criminogenic family link was indirect since it was mediated by adolescent antisocial behaviour and neuropsychological deficits (Lussier et al. 2009). Further, problematic childhood behaviour (e.g., defiance, aggression, deceit) was also a strong predictor of later IPV (Moffitt and Caspi 2003). Moffitt et al. (2002) identified a life-course persistent (LCP) trajectory, i.e., childhood onset of problematic behaviours, the LCPs (only 10 % of the Dunedin, New Zealand large cohort), accounted for 62 % of all convictions for IPV by young adulthood.

IPV, therefore, appears to be another manifestation of antisocial behaviour generally. Also, because multiple risk factors were more important than any individual risk factor, prevention or intervention programs attempting to reduce IPV require that most of these risk factors be addressed. This entails the multi-level targeting of both the individual level risk factors (e.g., alcohol/substance use, cognitive distortions surrounding the support of marital aggression) and neighbourhood level risk factors (e.g., building stronger communities through increasing collective efficacy). Given the largely similar risk factors for IPV and the LCP offender, preventative measures more likely need to include an initial early emphasis on LCPs. Traditional intervention programs that target the specific behaviour of adult intimate partner violence have had very limited effectiveness possibly because they have not adequately addressed the earlier developmental stage risk factors in an appropriately age/time manner or not at all (e.g., Babcock et al. 2004; Feder and Wilson 2005).

4.4 Consequences

The financial cost of IPV in the U.S. has been estimated at approximately 67 billion dollars annually (Miller et al. 1996). More importantly, IPV victims suffered numerous health/mental problems including depression, substance abuse, chronic disease, child victimization, suicide and homicide victimization (Appel and Holden 1998; Coker et al. 2002; Fagan and Browne 1994; McCauley et al. 1995; Plichta and Falik 2001). In addition, one-third to one-half of children in women's shelters

were also victims (Edleson 1999). Finally, regarding the intergenerational transmission of IPV, witnessing IPV as a child was associated with subsequent IPV victimization (Thornberry et al. 2014).

5 Young Offender Risk Tools and a Discussion of Related Programming for at Risk Children, Youth, and Their Families

Increasingly complex risk assessment and management instruments have been developed to respond to the multiple risks evident across multiple domains for child and youth delinquency and victimization, as well as adult offending and victimization. Ideally, these instruments, first, identify youths' risk profiles, and second, match the corresponding youths' needs profile with appropriate sets of treatment interventions. However, most current standardized assessment tools, typically utilized in youth corrections, have not been sufficiently comprehensive regarding the ever increasingly complex multi-risk and multi-level histories of youth and their families. Lack of comprehensiveness often limits the ability of service providers to provide the necessary range of programming. In contrast, risk management instruments such as the MASPAQ and the CRACOW, though highly complex and difficult to administer, are comprehensive. The latter, for example, includes risks from three broad, comprehensive, and multi-level domains: environmental (e.g., pre-perinatal risk factors, living conditions, peers), familial (e.g., family dynamics, parental characteristics, parent-child relationship), and the individual domain (e.g., psychological, biological) and age developmental stages (e.g., pregnancy to late adolescence) (Corrado 2011). There is preliminary validity research in Canada and Germany concerning the initial developmental stages sections of the CRACOW (Wallner et al. [under review](#); Lussier et al. 2011). However, despite this need for more comprehensive diagnostic instruments to reduce likelihoods of offending and victimizations as discussed above, there is an extensive history of intervention programs. Several model programs have been identified that have undergone rigorous empirical testing and were assessed as either effective, promising, or ineffective. The programs reviewed in this chapter include family-based programs; parenting programs; school-based programs; mentoring strategies; trauma-based interventions; neighbourhood and community-level initiatives; and interventions designed to target specific types of offending and victimization. The latter focus on individuals with psychopathic traits, sexual offending patterns, gang involvement, domestic violence offences (and their victims), and who have been victims of sexual assault.

6 Effective Programs to Reduce Likelihood for Serious-Violent Offending/Recidivism Among Children and Adolescents

6.1 Child- and Family-Centred Programming Interventions

Nurse-Family Partnership (NFP) is among the most effective program types to reduce young people's offending risk and victimization risk. The NFP involves low-income, first-time mothers and provides them with individualized one-on-one support from a nurse who visits the home in the initial pregnancy stages (Olds et al. 1997). The focus is on developing a rapport and trust with the mother that continues until the child reaches the age of 2. The nurse helps the mother identify her needs areas and assists in managing them and/or providing the mother with skills that improve the effectiveness of her parenting practices. Importantly regarding the risk factors discussed above, this program seeks to reduce maternal smoking, substance use, poor nutrition, undesired future pregnancies, and poverty. Regarding the latter risk factor, opportunities for further education and employment are encouraged. Equally important, the nurse fosters intimate, loving, and nurturing attachments between the mother and her child. Family planning includes a healthy life-style during pregnancy; birthing, and the first days following the birth are further emphasized. Finally, parenting strategies for childhood and adolescence too are encouraged.

Various models of nurse-home visitations have been introduced in the United States (Nurse-Family Partnership 2014), Canada (Reiter 2005), and Europe (Barnes et al. 2011) that have been effective in reducing maternal smoking and drinking during pregnancy, early pregnancies, premature birth, and birth complications (Olds et al. 1998). Weekly nurse visits also have reduced maternal stress (Sutton and Glover 2004) and reduced the severity of postpartum depression (Murray et al. 2003). Studies in England have indicated additional positive effects. Nearly two thirds (63 %) of mothers who participated in NFP breast-fed their infants and for a longer time period; had improved relationships with their infant and the infant's father; had confidence in their parenting skills and use of nurturing parenting techniques; participated in educational activities or were employed; and, overall, managed well during their pregnancy, labour, and parenthood (Barnes et al. 2009; Barnes et al. 2011). Several long-term outcomes for children and adolescents included: reduced substance use; fewer serious antisocial behaviours (e.g., arrests, convictions and probation violations); reduced consumption of alcohol; and less running away from home (Olds et al. 1998). However, Barnes et al. (2009) cautioned that successful NFP interventions required stable governmental funding levels and no reduction in the range of services provided. One concern emerging from the research, though, is that reducing subsequent pregnancies did not consistently occur until much later than anticipated (Rubin et al. 2011).

Other programs provide services to assist young people and their families later in the childhood stage. As discussed above, the focus on early intervention is based on

the extensive research, which indicated that untreated family related needs increased youth's risks for delinquency, violence, and even mental illness (Gavazzi et al. 2008; Howell 2009; Loeber and Farrington 1998; McWey and Mullis 2004). Secure attachment, in particular, has been identified as a long-standing and critical protective factor; youth with strong attachments to their parents engaged in far fewer delinquent acts and escalating criminal trajectories and victimizations (Hirschi 2002; Maimon et al. 2010; Meeus et al. 2004). Historically, therefore, it is not surprising that certain types of family interventions have been beneficial. These include cognitive-behavioural therapies (CBT), multisystemic therapy (MST), and functional family therapy (FFT). For youth removed from their immediate families, multidimensional treatment foster care (MTFC) has been effective for children and even their families.

Since the early 1970s, Functional Family Therapy (FFT) that targets youth from ages 10–18 (Alexander and Sexton 2000) has been recognized as an effective evidence-based behaviour-modification program. It incorporates the youth's family in the intervention milieu and has been effective with diverse cultural families regarding aggression, offending, and substance abuse issues. FFT therapists create individualized approaches and goals to address multiple needs that have been identified in the family, and then require family members to work as a group. The FFT personnel provide ongoing encouragement and support. However, attrition (i.e., family members dropping out of program participation) is a common challenge for all family-based programs. The more selective or individualized FFT strategies were intended to diminish the likelihood of challenges that can lead to families abandoning the program (Thornton et al. 2002). While family-level risk factors have been the focus, other risk areas are addressed and protective factors strengthened. Based on an examination of individual and family cognitive processes and the family's relational interactions and emotional responses, once the family appears receptive to the program's objectives, the therapist establishes a plan outlining the specific areas that will be targeted for behavioural modifications. The family is provided positive alternative coping and reaction techniques to conflict situations. This also includes new approaches to conflict situations encountered outside home, including school, work, with friends, and the community more generally (Alexander and Sexton 2000; Thornton et al. 2002). Following numerous empirical tests employing rigorous experimental design, numerous FFT evaluation studies have demonstrated reductions in violence, recidivism, and substance use in youth participants (Alexander et al. 2000; Brosnan and Carr 2000; Greenwood and Turner 2011; Mihalic et al. 2001; Waldron and Turner 2008; Welsh and Farrington 2006), as well as decreased likelihood of adult criminality (Gordon et al. 1995). A more recent study found that FFT had to be carefully implemented to have the greatest impact on youth probationer offending, both non-violent and violent, when compared to young offenders who received only traditional probation programming (Sexton and Turner 2010).

Multisystemic Therapy (MST) is another family-focused intervention. As a part of this program, a unique treatment plan is developed for each family to address these areas identified as presenting the greatest challenges within the family. Each

plan initiates improved familial attachment, parenting, and communication, and, again, is to be utilized in other domains including school (e.g., improved school performance), peers (e.g., developing relationships with prosocial peer relations), and the community (e.g., involvement in volunteering, community organizations, and extracurricular activities [Burns et al. 2000; Henggeler 1982; Lyons and Rawal 2005]). The therapist also identifies certain patterns or conditions that are barriers (e.g., family stressors, substance use, and mental health conditions) that may hinder positive transformations. Methods to reduce the magnitude of these obstacles becomes the focus of the extended plan (Schoenwald et al. 2000). MST emphasizes the role of the parents; parents are expected to provide consistent supervision and encouragement for the youth regarding their involvement and commitment to pro-social activities, and, conversely, the reduction in interactions with antisocial peers and delinquency (Eddy and Chamberlain 2000; Henggeler and Lee 2003; Leve and Chamberlain 2007). Numerous MST evaluation studies have indicated reductions in anti-social behaviour, recidivism rates (Borduin et al. 1990), severity of delinquent acts, and arrest-rates for violent crimes (Borduin et al. 1995). Other studies have also revealed: lowered out-of-home placements (Kashani et al. 1999), moderated drug use (Henggeler et al. 1999; Waldron and Turner 2008), and improved familial and peer relations (Henggeler et al. 1992).

Family-based role attachment focused therapy programs have also become very important in improving parenting skills and reducing severe behavioural problems in children and adolescents. Connect is an exemplary model program (Larstone and Moretti 2013). By enhancing parents' understanding of their role, and providing them with the confidence and tools to better assist in their child's healthy development, this program significantly improved relationships between parents and their children, and subsequent reductions in adolescent antisocial behaviour.

6.2 Individual Focused Programming Interventions

As mentioned briefly above, cognitive-behavioural therapy (CBT) focuses on the youth's behavioural and emotional problems that have been identified as risk factors for delinquency, violence and/or victimization. Once the therapist has met with the young person to assess concerns related to his/her problematic behaviour, CBT focuses on modifying the cognitive patterns involving serious antisociality and criminality. Instead, prosocial cognition and associated behaviours are promoted, especially alternative coping responses to stress and conflict (i.e., social and problem-solving skills [Vaske et al. 2011]). CBT-based anger-management and aggression interventions have been effective for incarcerated or community-based samples. It has as well been utilized in responding to certain mental health disorders associated with violence and victimization. Meta-analysis of CBT programs effect on criminal reoffending concluded that, on average, youth who had undergone the specialized treatment (CBT), had lower risk of recidivating within the 12 months following the therapy, than youth who were assigned to the non-CBT control

groups (Lipsey et al. 2001; Lipsey and Landenberger 2006; Lipsey et al. 2007). CBT is most effective when it is based on appropriately implemented program design (e.g., sufficient therapist/staff training, few cases of dropout, “monitoring” the quality and “fidelity” of the intervention) and when it is delivered to high-risk offenders (as compared to low risk). A more recent meta-analysis examined the effects of CBT on violent behaviour more specifically and also revealed preliminary support for the therapy’s usefulness in rehabilitating aggressive youth (Özabacı 2011). Other CBT research has also demonstrated transformations in antisocial cognitions and behaviour in young people (Bogestad et al. 2010; Vaske et al. 2011). Importantly, CBT has been effective regarding their managing diverse mental health needs involving anxiety, depression, suicidal ideation, and post-traumatic stress disorder (Schmied and Tully 2009).

6.3 School-Centered Programming Interventions

The Perry Preschool Project (PPP) is considered a classic, and now for over half a century or more, highly effective school-based intervention program with multiple favourable outcomes across the life course for children at high risk for serious criminality and victimization. The PPP was directed towards minority African American preschool-aged children who were identified as high risk for future problems in school and ultimately delinquency, as a result of living in socially disorganized and low income families and neighbourhoods in a Michigan city near Detroit, USA (Schweinhart and Weikart 1997). It consisted of a two and a half hour class format over 30-weeks paired with weekly visits to the child and the family at home to support mothers and assist them in playing a part in their child’s learning. The immediate program objectives were to provide young children and their families with the skills and support needed to develop the initial basic school taught skillsets that would prepare them to proceed successfully through the normal education trajectory from elementary, to middle and high school, as well as further to post-secondary education, either university or technical programs. This school-focused success was then hypothesized to translate positively to other areas of their life including employment, health, mental health, stable families and non-criminal life styles. Repeated PPP evaluations consistently indicated that the initial enhanced academic performance of PPP involved children compared to children who were not in the PPP was strongly associated with reduced arrests as youth and adults across the life course into middle adulthood. It has also resulted in healthier adult lives and more stable and happy family lives, and lower levels of substance use (Schweinhart et al. 2005).

Promoting Alternative Thinking Strategies (PATHS) and Life Skills Training (LST) also have been effective in reducing serious antisocial behaviour and victimization. PATHS and LST are both offered in a classroom setting by specially trained teachers and counsellors. The PATHS program’s focus provides youth with essential skills indispensable for daily behavioural and emotional management, social

interaction, impulse-management, and improved school functioning (Greenberg and Kusché 1993). In contrast, LST focuses on the reduction and cessation of youth's tobacco and drug use (Botvin et al. 1998). Nevertheless, LST does include developing problem-solving skills, social skills, and education concerning the effects of drugs. PATHS evaluations indicated that reduced levels of depression and externalizing behaviours were found in youth who had completed the program, as compared to control group samples. However, although their scores of internalizing behaviours increased over the course of PATHS specialized treatment, this increase was much less when compared with the students' scores for those in the control group (Kam et al. 2004). PATHS participants, though, exhibited reduced levels of anger, greater compliancy and emotional awareness, and improved interpersonal skills (according to teachers' evaluations) (Domitrovich et al. 2007). Substantial reductions in polydrug use, a marginal reduction in smoking, and a general reduction in the use of narcotics, hallucinogens, and inhalants also were evident (Botvin et al. 1998).

6.4 Programming Outside of the Biological Family and Traditional School Setting

Multidimensional Treatment Foster Care (MTFC) programs involve intensive training for foster care regarding skills needed to positively respond to highly complex behavioural and emotional problems for multi-needs and high risk for aggression and violent children and adolescents placed in their care. Caregivers are also in a better position to support children and adolescents in their rehabilitative progress and participation in community-based interventions (Chamberlain and Reid 1998; Leve et al. 2009). The MTFC emphasizes foster parents becoming a positive role model and mentor, and teaches them how to provide close supervision and offer a consistent environment in which clear limits are set and where behaviour is reasonably rewarded and punished. The development of strengths and healthy relationships with family, peers, and school are all central features of these programs. These placements are combined with positive peer interactions, school-focused interventions, and encouragement for strengthening the relationship between the young person and his/her biological parents or long-term guardian.

MTFC seeks to prevent the onset of antisocial behaviours generally, as well as more serious offending. In one study, MTFC-involved adolescent male youth had: fewer incidents of running away; increased program completion; reduced offending, including serious/violent offences; and fewer detention placements, compared to youth who were in traditional group homes (Chamberlain and Reid 1998; Leve et al. 2009). Similar results occurred for girls (Chamberlain et al. 2007). Caregivers who received systematic assistance from various agencies, had reduced stress and feelings of helplessness, which were related to the decreased probability of the youth being removed from the home (Leve et al. 2009). Other residential

treatment programs and intensive home-based treatment models have been utilized for youth with mental illness. Care providers provided structured living environments with high intensity supervision in combination with cognitive-behavioural exercises, individual and family counselling (the latter being dependent on the family situation), and schooling. Significant long-term improvements (2 years after intake to the program) in youth's functioning and symptomology were evident, including in relation to substance use problems (Preyde et al. 2011).

One-on-one mentoring programs have been effective for some low-risk and high-risk youth and offenders. Big Brothers/Big Sisters (BB/BS), for example, is a long-standing mentoring program for youth at high risk of offending and reoffending. The young persons are matched with selected positive mentors, or role models (based on sharing similar personalities and interests) who model prosocial behaviours, which assist the youth in developing their social skills and positive peer relations. Mentors expose them to prosocial community and extra-curricular activities, and can work with them as well on improving basic academic performance and coping with substance use. Peer mentors are expected to interact with the adolescents several hours every week in a variety of activities from seeing a film together to writing job applications (Mihalic et al. 2001). One of the most prominent outcomes of mentoring programs is the improvement in academic performance, decision-making, and prosocial attitudes (Henry 2009). BB/BS has also reduced the probability of experimenting with illicit substances, engaging in aggressive conduct, and increased youth's feelings of peer acceptance (Grossman and Tierney 1998).

6.5 An Integrated Program to Support Multi-Needs Children and the Prevention of Future Criminal Justice Involvement

The programs outlined above can be effective for children and adolescents who present with problematic behaviours, are at-risk of criminal involvement, or who have already come into contact with the law. One Canadian program that was developed specifically to respond to children who were under the age of criminal responsibility in Canada (i.e., <12 years of age), but who had perpetrated a criminal offence was Stop Now And Plan, most commonly known as SNAP (see Augimeri et al. 2011). Commencing in 1985, several professionals in the field came together to discuss approaches that could be employed to assist these young children who had presented a proclivity towards delinquency (i.e., as a result of their involvement in theft, vandalism, break and enter, or a more serious incident including physical aggression or assault), before they became formally involved in the criminal justice system. The result was SNAP, a multidisciplinary program that was intended to provide much needed support to these children and their families based on skills training, cognitive problem solving, self-control and anger management, cognitive

self-instruction, family management skills training, and parent training; the latter which included specifically Social Interactional Learning (SIL), through which children learned positive behaviours through their interactions with their parents (Augimeri et al., [under review](#)). Relying on collaboration between police and mental health services, the initial program model was offered to any child aged 6–11 who was identified as a result of their premature “criminal” involvement. It has since evolved to include a separate program for each gender (so that the distinct needs of each group can be met) and is offered under a continuing model rather than the previous session restricted model. The program also relies on the results of structured risk assessments to guide the interventions provided to children and their families. Today, SNAP includes four programs: one that is delivered to boys aged 6–11, one for girls aged 6–11, a school-based program for elementary aged children, and a program designed for older children and adolescents (aged 12–17) who have completed the earlier SNAP program. The expansion of the program to include a follow-up component for youth aged 12–17 occurred as a result of early evidence suggesting that, while most children benefited from the program, there was a small percentage of boys that did not experience the same level of success.

The main objectives of the SNAP program are achieved through a three-step process, in which children learn how to recognize situations that they find difficult, take a moment to calm themselves (STOP), use self-encouragement instead of negative thinking (NOW), and discover solutions to better deal with their negative emotions and challenges (PLAN). In doing this, children learn techniques that can assist them in minimizing their impulsivity and maximizing their planning and decision-making skills. The implementation of the program has produced sustained positive results for both boys and girls, as well as their families, as indicated by reduced externalizing problems (e.g., aggression), delinquency, and ameliorated parenting and home environments (e.g., less rigid family interactions) (Augimeri et al. 2007; Granic et al. 2007; Jiang et al. 2011; Pepler et al. 2010). It has also provided preliminary support in its ability to reduce later criminal involvement in adulthood (Augimeri et al. 2010).

6.6 Specific Offender-Based Programming Interventions

There are several programs that target particular types of offending including specifically youth’s proclivity towards violence. Violent Offender Treatment Programs (VOTP) have been established in several countries to support the most serious and violent young offenders in the modification of their behaviours (Serin et al. 2009). Components of these strategies often comprise cognitive-behavioural therapy and anger management strategies that have been found to be successful in reducing youth’s aggressive and violent conduct (see Serin et al. 2009). Additional research found that youth who successfully participated in a VOTP experienced reductions in violent and non-violent recidivism (Catchpole 2002; Gretton et al. 2003), and that when compared to untreated individuals, there was a lower

number of violent offences committed by both males and females subsequent to their treatment (Gretton et al. 2003).

Interventions developed to target the treatment of sex offenders also incorporate strategies from CBT to assist offenders in addressing their behaviours. These interventions are offered in group setting, individual sessions, and in combination with treatment for co-occurring mental health conditions using pharmacological responses (Scalora and Garbin 2003). While a number of factors predict recidivism among adult sex offenders, both general and continued sexual offending (e.g., prior criminal histories, age of first offence, and marital status), multidisciplinary cognitive behavioural approaches have also been associated with reduced recidivism risk. Lösel and Schmucker (2005) examined studies including both adults and adolescents, and highlighted the need to combine hormonal medication treatment with psychosocial interventions, since the risk for recidivism can increase significantly in cases where offenders terminate their medication compliance. They also found that, although not significantly different, interventions that were delivered to adolescent offenders had a somewhat greater impact on recidivism than those that were offered to adult offenders. Although the first researchers (Scalora and Garbin 2003) presented some important caveats—such as whether the program actually impacted re-offending as much as it suggested, or whether the offenders who completed the program were simply more likely to have better outcomes—these studies, for both violent offender and sex offender treatment, supported the application of cognitive-behavioural therapies in diminishing risk for these offences, as well as general youth delinquency and offender recidivism.

While programs designed to treat adolescent sex offenders have been successful in improving these offenders' outcomes, other research has found that, consistent with their hypothesis, adolescent sex offenders who scored high on the PCL:YV prior to completing an adolescent sex offender treatment program (SOTP), had an increased risk of escape, probation violations, and recidivism (including non-violent, sexual, and violent offenses), which also occurred sooner, compared to sex offenders not presenting psychopathic traits (Gretton et al. 2001). The SOTP provided a biopsychosocial intervention strategy that incorporated the youths' parents or caregivers, probation officer, social worker and any additional supports in the young persons' lives. Based on the results of this study, future programming and research in this area should, therefore, take into consideration these findings and recognize the greater complexity in treating these types of young offenders.

Concerning the treatment of adolescent offenders with psychopathic features specifically, one study evaluated the outcomes of offenders who were treated at the Mendota Juvenile Treatment Center (MJTC) compared to the outcomes of a similarly profiled, although not randomly assigned, group of young offenders who were sentenced to a youth detention centre where they received standard treatments available in these custodial settings (Caldwell et al. 2006). The MJTC was a specialized treatment program designed for young offenders with psychopathic features. The intensive treatment group received access to regular mental health professionals with reasonably low offender to psychiatrist and psychologist ratios, and a psychiatric nurse available daily. Alternatively, young offenders

detained in the correctional institute typically did not have access to these professionals and instead received only basic assessments to determine medication needs followed by modest monitoring of this. Each intervention model was also rooted in differing philosophical views regarding treatment, in that the Mendota Juvenile Treatment Center model was focused more on trying to rebuild conventional bonds than further damaging these with the use of strictly enforced sanctions. The findings of this study revealed that, following their release from these settings, youth who were treated in the MJTC had significantly lower rates of general recidivism (although this finding dissipated following propensity score matching), and most importantly, led to fewer serious/violent offences, which were also committed at lower rates than by the non-treatment group, including over a longer time frame, homicide. One of the most promising features of the Mendota Juvenile Treatment Center's treatment model was that, despite ongoing behavioural problems among youth undergoing treatment, program providers increased their strategies with these youth, instead of discharging them from the program. While offender dropout and release are common among the most serious young offenders in many of the treatment interventions offered to them, this approach instead encouraged the offenders' continued commitment to the treatment intervention, which may have impacted its positive results (Caldwell et al. 2006).

7 Effective Programs to Prevent Serious Crime Victimization

7.1 Child- and Family-Centred Programming Interventions

For children who develop early defiant and externalizing behaviours, parenting these youth can become incredibly challenging. Sometimes these families, in addition, utilize physical aggression in response to these behaviours, which can further deteriorate the child's behaviour, and also lead to an increased victimization risk through such early incidents of maltreatment and abuse. Parent-Child Interaction Therapy (PCIT) was designed to respond to the needs of these families by helping parents to remodel their interactions with their children so that the likelihood of continued abuse can be tempered (Herschell et al. 2002). Throughout the two phases of the program, parents are guided in how to develop more positive interactions with their child through the use of positive reinforcement and appropriate sanctioning and discipline. These families are also supported by other families who have also been through the program based on their similar experiences. The program relies on role-playing activities so that parents can practice employing new techniques before being expected to relate them to real-life situations. PCIT's model has been found to statistically significantly reduce successive incidents of abuse between parents and their children, thereby reducing reoccurring victimization and in turn modifying youth's likelihood for future victimization and

offending (Chaffin et al. 2004). This approach is also being utilized with minority families and is examining its applicability in diverse cultural settings (see Butler and Eyberg 2006).

Similarly, programs such as Triple P—Positive Parenting Program, another comprehensive behavioural family intervention, focus on training parents various techniques to provide a more positive environment for their children using qualified experts and multilevel strategies (see Sanders 2008). Some of the goals of this program include setting manageable expectations and delivering reasonable sanctions and discipline to children with conduct problems, so as to prevent child maltreatment by the parents and persistent behavioural problems in the children. The program is delivered to families with children under the age of 12 and the activities and objectives of the program are offered and reached throughout five levels of intervention. These levels range from the first, which is the media campaign to educate families on the program, to reduce some of parents' pre-conceived notions about parent training programs, and to familiarize parents with the goals of the program. Each stage then builds further on introducing parents to the program, through actual participation in training and guided sessions, with each level building from the previous and addressing increasingly severe behavioural problems (Sanders et al. 2000).

An evaluation of Triple P produced positive results over a 2-year follow-up between families who underwent the program as compared to families who did not receive the intervention. Using a randomized, controlled research design, Prinz et al. (2009) found that while the two groups of families did not differ across their measures of child maltreatment (i.e., substantiated child maltreatment, child out-of-home placements, and hospitalizations or emergency room visits injuries associated with maltreatment) prior to the program implementation, the control group had reduced experiences of the three types of maltreatment as compared to the control group. This supported the utility in this program in reducing experiences of victimization at home for youth from different ethnic backgrounds, many of whom were living in poverty and abusive homes.

7.2 Individual and School-Centered Programming Interventions

Cognitive-behavioural therapies (i.e., Trauma-Focused Cognitive Behavioural Therapy [TF-CBT]) similar to those reviewed earlier have been employed as well in interventions for youth who have experienced traumatic events, such as physical and sexual assault, a car accident, exposure to community violence, and the death/loss of someone they loved. This approach assists youth and their families from diverse backgrounds in overcoming the emotions that are associated with these experiences including anxiety, depression, and post-traumatic stress (e.g., Cohen et al. 2012). These experiences and the resultant feelings can lead to problems for

children and adolescents related to sleeping, eating, and even managing social situations. TF-CBT programs have, therefore, been employed and have yielded positive results in reducing youth's scores on scales measuring these feelings and emotions (Cohen et al. 2004; Cohen and Mannarino 1996). These results are encouraging for youth in relation to offending and victimization, since many of these experiences and feelings can result in more severe depression, violence, and/or substance use in adolescents. Furthermore, CBT-based approaches have also positively impacted trauma experienced by young people through the Cognitive Behavioural Intervention for Trauma in Schools (CBITS) strategy. This approach targets schools that have a number of children or young adolescents who may have experienced high levels of trauma or witnessed violence by offering group therapy sessions to teach youth about trauma, relating specifically to its symptoms and mechanisms they can use to manage their feelings (Kataoka et al. 2003; Stein et al. 2003).

7.3 Community Level Crime Reduction Programming and Practices

Beyond early interventions that focus on youth, their families, and schools, at the community level, there are also a series of practices that have been employed to reduce opportunities for crime and victimization, which, in effect, include crime and victimization of children and youth. Although there has not been strong support for neighbourhood watch programs—that rely on community residents to look out for crime and report any incidents to the police—on their impact on victimization, there has been more promising support for its utility in reducing offending based on an extensive meta-analysis (see Bennett et al. 2009). Initiatives in the UK, such as SAFER Cities and those that have re-designed crime prone environments to include improved lighting and visibility, however, have been more successful. SAFER Cities began with the objective of not only reducing crime and victimization and thereby creating safer cities, but also to mediate citizens fears related to crime. The program was able to achieve this based on the development of multiple projects that target hardened countless high-crime areas by introducing lighting, windows, fences, and a series of physical environmental changes that made areas less desirable and/or more visible. Citizens were also involved in this process through educational sessions in which community residents were taught strategies to modify their own homes and environments, so as to reduce the attractiveness of the area for offenders and the likelihood that they would be exposed to crime and victimization. This strategy undoubtedly had an impact on offenders and victims of all ages, especially in relation to property crimes (Ekblom 1996), and in consideration of the high numbers of youth involved in crime and victimization, this inevitably included those crimes and victimization experiences involving young people. Similar strategies have also been used in parks and other areas often frequented by young

people, and have reduced underage drinking and other delinquent activities and opportunities for neighbourhood victimization in those areas (Cohen et al. 2014). In all of these cases, there was also limited displacement in projects that implemented strongly designed models; i.e., service providers encouraged the participants to engage in diligent observations and be committed to making their neighbourhoods safer (i.e., moderate to high intensity action). For these properly implemented programs, the crime and disorder problems were neither shifted from one location to another, nor did offenders subsequently engage in different types of offending. Instead, the previous profile of crimes—mainly property-related—were reduced.

7.4 *Promising Program Interventions for Bullying and Domestic Violence*

In light of all of the positive interventions that exist to reduce young people's risks of involvement in serious offending and victimization, there are additional programs that did not meet with the same degree of success, but that could be promising strategies that would benefit from increased development and research.

7.4.1 Bullying Prevention Programming

Bullying prevention programs have provided mixed evidence concerning their impact on future associated incidents and involvement in these behaviours/activities. With the expanding avenues available to youth today to participate in social exchanges with other young people, it seems as though young people are bullying, being bullied, and/or witnessing bullying more than ever before. Although bullying can be defined in different ways, it is commonly viewed as behaviours that are physical (including hitting, kicking, and punching), verbal (such as taunting and name-calling), or psychological (in the form of rumours or ostracizing actions). Typically, individuals involved with bullying are classified as bullies, peer victims, or bystanders (see Wong 2009). Wong (2009) found that bullying victimization was significantly associated with running away from home, trafficking illegal substances, engaging in vandalism, theft, and other property crimes, and also in committing assault, when this victimization occurred before the age of 12. Her large meta-analytic review also revealed that prevention programs that have been implemented in schools are more successful in reducing students' self-reported experiences of victimization as a result of bullying, than reducing the reported bullying behaviours. This apparent inconsistency in self-reported numbers of victimization and officially reported bullying likely reflects the different types of measurements. Students often are reluctant to report bullying for fear of retaliation or further bullying and the desire to not undermine the positive impacts of these programs in which they were participants. Most importantly, programs that reduce

self-reported victimization more validly reflect the impact of the anti-bullying programs. However, Wong (2009) recommends that future research is required to understand why this discrepancy occurs and how to more effectively implement bullying programs. Related to the specific practices themselves, interventions that were delivered in a classroom setting were more effective than those that were offered to the entire school, including anti-bullying policies and that failed to involve one-on-one or group sessions with bullies and/or victims. While it was possible that policies that were implemented school-wide were rejected by students, they may have also provided an environment in which more bullying cases were reported (Wong 2009). Based on these results, she recommends that continued prevention programs targeting bullying also incorporate students' families in the intervention (e.g., through educational sessions or informational bulletins). These recommendations were also made in light of Ttofi and Farrington's (2009) meta-analysis, which produced promising results for bullying and victimization interventions (particularly for those that included peer mentoring and clear classroom rules, provided parents with information and training, provided playground supervision, and were offered over longer periods of time to older students).

7.5 *Intimate Partner Violence*

A large proportion of young people who have a higher risk for criminal justice involvement and victimization come from families and homes that experience high levels of conflict and domestic violence. The above discussion also presented the risks for and consequences of intimate partner violence. As such, interventions have been designed for domestic violence offenders, including the Duluth Model. While some intimate partner violence strategies that incorporate social workers and police (see Davis et al. 2007) and CBT (Babcock et al. 2004) approaches have not had significant effects on future incidents of violence, and in some cases increased these incidents, the Duluth model has experienced greater success based on its focus on domestic violence that occurs as a result of patriarchal ideology and the related power-imbalances between men and women, rather than as a result of anger-management problems, substance abuse, or other factors related to strained relationships. Using the "Power and Control Wheel" (accounting for factors such as intimidation, male privilege, isolation, emotional and economic abuse) group facilitators engage the male in activities that help them to reflect on their preconceived beliefs concerning their role in the relationship and then reframe these ideologies so that healthier relationships can be fostered with their partners (Babcock et al. 2004). Although a meta-analysis produced small effect sizes, the Duluth model significantly reduced domestic violence recidivism among the male partners and reports of victimization from the female partners. Babcock and his colleagues (2004) highlight that for families and children who are exposed to violence and experience its related psychological impacts any positive results should not be diminished.

8 Conclusion

Enormous research and policy advances have been made in understanding and responding to the complex dynamics of offending and victimization for both youth and adults. The focus of this chapter has been on youth, in part, because of the extensiveness of the literature, but also because the offending-victimization relationship frequently can be traced back to risk factors primarily from child and adolescent development stages. This is evident, for example, regarding the pervasive and persistent policy challenges associated with intimate partner violence. Much of the contemporary research reaffirms the continued importance of traditional risk factors primarily involving poverty related risk factors concerning families and child rearing. Intergenerational transmission of risk factors for both violence and victimization has become clearly evident, and raises the key policy issue of how to stop this continuation. Effective programs exist that address this dynamic, for the most part, however, there are certain risk profiles that remain particularly challenging for traditionally vulnerable individuals from certain age groups, i.e., the very young and the elderly, as well as politically and economically marginalized ethnic/racial groups in most countries. An outstanding policy issue is the need to enhance the cooperation necessary to integrate information systems among government and non-government agencies responsible for responding to serious and violent offenders and their victims in order to provide the most effective program interventions at the individual case management level. Clearly funding challenges are integral to this policy theme. Still, confidentiality of deeply sensitive personal information on offenders and victims, ethical concerns centered on aggressive interventions into the lives of already highly vulnerable and marginalized families and individuals, and the shortage of more updated multidisciplinary training of program delivery staff, all limit the ability to provide the most effective individual treatment services. In effect persistent political concerns negatively affect both the types of research and services to serious young offenders (as well as adult serious offenders) and their victims. The encouraging policy trend, though, is that vast increases in the validity of recent research, despite its inherent theoretical complexity, can facilitate progress in implementing effective programs.

9 Future Directions

Research and policy themes for the future will continue to expand on the identification of both risk and protective factors and the development of distinctive pathways for serious and violent offending and vulnerabilities to victimization, respectively. Treatment interventions will accelerate with breakthroughs in brain imaging technology that will likely identify more fully the neurological bases for serious offending. Relatedly, neuro/endocrinology studies will also assist in understanding the biological basis for these phenomena. Therapeutic interventions

involving these research trends will include pharmacological approaches to target aggression/violence. More controversial therapies may regard stem cell breakthroughs concerning neurologically-based disorders related to serious violence. Program evaluation research will increasingly be based on random designed studies, which will affect government decisions to implement and/or retain intervention programs.

Five Questions

1. What kind of training would be beneficial for practitioners to assist in identifying and addressing key risk factors?
2. How can agencies improve information sharing practices that maintain confidentiality while allowing for cross-agency collaboration?
3. In what ways can the fragmented research on victimization be better coordinated and how can the learnings from this research be better implemented?
4. A) How can professionals, practitioners, and program providers determine the most appropriate programs to address the individual needs of at-risk and criminally involved youth? B) How can these individuals then ensure that they deliver effective rehabilitative services and treatment to prevent the onset and reduce the continuation of delinquent behaviours?
5. In what ways have cognitive-behavioural therapies been used to address at-risk individuals, as well as specific types of victims and offenders?

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Evaluating Children and Adolescents in Contact with the Justice System

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Abstract The significant social costs associated with child and adolescent offenders and victims underscores the importance of using developmentally-sensitive, evidence-based tools if we are to respond effectively to the unique needs of youth. This chapter reviews some of the important considerations of childhood and adolescence for conducting legal evaluations and some of the essential criteria for determining whether an approach is evidence-based. This is followed by a review of current forensic assessment tools and interview protocols for use with children and adolescents. The goal is to highlight the collaborative work of scholars and practitioners in translating science into practice and encouraging the transformation of the juvenile justice system into a system that applies a developmental framework to all decisions.

1 Introduction

There are significant societal costs associated with child and adolescent offenders and victims across a variety of domains, including legal, medical, and social services. Despite a steady decline in criminal offences committed by youth since the 1990s (Canadian Centre for Justice Statistics 2013; Office of Juvenile Justice and Delinquency Prevention 2014), concerns about adolescent offenders resulted in a number of reforms to the juvenile justice system that focused on accountability, punishment, and retribution (Penney and Moretti 2005; Scott and Steinberg 2008). As such, the nature of youth court evaluations changed (Grisso 2003). In addition to assessments for the purposes of disposition and rehabilitation, the youth criminal justice system required evaluations to assist with legal decisions concerning trial processes, institutional management, and protection of the public. Another significant reform within the criminal justice system developed out of the growing awareness of child maltreatment and the implications of children's involvement

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as victims and witnesses upon disclosures of abuse (Poole and Dickinson 2013). Despite a lack of consensus concerning whether child maltreatment has declined or remained stable over the years (Canadian Centre for Justice Statistics 2011; Finkelhor and Jones 2012; Gilbert et al. 2012), there is agreement that child maltreatment continues to be a significant concern given that a substantial number of children are victimized each year (Canadian Centre for Justice Statistics 2011; Office of Juvenile Justice and Delinquency Prevention 2013; Spatz Widom and Landry 2011). This chapter will focus on developmentally-sensitive, evidence-based instruments and approaches for evaluating child and adolescent offenders and victims. The first section will address the assessment of adolescent offenders, with a focus on tools designed to measure risks and needs. The second section will address the evaluation of child victims, with a focus on investigative interviewing. In highlighting developmentally appropriate, evidence-based instruments and approaches, the goal is to acknowledge the collaborative work of scholars and practitioners who are motivated to translate science into practice towards the ultimate goal of effectively responding to the needs of children and youth.

2 Assessing Adolescent Offenders

Scholars are increasingly calling for a developmental approach to the juvenile justice system (e.g. Scott and Steinberg 2008; Vincent and Grisso 2005; Vincent et al. 2009). This approach entails an understanding by policy makers and practitioners of developmental issues unique to adolescence that warrants differential approaches to assessment and intervention. Furthermore, consistent with the United Nations Convention on the Rights of the Child, this framework is guided by the best interests of the child and the importance of implementing a juvenile justice system that addresses the root causes of delinquency (United Nations 1989, 2007). First and foremost is acknowledging that adolescence is a period of transition. This is supported by research in biology, cognition, and social development (Scott and Steinberg 2008). In addition to the onset of puberty and brain maturation, adolescents are learning to navigate changes in identity and social roles. As a result, adolescents are more susceptible to the influence of their peers, impulsive, and willing to take risks. Across adolescence and into adulthood, there are improvements in logical reasoning, decision making, and emotion regulation. Second, principles from the field of developmental psychopathology highlight that different pathways lead to the same outcome (referred to as equifinality) and that the same pathway leads to different outcomes (referred to as multifinality; Cicchetti and Rogosch 1996). Put more concretely, adolescent offenders are a heterogeneous group and not all youth identified as high risk possess the same number or type of risk factors. Related to this, risk factor research by developmental psychopathologists notes the importance of interactions between youth and their environments (Kazdin et al. 1997) whereby this developmental period is viewed as dynamic and malleable. Finally, it is well documented that antisocial behavior desists by late

adolescence and early adulthood for the vast majority of youth (Burke et al. 2003; Moffitt 1993). A number of large-scale, longitudinal studies indicate that there are two distinct groups of adolescent offenders: one group exhibits problematic behaviors early in childhood and continues to display antisocial and criminal behaviors throughout adolescence and adulthood, and another group begins their antisocial and criminal behavior in adolescence and discontinues these behaviors by early adulthood. The vast majority of youth fall into the latter group, but the former group is responsible for the majority of crime. Furthermore, the causes and correlates of offending for the two groups differ. What these issues illustrate is that context is particularly important to consider when assessing and evaluating youth, and assessments should be conducted more frequently with youth because of the changes that occur during this developmental stage.

Beyond adopting a developmental approach to assessing and evaluating youth, policy makers and practitioners should select instruments and tools that are evidence-based. The following criteria should be present for a measure to be considered evidence-based (Grisso 2005a; Vincent et al. 2009): first, there should be empirical support for the items included in the instrument. Ideally, there will be a published manual accompanying the tool that summarizes this evidence. In the absence of a manual, there should be evidence from peer-reviewed studies that have been conducted by independent researchers (i.e. individuals who did not author the instrument). Second, the instrument should possess an internal structure and reliability. The strongest evidence for this will be factor analytic studies, but more commonly, this criterion is demonstrated through internal consistency, test-retest reliability, and inter-rater reliability. Finally, the instrument should demonstrate validity. There are multiple forms of validity, such as concurrent and predictive, and more weight may be placed on the type(s) of validity relevant to the nature of the tool and its intended use.

Social science research concerning developmental issues and psychometric properties of instruments need to be considered in light of the decisions that criminal justice system personnel must make. Once a youth enters the juvenile justice system, s/he faces a number of assessments conducted at different stages of processing in order to make decisions about treatment amenability, risk for violence, and risk for recidivism (Mulvey 2005; Vincent et al. 2009). As such, any assessment tool should be relevant to answering the primary issue of concern at that point in the juvenile justice system. In other words, the key question faced by criminal justice system personnel will differ at intake, trial, sentencing, and supervision. At intake, decisions typically focus on the appropriateness of diversion. During the trial process, decisions typically focus on pretrial detention and transfer/waiver to adult court. Upon a finding of guilt, decisions typically focus on appropriate placement (community versus custody) and treatment plans. At supervision, decisions typically address questions of appropriate monitoring and interventions within the community. Furthermore, tensions can sometimes arise between theory and practice. On the one hand, scholars and researchers emphasize the need for decision-makers to use evidence-based tools that are developmentally-informed and conform to psychometric test standards. On the other hand, practitioners are

faced with difficult decisions concerning individual youths and their decisions may largely be guided by legal requirements concerning rehabilitation and protection of the public. It appears that one way to resolve this, as noted by Mulvey (2005), is for researchers to develop and validate tools focused on a specific decision within the juvenile justice system. The following review summarizes some of the existing assessment tools that policy makers and practitioners may want to consider for use when evaluating youth. To briefly summarize, assessment tools provide a comprehensive, individualized profile of the youth to assist in long-term case management and intervention strategies (Grisso 2005b). In contrast, screening tools are brief and assist in short-term decision-making to address issues that require immediate attention. The decision to focus on assessment tools is guided by the importance of a thorough evaluation in order to most effectively respond to the needs of young persons as individuals.

2.1 Early Assessment Risk Lists for Boys and Girls

The Early Assessment Risk List for Boys (EARL-20B; Augimeri et al. 2001) and the Early Assessment Risk List for Girls (EARL-21G; Levene et al. 2001) are guides designed to assist evaluators with assessing and managing risk for violence and antisocial behavior in children with disruptive behavior problems under the age of 12 years (Augimeri et al. 2010; Augimeri, et al. 2005). The EARL-20B and EARL-21G take approximately 15 min to code following a file review of the child and an interview with the child's parents and collateral informants. The assessments can be completed by a single evaluator or a team of evaluators who are professionals with experience working with high-risk children. Both measures are comprised of risk factors across three domains (Family, Child, and Responsivity). The Family items assess the degree to which the child is nurtured, supported, supervised, and encouraged (e.g. parenting style). The Child items assess the degree to which the child possesses individual risk factors that are associated with future violence and antisocial behavior (e.g. academic performance). The Responsivity items assess the degree to which the child and his/her caregiver are able and willing to engage in and benefit from treatment. The authors devised separate guides for boys and girls based on evidence of gender differences in risk factors. However, there is considerable overlap between the two guides. The only two differences are that one additional item has been included in the Family domain, and one item in the Child domain is distinct in the EARL-21G. The risk factors are rated on a 3-point scale (0 = not present, 1 = somewhat present, 2 = present) and evaluators can indicate whether an item is of particular concern by noting it as a critical risk factor. The items can be summed to yield a total score; the maximum total score is 40 for the EARL-20B and 42 for the EARL-21G. At the same time, given that the EARL instruments adopt a structured professional judgment approach, the evaluator provides an overall risk rating of low, moderate, or high based on a consideration of all risk factors. In general, higher total scores indicate greater risk. If an

evaluator's overall risk rating deviates considerably from the total score, s/he should provide an explanation for this divergence. The EARL instruments are designed to identify children at risk for antisocial and violent behavior at an early age in order to inform appropriate interventions. Therefore, in jurisdictions that hold youth criminally liable under the age of 12 years, the EARL instruments are likely best suited for assessing such children for diversion, disposition, and supervision. In jurisdictions whereby the minimum age of criminal liability is 12 years, the instruments are likely best suited for use by police and social service agencies that come into contact with disruptive children and treatment providers who administer interventions to disruptive children.

Existing evidence indicates that the EARL-20B and EARL-21G are reliable and valid tools. Enebrink et al. (2006b) found excellent inter-rater reliability of the EARL-20B total (0.92), Family (0.90), and Child (0.91) scores, and moderate agreement of the overall risk rating ($\kappa = 0.48$). Similarly, there is evidence for good to excellent inter-rater reliability of the EARL-21G total scores, ranging from 0.67 to 0.80 (Augimeri et al. 2010). With respect to concurrent validity, the EARL-20B is associated with reactive and proactive aggression (Enebrink et al. 2006b) and delinquency (Augimeri et al. 2010), and both EARL measures are associated with behavior problems (Augimeri et al. 2010; Enebrink et al. 2006b) and bullying (Jiang et al. 2011). Finally, there is evidence of predictive validity. The EARL-20B predicts aggression and conduct problems (Enebrink et al. 2006a), and both instruments predict criminality (Augimeri et al. 2010; Augimeri et al. 2012). Although this evidence is promising, it is important to note that there are limited studies of the EARL instruments. In particular, there is a need for more independent investigations of the measures, studies examining internal consistency, and stronger evidence for the EARL-21G.

2.2 Risk-Sophistication-Treatment Inventory

The Risk-Sophistication-Treatment Inventory (RST-I; Salekin 2004) is a clinical rating scale designed to assist mental health professionals with assessing and managing juvenile offenders between the ages of 9 and 18 years (Salekin et al. 2005). The RST-I ratings are based on an interview with and file review of the youth and collateral informants. Professionals who complete the assessment should have considerable knowledge, skill, and experience with juvenile offenders and hold an advanced professional degree with appropriate training in administering and interpreting psychological tests. The RST-I is comprised of 45 items across three domains (Risk for Dangerousness, Sophistication-Maturity, and Treatment Amenability). The Risk for Dangerousness domain assesses a youth's risk for future violence or recidivism. The Sophistication-Maturity domain assesses a youth's emotional and cognitive maturity. The Treatment Amenability domain assesses a youth's ability to respond to treatment. Each domain is further delineated into three subscales. The Risk for Dangerousness subscales are Violent and Aggressive

Tendencies (e.g. engages in unprovoked violence), Planned and Extensive Criminality (e.g. leadership role in crimes), and Psychopathic Features (e.g. lacks empathy). The Sophistication-Maturity subscales are Autonomy (e.g. internal locus of control), Cognitive Capacities (e.g. foresight), and Emotional Maturity (e.g. ability to delay gratification). Furthermore, a Criminal Sophistication subscale can be derived from the Sophistication-Maturity domain by noting whether the items are used for prosocial or antisocial purposes. The Treatment Amenability subscales are Psychopathology—Degree and Type (e.g. treatability of psychopathology), Responsibility and Motivation to Change (e.g. motivated to engage in treatment), and Consideration and Tolerance of Others (e.g. feels guilt/remorse). Each item is rated on a 3-point scale (0 = absence of the characteristic/ability, 1 = subclinical/moderate characteristic/ability, 2 = presence of the characteristic/ability) whereby the items are summed to yield domain and subscale scores. These scores can be compared to the norms published in the manual to categorize youth as low, medium, or high; separate norms are reported for boys and girls. The RST-I is designed primarily to assist with decisions concerning transfer to/from adult court and disposition, but can also be utilized during supervision to assist with case management of treatment plans.

Existing evidence indicates that the RST-I is a reliable and valid tool. Inter-rater reliability of the domain scores vary from good to excellent, with reports ranging from 0.60 to 0.94 (Leistico and Salekin 2003; Spice et al. 2010). Similarly, the domain scores possess good to excellent internal consistency, ranging from 0.69 to 0.87 (Spice et al. 2010). Regarding concurrent validity, evidences indicates that risk for dangerousness is positively associated with, whereas treatment amenability is negatively associated, with conduct disorder symptoms (Leistico and Salekin 2003; Spice et al. 2010), psychopathy (Leistico and Salekin 2003), aggression (Leistico and Salekin 2003), criminal history (Leistico and Salekin 2003; Spice et al. 2010), and transfer to adult court (Leistico and Salekin 2003; Spice et al. 2010). In addition, risk for dangerousness is negatively associated with, whereas treatment amenability is positively associated with, institutional treatment compliance (Leistico and Salekin 2003). With respect to sophistication and maturity, evidence indicates this domain is negatively associated with conduct disorder symptoms (Spice et al. 2010). In sum, the evidence for the RST-I is promising. However, more evidence is needed by independent researchers.

2.3 Structured Assessment of Violence Risk in Youth

The Structured Assessment of Violence Risk in Youth (SAVRY; Borum et al. 2006) is a guide designed to assist evaluators with assessing and managing violence risk in youth between the ages of 12 and 18 years (Borum et al. 2005; Borum et al. 2010). The SAVRY takes approximately 15 min to code after an interview with and file review of the youth and collateral informants. The assessments can be completed by professionals who are knowledgeable about adolescent

development and youth violence, and have expertise in conducting individual assessments. The measure is comprised of 24 risk factors across three domains (Historical, Social/Contextual, and Individual/Clinical) and six protective factors. The Historical risk factors assess past behaviors or experiences (e.g. early initiation of violence). The Social/Contextual risk factors assess the youth's environment and interpersonal relationships (e.g. peer rejection). The Individual/Clinical risk factors assess the youth's psychological functioning (e.g. risk taking/impulsivity). The protective factors are individual and contextual items that buffer the influence of risk factors (e.g. strong social support). The risk factors are rated on a 3-point scale (low, moderate, high) and the protective factors are rated on a binary scale (absent, present). The SAVRY adopts a structured professional judgment approach whereby evaluators provide an overall rating of low, moderate, or high risk for violence based on a consideration of the risk and protective factors. The primary purpose of the SAVRY is to assist evaluators with violence prevention and reduction. As such, the measure can be applied across all stages of the criminal justice system. The specific point at which the SAVRY is administered will depend on legal requirements and assessment policies concerning risk for violence and protection of the public.

Existing evidence indicates that the SAVRY is a reliable and valid guide. Inter-rater reliability of the overall and total risk ratings are excellent, with reports ranging from 0.79 to 0.97 (Hilterman et al. 2014; Lodewijks et al. 2008b; Lodewijks et al. 2008c; Meyers and Schmidt 2008; Penney et al. 2010; Spice et al. 2010; Viljoen et al. 2008; Welsh et al. 2008). Similarly, inter-rater reliability of the domain scores vary from good to excellent, with reports ranging from 0.60 to 0.96 (Hilterman et al. 2014; Lodewijks et al. 2008b, 2008c; Meyers and Schmidt 2008), although one study found low reliability for the Social/Contextual domain (Penney et al. 2010). With respect to internal consistency, the overall score demonstrates excellence, ranging from 0.83 to 0.98 (Hilterman et al. 2014; Spice et al. 2010; Welsh et al. 2008), whereas the domain scores vary from moderate to excellent, with reports ranging from 0.66 to 0.86 (Hilterman et al. 2014). Finally, there is evidence for predictive validity of the guide. The total scores/summary risk ratings are associated with institutional aggression and violence (Lodewijks et al. 2008c; Viljoen et al. 2008), institutional violations (Lodewijks et al. 2008c), and violent, non-violent, and general recidivism (Gammelgard et al. 2008; Hilterman et al. 2014; Olver et al. 2009; Penney et al. 2010; Schmidt et al. 2011).

2.4 Youth Level of Service/Case Management Inventory

The Youth Level of Service/Case Management Inventory (YLS/CMI; Hoge and Andrews 2003) is a 42-item actuarial risk/need tool that assesses the risks, needs, and responsivity factors of juvenile offenders between the ages of 12 and 17 years (Hoge 2005, 2010). The YLS/CMI takes approximately 30–40 min to score following an interview with and file review of the youth and collateral informants. The

assessments can be completed by professionals who have knowledge of child and adolescent psychology, and training in administering and interpreting the tool. Each item is rated on a binary scale (0 = absent, 1 = present) whereby the items are summed to yield eight subscale scores (Prior and Current Offenses, Family Circumstances/Parenting, Education/Employment, Peer Associations, Substance Abuse, Leisure/Recreation, Personality/Behavior, and Attitudes/Orientation) and an overall total score. The YLS/CMI also gives assessors the ability to note the youth's strengths and other concerns. The total score can be used to classify youth into four categories of overall risk/need: low (0–8), moderate (9–22), high (23–34), and very high (35–42). In addition, the measure includes a professional override feature that allows the assessor to estimate the youth's level of risk/need by considering all available information. If the estimate of risk/need arrived at through the professional override feature differs from that arrived at by summing the individual items, the assessor provides the reasons for the difference. The YLS/CMI is designed primarily to assist with the case management of juvenile offenders by identifying the youth's goals and procedures for attaining those goals. Therefore, this measure is best suited to assessing youth for disposition and supervision.

Existing evidence indicates that the YLS/CMI is a reliable and valid tool. Inter-rater reliability of the total scores varies from fair to excellent, with reports ranging from 0.51 to 0.98 (Hilterman et al. 2014; Marshall et al. 2006; Olver et al. 2012; Vieira et al. 2009; Viljoen et al. 2009). However, inter-rater reliability of the subscale scores varies from poor to excellent, with reports ranging from 0.03 to 0.78 (Hilterman et al. 2014; Welsh et al. 2008). With respect to internal consistency, total scores demonstrate excellence, ranging from 0.87 to 0.90 (Hilterman et al. 2014; Olver et al. 2012), whereas the subscale scores vary from poor to excellent, with reports ranging from 0.46 to 0.86 (Hilterman et al. 2014; Olver et al. 2012; Welsh et al. 2008). Finally, there is evidence for concurrent and predictive validity of the tool. The YLS/CMI total score is associated with externalizing, internalizing, and delinquent behavior (Schmidt et al. 2005), official charges and convictions (Marshall et al. 2006), institutional misconduct (Holsinger et al. 2006), and general, serious, and violent recidivism (Bechtel et al. 2007; Hilterman et al. 2014; Olver et al. 2009, 2012; Rennie and Dolan 2010; Schmidt et al. 2011; Schwalbe 2007; Viljoen et al. 2009).

The above review of some of the current evaluation tools illustrates that developmentally-informed, evidence-based measures exist for use with youth who come into contact with the criminal justice system for the purposes of assessment and management. However, as noted earlier, some of these instruments are limited by the small number of independent validation studies. Furthermore, the appropriateness of the tools across gender and ethnicity has not been adequately addressed. Studies of the SAVRY have produced mixed findings, with one study illustrating that the measure is not as effective at predicting recidivism in females (Schmidt et al. 2011) and others concluding that it predicts violent recidivism comparably in males and females (Lodewijks et al. 2008a; Meyers and Schmidt 2008; Penney et al. 2010). Recent studies and meta-analyses indicate that the YLS/CMI predicts recidivism comparably in males and females (Olver

et al. 2009, 2012; Schwalbe 2008), and Aboriginals and non-Aboriginals (Olver et al. 2009). However, this is based on a small number of studies and there is evidence that the YLS/CMI is not as effective in predicting recidivism in females (e.g. Onifade et al. 2008; Schmidt et al. 2011) and ethnic minorities (e.g. Onifade et al. 2008).

3 Translating Science into Practice

More importantly, an outstanding issue with respect to youth assessment instruments is that of context. Much of the evidence for the reliability and validity of the tools is based on information obtained in a research context whereby research assistants complete ratings of the youth, and the evaluations do not have implications for placement and services. As such, questions remain concerning the field reliability and validity of the measures. Fortunately, this issue is receiving attention and the emerging findings are promising. In their analysis of YLS/CMI assessments completed by mental health professionals and probation officers, Schmidt et al. (2005) found good to excellent inter-rater reliability of the subscale scores and predictive validity for serious reoffending. Similarly, SAVRY subscale, total, and summary ratings completed by juvenile probation officers possess good to excellent inter-rater reliability (Vincent et al. 2012). With respect to predictive validity, SAVRY total scores completed by youth classification and program officers are associated with violent and non-violent recidivism (Vincent et al. 2011), and SAVRY summary ratings completed by youth probation officers are associated with probation completion and revocation (Childs et al. 2013). In sum, the reliability of juvenile justice system personnel evaluations is comparable to the reliability estimates found in research studies and there is some evidence for the predictive ability of juvenile justice personnel assessments. However, future research is needed in these areas and with other developmentally-informed, evidence-based tools to provide a more optimistic conclusion.

Once the field reliability and validity of evidence-based juvenile instruments are established, an important next step is to illustrate whether their use contributes to changes in policy and practice. This is arguably the ideal standard for assessing whether science translates meaningfully into practice. Emerging evidence examining the SAVRY and YLS/CMI is encouraging. Vincent et al. (2012) conducted a multi-site, pre-post study of six youth probation offices that implemented either the SAVRY or YLS/CMI. Interviews with the juvenile probation officers prior to, 3 months after, and 10 months after implementation of the tools found an increase over time in differential placement/disposition and service recommendations by risk level. In addition, there was a decrease in perceptions of juvenile risk for recidivism and an increase in the use of the tools to assist with decisions concerning disposition, supervision, and services. Similarly, Vincent et al. (2012) compared youth on probation approximately 6 months prior to and 6 months after implementation of the SAVRY, and tracked these youth for approximately 1 year. They found

that implementation of the SAVRY resulted in fewer detention dispositions, more probation dispositions, more service referrals, and more youth completing services successfully. Furthermore, risk ratings influenced service referrals and supervision level such that high-risk youth were more likely to receive more service referrals and maximum community supervision. Overall, this resulted in a 30 % reduction in the use of maximum and intensive supervision. It is important to note that these achievements were likely due to a thorough implementation process, which included stakeholder buy-in, comprehensive training, changes in office policy, and standardized procedures for assessment and case management. In sum, developmentally-informed, evidence-based practices can be cost-effective and lead to positive changes in assessing and managing youth.

4 Assessing Child Victims and Witnesses

The use of developmentally-informed, evidence-based instruments is equally important when dealing with child victims and witnesses. This section will review developmental approaches to interviewing children, with a focus on forensic investigative interview protocols to underscore the importance of addressing the needs of child victims and witnesses involved in the criminal justice system. However, the ability to respond to their needs is dependent on society's ability to accurately measure the prevalence of child maltreatment and identify children at risk of maltreatment (for a brief review of some of the assessment methods for determining the prevalence of child maltreatment, please refer to the World Health Organization's (2006) report, *Preventing Child Maltreatment*). Significant progress has been achieved in developed countries through child protection and mandatory reporting laws, but much work remains to be done in both developed and developing countries due to cultural issues surrounding parenting and the right to privacy within the family, and the lack of systems and structures in place to assist professionals who intervene (Spatz Widom and Landry 2011; World Health Organization 2002, 2006). An important first step in this regard is to encourage collaboration and communication across the social service, medical, and criminal justice systems towards detecting and responding to child victims and witnesses.

Similar to the comments noted earlier concerning juvenile offenders, a developmental approach to addressing child victims and witnesses entails an understanding of the unique characteristics of this population in order to adopt appropriate strategies. Researchers have highlighted a number of important factors that policy makers and practitioners should be mindful of when developing child interview protocols (e.g. Goodman et al. 2011; Lamb et al. 2007c; Poole and Dickinson 2013). One of the most important issues to acknowledge is developmental differences in memory, language, and communication. In general, young children's narratives are shorter than that of older children and adults, but there are no differences in accuracy. This is largely because children have less well developed memory abilities and vocabulary skills. The second important issue concerns

fantasy and suggestibility. Existing evidence indicates that children over the age of 6 years are comparable to adults in their ability to distinguish between events that are imagined versus experienced. However, it is not clear to what extent young children have difficulty making this distinction. What researchers have found is that specific interview strategies, such as the use of props, can contribute to imagined details in young children's narratives. With respect to suggestibility, there is considerable evidence that young children are more susceptible to misleading questions. However, a number of studies have also found that children are resistant to suggestion under certain circumstances. The seemingly equivocal statements concerning children's abilities to recount information highlight that a number of external factors contribute to their ability to remember and recall experiences, and influence the quantity and quality of information. As a result, researchers in the fields of child development, cognitive psychology, and forensic psychology have developed a number of guidelines that should be followed when conducting investigative interviews with children and youth, such as rapport building, using free recall questions, and avoiding leading and yes/no questions (Perona et al. 2006; Poole and Dickinson 2013).

There are three interview techniques currently advocated for by scholars that are based on empirical research: the Cognitive Interview (Fisher and Geiselman 1992), the Step-Wise Interview (Yuille et al. 1993), and the National Institute of Child Health and Human Development (NICHD) Investigative Interview Protocol (Lamb et al. 2007a). These protocols possess similar features and guidelines, such as recommending the use of free recall questions to elicit narratives. Importantly, all of the protocols are consistent with the 2005 United Nations guidelines, Justice in Matters Involving Child Victims and Witnesses of Crime (United Nations Office on Drugs and Crime 2009), with respect to advocating for child-sensitive interview techniques that minimize distress and maximize information quality. This section will focus on the NICHD Investigative Interview Protocol as it incorporates best practices supported by experts and translates these recommendations into an operational guideline for practitioners by providing a detailed script (for a brief review of the Cognitive Interview and Step-Wise Interview, please see Goodman and Melinder 2007). Furthermore, the NICHD Investigative Interview Protocol is a prime example of the translation of science into practice. The developers of the protocol responded to research illustrating that guidelines recommended by scholars for conducting interviews with children are seldom followed, despite awareness of best practices and extensive training. Before moving to a detailed discussion of the NICHD Investigative Interview Protocol, it is important to acknowledge an effort by the state of Michigan's Governor's Task Force on Child Abuse and Neglect, in conjunction with the Department of Human Services (2011), to implement a state-wide forensic interviewing protocol. This protocol is the result of collaborative work between researchers and practitioners. The user-friendly guide is comprehensive and accessible, and is a model example of how stakeholder involvement plays an important role in the translation of science into practice.

4.1 NICHD Investigative Interview Protocol

The NICHD Investigative Interview Protocol is an empirically-based, structured interview protocol for use with child victims (Lamb et al. 2007a). Variations of the protocol have been developed for use with child witnesses (Lamb et al. 2003) and juvenile suspects (Hershkowitz et al. 2004). The NICHD Investigative Interview Protocol includes five phases that address the entire investigative interview process. The first phase is the introduction, whereby the child is introduced to the interviewer, the purpose of the interview is explained to the child, and the rules and expectations of the interview are described. Many jurisdictions address the issue of truth telling in this phase. The second phase is rapport building, whereby the goal is to create a relaxed, supportive environment for the child. The third phase is training in episodic memory, whereby a recently experienced neutral event is elicited. This is designed to train and familiarize the child with the interview techniques that will be utilized when discussing the incident under investigation. The fourth phase is substantive issues, whereby the incident under investigation is introduced and elicited, and information is obtained concerning the disclosure of the incident. During this phase, the interviewer begins with free recall questions or prompts and only after this is exhausted does the interviewer proceed to focused recall questions. The final phase is the closing, whereby the child is provided with the opportunity to provide any other information and ask questions. This phase ends with the child engaging in a conversation about a neutral topic in order to conclude the process in an emotionally-neutral manner.

Evaluations of the NICHD Investigative Interview Protocol indicate it is an effective strategy for eliciting accounts among children as young as 3 years of age (Cyr and Lamb 2009; Lamb et al. 2007a, 2007c; Sternberg et al. 2002). In addition to improvements in the nature and structure of interviews, adherence to the protocol leads to better quality narratives. For example, the interviews are better organized, interviewers adhere to best practices by using more free recall questions, and children provide more details. Furthermore, there is some evidence to suggest that the protocol facilitates the reporting of accurate information (Brown et al. 2013; Lamb et al. 2007b). A contributing factor in the success of the NICHD Investigative Protocol is likely the manner in which training is administered (Lamb et al. 2007a). Practitioners are provided with an overview of the protocol's theoretical framework to demonstrate how the components of the protocol are supported by research on children's memory, language, communication, and development. This is followed by close supervision in the use of the protocol and monthly workshops, whereby supervision involves analysis and feedback of post-training field interviews. The training procedures were implemented based on empirical evidence illustrating the importance of continued supervision and ongoing feedback (Lamb et al. 2000; Lamb et al. 2002). Importantly, there is emerging evidence that the use of the NICHD Investigative Interview Protocol contributes to the outcome of legal cases. Pipe et al. (2008) found that use of the protocol increased the probability of charges being filed and as a result, more cases were

resolved through a guilty plea. In addition, of the cases that proceeded to trial, those that utilized the protocol were more likely to result in a finding of guilt. Together, these findings suggest that translating science into practice involves not only a comprehensive process for implementing and maintaining best practices over time, but also efforts to evaluate whether and how such practices address the ultimate issue at hand.

5 Conclusion

Considerable advancements have been made in the criminal justice system to address the unique needs of child and adolescent offenders and victims. A number of assessment tools and strategies currently exist that are developmentally sensitive and evidence-based. At the same time, improvements can be made with respect to the ability of assessment tools to generalize across gender and ethnicity, and in our understanding of the optimal interview strategies for child and adolescent witnesses. However, these limitations should not detract from the efforts made by researchers and scholars to translate science into practice by addressing how these methods are most effectively utilized by practitioners and whether these tools lead to meaningful changes in policy and practice. In sum, it is important for researchers and practitioners to continue their collaborative work to answer the ultimate legal issues of concern. The hope is that these efforts will transform juvenile justice system policies and practices in such a way that a developmental approach is adopted for all decisions concerning children and youth.

Five Questions

1. What are the advantages and disadvantages of implementing jurisdiction-wide screening tools and/or assessment tools within the juvenile justice system?
2. What can researchers do to encourage the use of developmentally-informed, evidence-based assessment tools with adolescent offenders?
3. What are the necessary components of effective training for practitioners (e.g., police, probation officers, social workers) in the use of youth assessment protocols?
4. Current investigative interview protocols are primarily designed for youth victims of sexual assault. Is an investigative interview protocol specific to youth witnesses required? Why or why not?
5. Is a juvenile justice system that adopts a developmental framework attainable and sustainable? What would this system entail and what factors are necessary to maintain this approach?

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The Problem of Risk Assessment: Can Better Crime Prognoses Reduce Recidivism?

Michael Alex and Thomas Feltes

Abstract Every society has to face the situation that there are a very small group of people who do not respect elementary rules of human behavior and who commit very serious violent crimes again and again. But how do we know who belongs to this group and who does not? To predict the probability of people re-offending is one of the most challenging tasks for experts and has become an important part of criminal policy in societies aiming to completely abolish crime. Referring to several studies on recidivism, including an investigation accomplished by the Ruhr-Universität Bochum's Department of Criminology, the limitations of crime prognosis and unjustified promises of crime forecast procedures are pointed out in this chapter. Despite all recent efforts to improve crime prediction, we are unable to predict human behavior precisely. As a result, other means than unlimited imprisonment of people regarded to be very dangerous by psychiatric or psychological experts are recommended to manage the problem of crime prevention in a way that considers both human rights' aspects as well as public needs.

1 Introduction

The English eighteenth-century lawyer William Blackstone once said, "It is better ten guilty persons escape than that one innocent suffer" (quoted in Mangino 2013). Things have changed a lot since that time, and not only in England. After centuries of discussions, which started with Robert Martinson's famous "Nothing Works", and continued on to intensive evaluations and meta-studies, such as by LW Sherman's "What Works and What Doesn't – and What's Promising?" (Sherman et al. 1997), politicians nowadays are promising to eliminate crime completely through preventive measures. Scholars have declared the twenty-first century the century of prevention and analyzed a preventive and punitive turn in penal and police law (Crawford 2009). The idea of "pre-crime" strategies (Zedner 2007) was

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not only developed by the police (such as in the context of the movie “Minority Report”), but also criticized as “pre-punishment”. In the aftermath of 9/11, such ideas have been taken as necessary until the NSA scandal in 2013 when more and more people realized that such pre-crime activities might infringe upon citizen rights. To predict where crime will happen is one thing, but to predict, whether an offender will reoffend is something else entirely.

Whenever a new law is established or—more often—when harsher sentences for certain crimes are demanded, this is done in favor of prevention: to prevent those people who have not yet offended from doing so (usually by asking for more of the same: more laws and harsher sentences), and to stop those who have already committed a crime from doing it again. The prevention of recidivism was and still is in some German states the primary goal in the execution of prison sentences.¹

The German Criminal Code² is one of very few European Criminal Codes that distinguishes between penalties and so-called “measures of correction and prevention” as a state reaction to punish an offender. This twin-track system of sanctions had been considered and discussed since the end of the nineteenth century when Franz von Liszt started the discussion in 1882. The care orders were incorporated into the Criminal Code by the “act of dealing with dangerous habitual offenders and on measures of correction and prevention” (the “Habitual Offenders Act”) on November 24, 1933, under Adolf Hitler’s Nazi regime. The rules of “Sicherungsverwahrung” (translated as “preventive order/custody” in the following text) remained in force essentially unchanged after 1945 in West Germany, although the allies called for the retraction of this law. But several reforms were enacted by the legislator from 1969 onwards, instead of abolishing the measure of preventive custody.

Penalties in the German Criminal Code (see Articles 38 et seq.) consist mainly of prison sentences and fines. The penalty is fixed according to the defendant’s guilt (Article 46 § 1 of the German Criminal Code).

A care order (see Articles 61 et seq. of the German Criminal Code) consists mainly of either a placement in a psychiatric hospital or a detoxification facility (Entzugsanstalt) or assigned a preventive order (Article 66 StGB), according to a proclivity prognosis. Proclivity, in the sense of Article 66 StGB (“Hang”), means the attitude of a person that predisposes him to commit a crime, that is, the intention to commit criminal offenses, or at least the willingness to do so at the earliest opportunity (Müller et al. 2013, p. 9). The purpose of the measures of correction and prevention is to rehabilitate dangerous offenders or to protect the public. They may be ordered for offenders in addition to their punishment (compare Articles 63 et seq. StGB). They must, however, be proportionate to the gravity of the offences committed by, or to be expected from, the defendant as well as to his/her³ dangerousness (Article 62 StGB).

¹ After the right for legislation of the prison law had been moved to the states (formerly it was under the Federal Republic), some states put “security” in first place, and prevention (meaning: preparing the prisoner for not committing crimes after release) second.

² There is (contrary to the prison laws) just one criminal code for all of Germany.

³ Only few female offenders have ever been sentenced to such a preventive measure. In 2011, there have been a total of 84 people in care order, and three female offenders in preventive custody.

The temporal applicability of provisions in the German Criminal Code depends on whether they relate to penalties or measures of correction and prevention. The penalty is determined by the law, which is in force at the time of the act (Article 2 § 1 of the German Criminal Code); if the law in force upon completion of the act is amended before the court's judgment, the more lenient law applies (Article 2 § 3). On the other hand, decisions on measures of correction and prevention are based on the law in force at the time of the decision unless the law provides otherwise (Article 2 § 6) (European Court of Human Rights in the case *M v. Germany*, application no. 19359/04, judgment of December 17, 2009, p. 11).

The idea of preventive custody was to reduce the risk of relapse of prisoners who had committed severe crimes several times before by keeping them in prison after the time of the sentence was finished. Preventive custody was announced in addition to the sentence in the judgment of the court. In 1934, preventive custody was inflicted against 3723 convicted persons, and in 1939 and 1940, a little less than 2000 convicted persons were sentenced to this additional imprisonment.

In 1954, East Germany cancelled the rules of preventive custody because of their Nazi origin, but in West Germany, the Allies accepted most of the regulations of the so-called "Habitual Delinquents Act." In 1968, preventive custody was imposed on 268 offenders, the largest number since 1945. From 1975 on, preventive custody was not permitted to last longer than ten years when imposed for the first time, but this did not change the tendency of the courts to neglect this additional instrument. The number of persons kept in prison after the end of the regular penalty decreased from 337 in 1975 to 176 in 1996, the lowest rate ever. During the negotiations to accomplish the reunification of Germany in 1990, it was decided to regard the different development in both countries and restrict preventive custody to offences committed on the territory of former West Germany. This agreement was cancelled by the German parliament in 1995.

After singular cases of murder involving children occurred in Belgium and Germany in 1996, efforts were intensified to make it easier for courts to impose preventive orders in addition to the initial penalty, especially against sexual offenders. As a result, in 1998, the number of preceding offenses necessary was lowered and the limit of ten years as the longest time in preventive custody was cancelled by the "Combating of Sexual Offences and Other Dangerous Offences Act" (*Gesetz zur Bekämpfung von Sexualdelikten und anderen gefährlichen Straftaten*) of January 26, 1998, which came into force on January 31, 1998. In 2002 and 2004, the Criminal Code was amended, establishing the possibility of imposing preventive custody on proviso or even retroactively after the court sentence had been imposed because of new incidents observed afterwards. German courts took care that only extremely severe incidents in prison were suitable to impose preventive custody retroactively, and in most cases applicants had to be released from prison. On December 17, 2009, and in the judgments that followed, the European Court of Human Rights held unanimously that there had been a violation of Art. 5 § 1 (right to liberty and security) of the European Convention on Human Rights by German Courts, retroactively neglecting the 10 year limit for the first period of preventive custody or the retroactive ordering of preventive

custody. Due to all these judgments, prisoners had to be released from prison, although prison-officials and psychiatric and psychological experts had argued that there was a high risk they might seriously re-offend.

2 The Risk of Reoffending: Empirical Studies on Recidivism

In Germany, only a few studies have examined the recidivism of small groups released after their court decisions, even though they were still regarded as dangerous. Rusche (2004) examined 32 former inmates from psychiatric-forensic hospitals in East Germany who had to be released after the reunification because their hospital stay was unlawful. Several experts had regarded them as very dangerous. Eight of these reoffended, five of them with severe sexual or violent delinquency. This result is similar to the legal probation of a second group of 31 regularly released patients. Kinzig (2010) studied the records of 22 persons released from preventive custody and found that of the eight of them who had committed new offenses, two of them were registered with severe violent crimes.

Sepejak et al. (1983), Klassen and O'Connor (1988) and Lidz et al. (1993) examined the recidivism rate after release from psychiatric hospitals and found out that in 41–47 % of all cases with negative crime prognosis, no relapse occurred (false positives).

Müller et al. (2013) examined all cases that were finally adjudicated according to the German Federal Supreme Court (Bundesgerichtshof, BGH). 37 decisions by the Federal Supreme Court were available up to the end of the study on June 17, 2008. By May 2010, eight preventive custody decisions of lower courts were confirmed by the Supreme Court and the affected persons were retroactively sent to preventive custody; in 29 cases, the orders were overruled by the Supreme Court and, as a result, the persons affected had to be released immediately. Case files were submitted for 25 of these persons who had been considered to be highly dangerous but ultimately were not taken retroactively into preventive custody because there was not enough evidence that they became dangerous after the original judgment. Although there were only 14 corresponding expert predictions, all 25 cases were included in the study to demonstrate the validity of risk assessment (Müller et al. 2013, p. 9) (Table 1).

A detailed analysis of sex offender recidivism in the state of New York shows that only 6 % of 556 sex offenders released from state prisons in 1986 were returned to prison for a new sex crime (Canestrini 1996). Between 1985 and 2002, a total of 12,863 sex offenders were released from state prisons. Only 272 of these (2.1 %) were returned to prison for new sex crimes within three years of their release (Kellam 2006).

Probation is the most common sentence for sex offenders in New York. Of the 2944 sentences for offenses requiring registration on the Sex Offender Registry

Table 1 Prediction based on determination of proclivity and legal probation

Group	Experts’ recommendation: preventive custody, offender dangerous	Experts’ recommendation: no preventive custody, no dangerous offense expected
No recidivism/mild recidivism	5/25	4/25
	(20 %)	(16 %)
	False-positive	Correct-negative
Severe recidivism (penalty at least 1 year prison)	5/25	0
	(20 %)	(0 cases)
	Correct-positive	False-negative

Table 2 Proportion of registered offenders rearrested

Proportion of registered sex offenders rearrested (among 19,827 offenders on the registry on March 31, 2005)		
Time from registration date (year)	Any new arrest (%)	Any new registrable sex offense (%)
~1	15	2
~2	24	3
~5	41	6
~8	48	8

Source: DCJS: NYS Sex Offender Registry and NYS Computerized Criminal History Data Base

(SOR) in 2006, 1206 were for probation, representing 41.0 % of the total. Prison sentences accounted for 31.0 % (913) and sentences to local jails accounted for 16.9 % (500). There were 325 offenders in the “other” sentencing category, which includes fines and conditional discharges. A small number of sentences were categorized as unknown (120).

A study that also included those sentenced to probation and county jails examined 19,827 offenders on the New York State Sex Offender Registry on March 31, 2005, see Table 2.

The DCJS data above included probationers, as well as parolees, those under custody, and offenders whose sentence had expired (New York State Division of Probation and Correctional Alternatives 2007).

Utilizing time-series analyses, a study examined differences in sexual offense arrest rates before and after the enactment of New York’s Sex Offender Registration Act. Results provided no support for the effectiveness of registration and community notification laws in reducing sexual offending by: (a) rapists, (b) child molesters, (c) sexual recidivists, or (d) first-time sex offenders. Analyses also showed that over 95 % of all sexual offense arrests were committed by first-time sex offenders, casting doubt on the ability of laws that target repeat offenders to meaningfully reduce sexual offending (Sandler et al. 2008).

In a study assessing the practical and monetary efficacy of Megan’s Law in New Jersey, 550 released sex offenders were examined. Ultimately, 9 % of them were

re-arrested for a sex crime within a time at risk of approximately six and a half years (Zgoba et al. 2008).

In 1999, Margaret A. Alexander examined the utility of sexual offender's treatment, considering that efforts to treat sexual offenders had proliferated over the last 50 years. At that time, several authors had addressed current views of sexual offender treatment efficacy. Some maintained that offenders can benefit from treatment while others argued that the vast majority cannot. Some researchers said that the field of sexual offender treatment was too new to be able to accurately determine whether or not treatment works. This latter group noted that most studies in this field had not yet reached the point at which meta-analytic techniques could be applied; for this reason, no definite statement could be made about the utility of treatment. Alexander's analysis examined the issues from a slightly different perspective. Data from a large group of studies were combined to identify patterns, which could be examined later in more detail. More specifically, 79 sexual offender treatment outcome studies were reviewed, encompassing 10,988 subjects. Recidivism rates for treated versus untreated offenders were investigated according to age of offender, age of victim, offense type, type of treatment, location of treatment, decade of treatment, and length of follow-up. Each study was used as the unit of analysis, and studies were combined according to the number of treated versus untreated subjects who reoffended in each category. The 10,988 subjects were divided into the subtypes shown in Table 3.

Under specific conditions (type of intervention, sexual offender subtype), less than 11 % of treated offenders reoffended, with juveniles responding particularly well to treatment. This led to the conclusion that the question of how best to treat may be as complex as the reasons people offend. Even though research remains in the formative stages, what has been learned so far has practical utility. A variety of treated sexual offenders reoffend at rates below 11 %. This finding suggests that some effective components of the treatment process may have been identified. Practitioners working with offenders should master standard curricula explicating these treatment tools, so they can apply them in a uniform and consistent manner. Future research could then enhance what is already known about how to treat sexual offenders (Alexander 1999, p. 10).

Table 3 Subjects in the data pool

Subject type	Treated recidivism rate	Untreated recidivism rate
Juveniles ($N = 1.025$)	7.1 % (73/1.025)	No data available
Rapists ($N = 528^*$)	20.1 % (79/393)	23.7 % (32/135)
Child molesters ($N = 2.137^{**}$)	14.4 % (41/1.676)	25.8 % (119/461)
Exhibitionists ($N = 331$)	19.7 % (61/310)	57.1 % (12/21)
Types not specified ($N = 6.967$)	13.1 % (786/5.979)	12.0 % (119/988)
Totals ($N = 10.988$)	13.0 % (1.240/9.383)	18.0 % (282/1.605)

*Does not include 103 juveniles

**Does not include 47 juveniles

In a meta-analytic review, Hanson et al. (2002) examined the effectiveness of psychological treatment for sex offenders by summarizing data from 43 studies. The 43 studies examined a total of 5078 treated sex offenders and 4376 untreated sex offenders. Averaged across all studies, the sexual offense recidivism rate was lower for the treatment groups (12.3 %) than the comparison groups (16.8 %, 38 studies, unweighted average). A similar pattern was found for general recidivism, although the overall rates were predictably higher (treatment 27.9 %, comparison 39.2 %, 30 studies). These recidivism rates were based on an average 46-month follow-up period using the variety of recidivism criteria reported in the original studies (Hanson et al. 2002, p. 181). The authors came to the conclusion that given the large numbers in their study (9454 offenders in 43 studies), the result that the recidivism rates of treated sex offenders were lower than the recidivism rates of untreated sex offenders cannot be seriously disputed. What can be disputed, in their view, are the reasons for the group differences. “Did the treatment reduce the offenders’ recidivism rates, or were the observed differences produced by unintended consequences of the research design? We believe that the balance of available evidence suggests that current treatments reduce recidivism, but that firm conclusions await more and better research” (Hanson et al. 2002, p. 186).

3 Problems of Risk Prediction

Crime prognosis has always been a very controversially discussed matter in the field of psychiatry, psychology, and criminology because in most cases it is almost impossible to predict precisely how a person will actually act in a certain situation. Nevertheless, risk prediction is becoming more and more important in split societies claiming to avoid risks for their members. Politicians promise complete safety from all kinds of threats, and fear of crime is a favorite subject to establish preventive measures. Consequently, the methods of crime prognosis have developed rapidly during the past 20 years. Computer generated models that predict where crime is going to occur are used by the police throughout the United States of America, but as yet they are not a profiling tool to identify who is committing crimes (Mangino 2013). Nevertheless, there is great confidence in the U.S. that the remaining problems can be solved by improving statistical procedures (Berk and Bleich 2013; Perry et al. 2013).

Crime prognosis is fundamentally limited by one of the main methodological problems to predict severe crimes: the mathematical construction of “base rates”. The base rate generally refers to the (base) class probabilities unconditioned on featural evidence, also known as “prior probabilities”. For purposes of crime prediction, the base rate is supposed to give evidence of the probability that a convicted offender will reoffend. If the base rate was 1 %, only one out of a 100 released prisoners would reoffend. If the base rate was 50 % and the reliability of crime prognosis was about 90 %, one out of two would reoffend. The

Table 4 Prognosis at base rate of 90 %

	Positive prognosis (will reoffend)	Negative prognosis (will not reoffend)	
New offense	True positive: 81	False negative: 9	$N = 90$
No offense	False positive: 1	True negative: 9	$N = 10$

Table 5 Prognosis at base rate of 10 %

	Positive prognosis (will reoffend)	Negative prognosis (will not reoffend)	
New offense	True positive: 9	False negative: 1	$N = 10$
No offense	False positive: 9	True negative: 81	$N = 90$

consequences of low and high base rates for crime prediction can be seen in Tables 4 and 5 (reliability 90 %).

The higher the base rate, the more often re-offences are predicted correctly compared to the false positive assumptions, and the more often people reoffend unexpectedly (false negative). These results are a lot more apparent when the base rate is very low, as we can see regarding severe forms of crime. A base rate of 1 ‰ says that, on the average, one of every 1000 people will commit homicide for example, which is close to the actual rate of homicide in Germany (one case per 100,000 population). But it also means that 999 will not commit this offense, even if they were regarded as highly dangerous because of the mathematical limitations (Volckart 2002).

According to global studies of the United Nations Office on Drugs and Crime, 437,000 cases of homicide worldwide were reported to the police in 2012 (UNODC 2014). More than a third of those (36 %) occurred in the Americas, 31 % in Africa, 28 % in Asia, while Europe (5 %) and Oceania (0.3 %) accounted for the lowest shares of homicide at the regional level (UNODC 2014, p. 11). The global average rate was 6.2 homicides per 100,000 population. The annual global rate of sexual violence in 2011 was 36.7 per 100,000, the rate of robbery 138.1, the rate of assault 180.5, the rate of burglary 413.8, and finally, the rate of theft was 981.1 (UN-CTS 2012). All in all, property related crimes are committed much more often than severe violent offenses, and therefore can be predicted much more easily. Severe crimes can hardly be predicted at all without further biographical information about the individual's development.

The idea to predict future crimes (and to prevent them by repressive and/or preventive measures) is not new, but of course very fascinating, as the movie "Minority Report" has shown. In the film, a specialized police department apprehends criminals based on foreknowledge provided by three psychics called "precogs". Although crime forecasting (or predictive policing) in law enforcement has become an important part of policing, especially in the United States, the limits of crime prediction are well known.

“The key for agencies is to think of the tools as providing situational awareness rather than crystal balls. The system should help agencies understand the where, when, and who of crime and identify the specific problems driving that criminal activity; this information will help support interventions to address these problems and reduce crime” (Perry et al. 2013, p. 136).

While in former times psychiatric experts mostly relied on their professional experience, we now have a wide variety of additional prognostic instruments strengthening the idea that human behavior can be predicted objectively and precisely. Internationally known examples for these instruments of assumed high objectivity, reliability, and validity are the Psychopathy Checklist (Hare 1991), PCL-SV (short version) and PCL-R (revised), Level of Service Inventory—Revised (LSI-R, Andrews and Bonta 1995), the Historical Clinical Risk (HCR-20, Douglas et al. 2013) which is used to predict the risk of violent delinquency, the Sexual Violence Risk (SVR-20, Boer et al. 1997), Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR, Hanson 1997), Static-99 (Harris et al. 2003), Violence Risk Appraisal Guide (VRAG, Quinsey et al. 2006), and the Sex Offender Risk Appraisal Guide (SORAG, Quinsey et al. 2006). Crime forecast is based primarily on these kinds of actuarial assessment instruments in the Anglo-American countries while most European countries, particularly in Germany, regard them as helpful, but not sufficient enough for crime prognosis (Dahle 2006). They suggest that the behavioral instruments should complement a series of other carefully and clinically informed appraisals and should not be used as a substitute for them when making an assessment about a prisoner. What all of these instruments have in common is that there are rather few items relating to demographic characteristics, criminal history and personality variables with a statistically high probability of severe recidivism that can be listed easily and evaluated according to the score that is reached. Because of the statistical background, they are not sufficient to predict the individual’s behavior: a high score on a scale does not necessarily indicate a high risk, because there may be a lot of protective variables in the surroundings of the individual (good relationships, satisfying conditions of living) to keep him from committing crimes again. Because there is a strong emphasis on historical events, the instruments also neglect individual developments and changes. Although courts tend to be satisfied with statements as to the degree of dangerousness shown by a test-score, as a high score at first sight is rather convincing, the actual predictive validity is very limited. In fact, a recent German study came to the conclusion that the Psychopathy Checklist is more suited to predict violent delinquency than sexual delinquency (Eher et al. 2012). Therefore, risk prediction without considering the personal situation of the individual is also not a sufficient method. But even with a methodically perfect approach, the prediction of the behavior of a human being will always be a problem without an appropriate solution. This is indicated by former relapse-studies and can also be demonstrated by the results of an examination we performed at the Ruhr-Universität Bochum/Germany. In this study from 2007 to 2013, the actual relapse-rate of 131 released prisoners who were considered to be very dangerous at the end of their sentence and therefore should be taken in permanent custody (preventive custody imposed retroactively) was examined.

4 The Bochum Study on Recidivism in Preventive Custody Cases Was Intended, but not Imposed

The situation in Germany after the decisions of the German Supreme Court and the European Court of Human Rights during the years from 2002 onwards was one of the few opportunities to examine whether the predicted dangerousness by the experts' risk assessment was true or just an assumption that did not correspond with the actual behavior of the prisoners released. As long as people regarded as dangerous are kept in prison, they can never prove that the expectation might have been wrong. The first time a larger group of people had been released from an institution despite of their assumed dangerousness was studied was in 1966. This study is well known as the "Baxtrom Case", when, after a decision of the Supreme Court of the U.S.A., all 967 (920 male, 47 female) inmates of forensic-psychiatric hospitals in the state of New York had to be released, even though they were still regarded as very dangerous. Only nine of them re-offended with severe crimes of violence (Steadman and Cocozza 1974). In 1971, another group of 438 mentally disturbed inmates had to be released in Pennsylvania after a court decision (Dixon vs. Pennsylvania) known as the "Dixon Case." Within four years after release, 14 % of the former inmates showed violent behavior (Thornberry and Jacoby 1979). Such experimental designs are usually quite rare, although the field of experimental criminology is a booming discipline, and some scholars see experimental designs as a kind of "silver bullet" for criminological research.

As German courts rarely imposed preventive custody retroactively since they denied the evidence of high risk concluded from the behavior in prison, about 115 prisoners throughout Germany were released between 2002 and the end of the year 2006, despite expert testimonies that had considered them to be too dangerous to be released. We used this kind of "natural experiment" to study the recidivism rates of those prisoners released from custody. In nearly all of the cases, the prison administration and external experts (psychologists and psychiatrists) had evaluated those people as dangerous. From 2007 to the end of 2009, another group of about 75 prisoners who were considered to be highly dangerous were also released because of court decisions. The recidivism of 121 out of these about 195 released prisoners⁴ had been examined in a nation-wide study by the Department of Criminology at the Ruhr-Universität Bochum⁵ (Alex 2013; Feltes and Alex 2010). In most cases, in four years after release from prison,⁶ 63 people (52 %) had been convicted again for a new offense, but only 38 (31 %) were sentenced to a prison sentence again (see Table 6).

The more severe new offenses (prison terms of one year and longer) compared to the index offense are shown in Table 7 ($N = 11$).

⁴Ten released prisoners had already died before the study was finished.

⁵www.rub.de/kriminologie.

⁶Twenty-five people had been released only 2½ up to 4 years before.

Table 6 Sentence in case of recidivism ($N = 63$)

Recidivism					No recidivism
Fine	Prison on probation	Prison	Prison and additional preventive custody	Other measure (psychiatric hospital)	
16	9	19	17	2	58

Table 7 Severe re-offense

Index offense	Re-offense	New penalty
Rape	Theft	1 year and 5 months
Aggravated battery	Fraud, violation of terms of conditioned release	1 year and 8 months
Rape	Stalking	1 year and 9 months, hospital treatment order, Art. 63 StGB
Attempted murder	Theft, violation of terms of conditioned release	1 year and 11 months
Attempted robbery	Breach of narcotic law	2 years
Rape	Robbery	2 years and 2 months
Attempted rape	Theft, fraud	2 years and 9 months
Theft	Breach of narcotic law	3 years and 6 months
Sexual abuse	Burglary	4 years
Attempted aggravated robbery	Theft, fraud	6 years and 9 months
Aggravated robbery	Aggravated robbery	9 years

Two of these new offenses (robbery) can be regarded as cases that reveal the assumed high risk of violent recidivism, but the other nine offenses were less severe. Seventeen further court decisions resulted in imposing additional preventive custody because of very severe recidivism. The most severe new offenses (prison and preventive custody), in comparison to the previous judgment, are shown in Table 8.

All violent or sexual offenses may be regarded as cases where the high risk of serious relapse predicted by the experts came true. Notably, in about 85 % of all cases, the assumed severe recidivism did not occur (Table 9).

Only one of 18 sexual offenders older than 50 years at the time released from prison reoffended with a severe crime (severe sexual abuse), whereas three of the seven former prisoners who had committed other offenses reoffended severely. This demonstrates that sexual offenders in particular become less dangerous with increasing age.

Almost 50 % of the re-offenses with more serious consequences (defined as a sentence of more than two years) were committed during the first six months after discharge, and only five cases of more severe recidivism (22 %) occurred later than 18 months after discharge, as the Table 10 shows.

Table 8 Type of offense and sentence (prison and additional preventive custody) ($N = 17$)

Index offense	Re-offense	New penalty
Rape	Rape	3 years and preventive custody
Robbery	Robbery	3 years and preventive custody
Sexual abuse	Severe sexual abuse	3 years, 2 months and preventive custody
Severe sexual abuse	Severe sexual abuse	3 years, 6 months and preventive custody
Rape	Attempted robbery	3 years, 9 months and preventive custody
Sexual abuse	Sexual abuse	3 years, 9 months and preventive custody
Severe sexual abuse	Severe sexual abuse	4 years, 6 months and preventive custody
Murder	Aggravated battery	4 years, 6 months and preventive custody
Sexual abuse	Sexual abuse	5 years and preventive custody (on reservation)
Severe arson	Attempted arson,	6 years and preventive custody
Aggravated battery	Aggravated battery	6 years, 6 months and preventive custody
Severe sexual abuse	Severe sexual abuse	7 years and preventive custody
Aggravated robbery	Rape, bodily harm	7 years, 3 months and preventive custody
Murder	Aggravated robbery	9 years, 6 months and preventive custody
Aggravated robbery	Aggravated robbery	11 years and preventive custody
Sexual abuse	Rape, severe sexual abuse	11 years, 9 months and preventive custody
Bodily injury	Attempted murder, rape	13 years and preventive custody

Table 9 Age and delinquency ($N = 121$)

Age at release (years)	Sexual index offenses	Recidivism prison > 1 year	Other index offenses	Recidivism prison > 1 year
≤ 40	23	9 = 39.1 %	32	8 = 25.0 %
≤ 50	27	4 = 14.8 %	14	3 = 21.4 %
> 50	18	1 = 5.6 %	7	3 = 42.9 %
Σ	68	14 = 20.6 %	53	14 = 26.4 %

In 70 cases, experts (psychiatrists, or in some cases psychologists) had given corresponding risk assessment reports. Thirty-nine out of 53 released prisoners (73.6 %) did not commit any new serious offenses, even though they were considered to be very dangerous (Table 11):

Compared to the study of Müller et al. (2013), the group of released prisoners that did not reoffend despite being regarded as very dangerous (false positive) was significantly larger (55.8 % vs. 20 %). This can partly be explained by the different methodological approach, but it also indicates the high rate of false predictions in our study.

Table 10 Time to severe recidivism (persons who were sentenced to imprisonment for more than two years), $N = 23$

Re-offense	Time after release			
	<6 months	<12 months	<18 months	18 months and longer
Sexual abuse	2	1	–	24 months 36 months 45 months 61 months
Rape	–	1	1	–
Other violent offense	5	1	3	–
Non-violent offense	4	–	–	–
Arson	–	–	–	28 months
Σ	11	3	4	5

Table 11 Risk assessment and legal probation

Group	Experts' recommendation: preventive custody ordered retroactively because of dangerousness		Experts' recommendation: no preventive custody, no probability of serious relapse	
	N	%	N	%
No relapse/mild relapse	39 false positive	55.8	14 correct negative	20.0
Serious relapse (more than 1 year prison)	14 correct positive	20.0	Three false negative	4.3
Additional preventive custody	Seven after serious relapse	10.0	One after serious relapse	1.4

In 73.6 % of all 53 cases with negative expectations, this prediction did not end up with serious recidivism, but 82.4 % of 17 cases with positive expectations turned out to be true. Obviously, it is easier to predict positive legal probation than to predict recidivism.

Table 12 with the ICD-10 diagnosis of the 23 people with severe recidivism (penalty of more than two years imprisonment) indicates an expected correlation between dissocial personality disorder and recidivism.

Regarding all 121 examined people with emphasis on dissocial personal disorder and the frequency of reoffending, this result is verified (see Table 13)

Eighteen out of 47 subjects with dissocial personal disorder (38.3 %) were sentenced to imprisonment after reoffending, compared to only ten out of 42 with other diagnoses (23.8 %). Nevertheless, 29 subjects with dissocial personal disorder (61.7 %) did not reoffend at all or not severely.

The number of previous convictions prior to the index offense is also correlated with recidivism as shown in Table 14.

Twenty-eight out of 37 more severe re-offenses (75.7 %) were committed by subjects with five previous convictions or more, although only 50 % of the released prisoners belonged to the group with five previous convictions or more. This

Table 12 ICD-10 diagnosis and recidivism ($N = 23$)

Re-offense	Dissocial personal disorder	Combined personal disorder	Drug addiction	Pedophilia	Mental debility	No risk assessment report
Sexual abuse	2	1	–	1	1	2
Rape	3	–	–	–	–	–
Violence offense	6	–	–	–	–	2
Non-violent offense	2	1	–	–	–	1
Arson	–	–	1	–	–	–

Table 13 Diagnosis and recidivism ($N = 121$)

Penalty	Dissocial personal disorder	All other diagnoses	No risk assessment report
Prison and preventive custody	9	4	4
Prison	9	6	5
Prison on probation	8	2	–
Fine	7	6	3
No relapse	14	24	20
Σ	47	42	32

Table 14 Previous convictions and recidivism

Penalty	Number of previous convictions				
	None	1–4	≥ 5	≥ 10	≥ 15
Prison and preventive custody	0	5	7	4	1
Prison	1	3	2	6	8
Prison on probation	2	2	4	1	1
Fine	5	3	3	3	2
No relapse	16	22	14	5	1
Σ	24	35	30	19	13

illustrates the higher probability of re-offending by people with many previous convictions and also explains the tendency of experts to come to the diagnosis “dissocial personal disorder” just because of the number of previous convictions. Often, the anti-social attitude is only concluded from the number of previous convictions and not by exploring personal traits. On the other hand, 34 out of 62 offenders with five previous convictions or more (54.8 %) did not reoffend severely, which is another evidence for the difficulty of predicting peoples’ behavior.

The results of the Bochum study are not very different from the findings of a nationwide survey on recidivism by the German Ministry of Justice. Jehle et al. (2003) observed the legal probation of all persons convicted (fine, sentenced to prison or probation) or released regularly from prison in Germany in 1994 ($N = 947,090$). About 35 % of them reoffended within a follow-up period of four years. 56 % of the released prisoners reoffended, but only half of them ended up in prison again. 27 % of those had previously been convicted for robbery, 19 % for sexual violence, and 10 % for homicide or murder.

In 2008, this study was repeated for the population of convicts or released prisoners in 2004 ($N = 1,049,922$) with a slightly different approach (follow-up period of only three years resulting in a lower recidivism-rate), and in 2011 it was extended to the convictions and releases in 2007 ($N = 1,049,816$). The general recidivism rates were 36 and 34 %, respectively. After a period of six years after conviction or release (2004–2010), the general recidivism rate increased to 44 %. As in the previous study, most released prisoners reoffended, but less than 50 % ended up in prison again. The highest recidivism-rate was observed after previous convictions for aggravated kinds of theft and robbery (more than 50 %), the lowest rate after previous convictions for homicide or murder. 15 % of all subjects convicted for violent crimes committed new violent crimes, while less than 4 % of previous sexual offenders committed another sexual offense. Recidivism is found only in few cases after more than three years of legal probation. The rate of recidivism with sexual violence increased from 2 to 3 %, the rate of recidivism with any kind of violent or sexual delinquency increased from 9 to 12 %, and the rate of recidivism with sexual abuse increased from 3 to 4 %. Regarding exact corresponding previous convictions only, the recidivism-rate is higher, however. After six years, 7 % of those convicted for sexual violence were again convicted for the same crime, 18 % of those convicted for sexual abuse were again convicted for sexual abuse. The rate of severe recidivism followed by a new sentence to prison varies from 3 % (murder or homicide), 6 % (sexual abuse), 7 % (rape), 20 % (robbery) to 23 % (aggravated battery) (Jehle et al. 2010, 2013). All in all, there is no significant difference concerning the legal probation of regularly released prisoners compared to the results of the Bochum study concerning prisoners considered to be extremely dangerous.

The study of Jehle et al. on recidivism, of which three waves are now available is a result of a development that can be observed throughout the world during the last two decades. The significance of, and the need for collecting comprehensive data on recidivism and its prevention for purposes of research, for judicial decision making, and for criminal policy have been recognized in many European countries and beyond. Similar efforts as in Germany have been made in England/Wales, Scotland, France, the Netherlands, Scandinavian countries, Switzerland, Estonia, and Ireland. Singular studies on recidivism have been conducted in further European countries. Countries in South America, Asia and Africa are also interested in nationwide and systematical studies in recidivism. In North America recidivism statistics based on available information have been established. Australia regards the European development as a milestone for evidence-based criminal policy (Albrecht 2013, p. 401).

“Modern evidence-based criminal policy, which aims to reduce recidivism in general as well as criminal courts which must increasingly deliver individualized decisions on the dangerousness of offenders based on anticipated recidivism are both in need of substantive and reliable information. Yet, the latter task in particular can hardly be fulfilled based on the rudimentary data provided by official statistics in countries such as Germany; likewise, data gathered through specific research studies most often cannot be generalized due to the specific methodological circumstances under which the data have been gathered.” (Albrecht 2013, p. 400).

5 Discussion

Every society has to face the situation that there is a very small group of people who do not respect elementary rules of human behavior and commit very serious violent offenses again and again. In Germany these people—who are regarded as so mentally disturbed that they cannot be blamed for their crimes—are kept in psychiatric hospitals for an unlimited period of time until, according to an expert report on crime prognosis, no more serious recidivism is assumed.

Against offenders who were at least partly regarded to be responsible for their delinquency the measure of preventive custody was established in Germany in 1934, but this measure had to be imposed in combination with the judgment and was limited to ten years when ordered for the first time until 1998. This limit was cancelled in 1998 by the “Combating of Sexual Offenses and Other Dangerous Offense Act”, and in 2004 a new measure was established for prisoners whose dangerousness was first noticed after judgment during imprisonment. Since 1934 offenders, who were not regarded as mentally disturbed, could not only be punished after previous times of imprisonment, but could be kept in preventive custody after the time of penalty ended. In 2004 the measure of preventive custody was extended to prisoners with penalties of more than five years, if they were assumed to be very dangerous according to events observed during the time of imprisonment.

Single cases of serious recidivism with sexual and/or violent delinquency after release from prison during the last decade of the past century had changed the attitude towards serious crimes in German society and had made the introduction of these new measures possible. On December 17, 2009, the European Court of Human Rights ruled that there had been a violation of Article 5 § 1 (right to liberty and security) and Article 7 § 1 (no punishment without law) of the European Convention on Human Rights by retroactive extension of a prisoner’s preventive custody by German courts (*M. v. Germany*, application no. 19359/04). On January 13, 2011, the court also ruled that there had been a violation of Article 5 § 1 by imposing preventive custody retrospectively, because there had not been a sufficient connection between the conviction and the later decision to impose preventive custody under Article 66b § 1 of the German Criminal Code (*H. vs. Germany*, application no. 6587/04).

On May 4, 2011, the German Federal Constitutional Court finally accepted this jurisdiction and ruled that the regulations of imposing and executing the measure of preventive custody in the German Criminal Law violated the right to liberty, and as such, Article 2 of the German Constitution had to be changed by May 31, 2013 (judgment from May 4, 2011, no. 2 BvR 2365/09). In the meantime, inmates whose preventive custody had been imposed retrospectively or had been extended over ten years retroactively had to be released from prison, unless they were seen as extremely dangerous (danger to commit most serious sexual or violent crimes because of mental health problems or mental disorder).

The adjusted law was put into force on June 1, 2013, but in a following decision, the European Court of Human Rights from November 28, 2013 doubted whether a dissocial personality alone, which had been found by the German authorities not to be pathological, could be considered as a sufficiently serious mental condition so as to be classified as a “true” mental disorder for the purposes of Article 5 § 1 (e) of the European Convention on Human Rights, providing for detention independent of an offense (*G. v. Germany*, application no. 7345/12).

It seems that the European debate on preventive custody and the compatibility with human rights standards is not finished yet. Nevertheless, medical, psychological and criminological expertise will often be of much importance to prepare decisions on probation. All over the world, experts are asked in cases of offenders who are assumed to be very dangerous to judge whether these offenders are to be taken into custody or released from prison. It depends on the scientific limits to predict future behavior and on the quality of expert reports to help judges to find an adequate solution. There have been a lot of efforts to improve risk assessments during the last years. Not only have standards with regard to the procedures and contents for risk assessment reports been established, but standardized scales have also been developed to accomplish a more objective prediction of the behavior of offenders expected in the future. Worldwide used actuarial instruments are exemplified by the Psychopathy Check List-Revised (PCL-R), Sexual Violence Risk (SVR-20), Historical Clinical Risk (HCR-20), Static-99, Sex Offender Risk Appraisal Guide (SORAG), Violence Risk Appraisal Guide (VRAG), and the Level of Service Inventory-Revised (LSI-R). What all of these risk assessment instruments have in common is that personal traits and experiences that often correspond with certain kinds of delinquency have to be checked by experts to predict the probability of recidivism.

As to the quality of risk assessment, Müller et al., based on the results of their study, saw the need for improvement in the quality of experts' reports and came to the following conclusion: “Although most forecast reports (87 %) complied with a minimum of requirements, there were gaps, for example, in addressing the initial offense and the conditions with respect to the social support after release. A physical examination was carried out only in one-fifth of the cases, and additional psychological examinations were used only in half of the forecast reports. In addition, one third of the expert's reports only described striking personality traits, without diagnosing a personality disorder in the context of a psychiatric classification system. Around two-fifth of the forecast reports did not use an empirical risk

checklist. The discussion about how the residual risk of recidivism might be minimized was missing in about one-third of the forecast reports. By contrast, in the study of interrater reliability, a high correlation in the assignment of psychiatric diagnoses by experts who conducted independent assessments was seen" (Müller et al. 2013, p. 18 with further references). Nevertheless only four out of 25 offenders (16 %) reoffended with crimes that ended up with new imprisonment of more than two years, although in ten cases corresponding experts' reports had assumed severe dangerousness.

The results of the Bochum study on recidivism indicate that, despite of all improvements, risk assessments are still no means to reduce recidivism. Too many subjects are considered to be extremely dangerous, even when they are not (false positive prognosis). Only 19 out of 121 surviving discharged offenders (15.7 %) committed serious sexual and/or violent offenses after they were released from prison. This rate of recidivism of supposedly very dangerous offenders does not differ at all from the relapse-rate of regularly released prisoners. It shows that in almost 85 % of all high-risk cases, no serious new offense is registered after several years.

This result is in accordance with the earlier results and recent studies concerning legal probation of persons released from prison or psychiatric hospital, even though they were regarded as very dangerous. The German studies that we referred to indicate a comparable relapse-rate. The data from New York State indicates that sex offenders have a lower three-year rate of overall recidivism (31 %) than the general prison population (42 %). Only 8 % of sex offenders were returned to prison as a result of a conviction for a new crime. Most were returned for parole violations (Kellam 2006).

The New York Senate Committee on Crime, Crime Victims, and Corrections suggests in their 2009–2010 report to examine the method of assessing risk of re-offense among registered sex offenders currently used by the New York State Board of Examiners and to appoint a commission to choose among the various assessment tools available today one that would provide the most reliable determination of risk. "Assessment guidelines were developed more than fifteen years ago, at a time when experts in the state knew far less about how to measure the risk that someone once convicted of a sex crime would reoffend. It is our belief – one shared by many experts – that there are far too many people in New York who are misclassified in the higher risk level category, and are therefore unnecessarily diverting limited resources away from likely re-offenders" (New York State Senate 2010, p. 28).

The probability that someone who has been convicted for very serious sexual or violent crimes reoffends is much smaller than the chance to become a victim of an offender not having been registered before with similar crimes. In New York, the overwhelming majority (around 95 %) of sex offenses, including rape and child molestation, is committed by those who have never before been convicted of an offense (New York State Senate 2010, p. 29). In Germany, among 25,000 persons convicted of sex offenses, murder/homicide or robbery every year, 85 % have never

been registered with offenses like that before (Statistisches Bundesamt: Strafverfolgungsstatistik 2009, 2010, table 2.1.).

Looking at the results of the Bochum study in detail, it is not surprising that, due to the emphasis on sexual delinquency, 71 of the offenders intended to be taken into retrospectively imposed detention had been convicted for a sex offense. Three of them had died soon after release from prison. Eight of the remaining 68 sex offenders relapsed with sexual delinquency (11.8 %), and only one of them was older than fifty years by the time of discharge. The often mentioned idea that sex offenders are liable to relapse with sexual delinquency, even when they are old, can be rejected after the results of our study.

The results also give no evidence that sex offenders often reoffend a long time after discharge. Eighteen of 23 new serious offenses (78.3 %) were committed within one and a half year after release from prison, later than that only four cases of sexual abuse and one case of arson were registered. Concerning experts' risk assessment, there was no difference in the predictability of reoffending with sexual delinquency or violent crimes. The only significant differences between recidivism and non-recidivism were the number of previous convictions and the ICD-10 diagnosis of dissocial personal disorder. This is a self-fulfilling prophecy, though, because people, who have often broken rules tend to do so again more often than people who abide by them.

6 Conclusion

Better crime prognoses will not help to reduce recidivism. Müller et al. come to the conclusion that even though the predictive validity of the experts' reports as a whole still had room for improvement, there was no denying that there were valuable conclusions to be drawn from the experts' reports that do not recommend "subsequent placement in preventive custody" (Müller et al. 2013, p. 18). But the results of the Bochum study show that even in those cases, forecasts do not always come true, although there are more correct predictions than in cases where severe dangerousness is assumed.

Even though the quality of risk-assessment reports may have improved during the last decades, the fundamental difficulties in precisely predicting human behavior cannot be solved. The validity of prediction is limited by methodological problems as well as by unexpected developments in peoples' lives.

Even social scientists who support efforts to use methods of crime forecast in law enforcement activities try to convince people that the nature of predictive policing had nothing to do with "Minority Report": "There is an obvious appeal to being able to prevent crime as opposed to merely apprehending offenders after a crime has been committed. For law enforcement agencies, the ability to predict a crime and stop it before it is committed is tantalizing indeed – as it is to the public. Any hype must be tempered somewhat by considerations of privacy and civil rights, however. Predictive methods, themselves, may not expose sufficient probable cause

to apprehend a suspected offender. ‘Predictions’ are generated through statistical calculations that produce estimates, at best; like all techniques that extrapolate the future based on the past, they assume that the past is prologue. Consequently, the results are probabilistic, not certain.” (Perry et al. 2013, p. 8).

We have to accept these limits and must look for other ways to deal with recidivism. One way is to improve treatment of sexual offenders and other persons who have committed severe crimes. As the meta-analyses mentioned above show (Alexander 1999; Hanson et al. 2002), specified types of intervention according to the offenders’ personal needs can reduce recidivism significantly. More than 50 % of all prisoners in Germany show personality traits with relevance for psychiatry, or even personality disorders according to ICD-10, F60 (Habermeyer et al. 2012; Konrad 2013), but cannot be classified as “persons of unsound mind” in the sense of Article 5 § 1 (e) of the European Convention of Human Rights (ECHR, judgment of Nov. 28, 2013, application no. 7345/12). Most of them get no treatment during their stay in prison, because they are regarded as being responsible for their offense. Instead of threatening them with preventive detention it is suggested to offer them treatment similar to the treatment in psychiatric hospitals in socio-therapeutic facilities, separated from prison with a staff of psychologists and social workers (Boetticher 2012; Höffler 2013; Konrad 2013). This measure had already been established in the German criminal code in 1969 (§ 65 StGB) but was never put into force and was finally cancelled in 1984, mostly because of the costs for the new institutions. As the extension of preventive detention will also be very expensive, the demand for “recovery” of the former § 65 StGB and a treatment opportunity for prisoners with severe personality disorders is justified and would be a better way to stop violating the European Convention of Human Rights than all past and present efforts to adjust the rules of preventive detention to the Convention (see Arloth 2013 as an example for these efforts).

In addition, positive social surroundings after release from the institution have to be established to reduce recidivism.

Finally, we have to get away from the idea that society could be saved from crime completely. There are many risks in life, and the threat to become victim of a crime is just one of them. This risk cannot be reduced by denouncing discharged prisoners either. Community notification has been found to have no demonstrable impact on sexual recidivism. In fact, some studies suggest that community notification may aggravate stressors that lead to increased recidivism (Freeman 2012), and requiring broad community notification via the internet may discourage some victims of sexual abuse from reporting incidents to the authorities. Victims may be reluctant to report offenses out of concern for a perpetrator who is close to them (a relative, a step-parent), or out of concern for their own privacy (Sandler et al. 2008). There are many examples in the United States of America (“Megan’s law”, Adam Walsh Act) and in Germany where released prisoners were threatened by their neighbors so severely that integration was about to fail and the risk of recidivism increased (Tewksbury 2005; Tewksbury and Lees 2006). Zevitz and Farkas (2000) also found that a majority of sex offenders reported negative consequences, such as exclusion from residences, threats and harassment, emotional

harm to their family members, social exclusion by neighbors, and loss of employment. These problems might even get worse when addresses and biographical data are published on websites. People have to learn that the risk of victimization by reoffending ex-prisoners is much lower than the risk to be attacked by someone who has not been convicted before, and that positive surroundings are very helpful to reduce recidivism. Risk assessment will not prevent society from crime, but will continue to be responsible for a large number of people kept in preventive custody or other means of imprisonment unnecessarily.

Five Questions

1. Can crimes be predicted, and if so, how precisely?
2. How did crime prognosis procedures develop during the last years?
3. Weather forecast vs. crime forecast, what are the problems?
4. Can we avoid re-offending completely?
5. Which measures are useful to prevent re-offending?

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Anti-Corruption Education as a form of Early Prevention of Conflict with the Law for Women and Children: Making the United Nations Law Work 2016–2030

Sławomir Redo

Abstract Imprisonment, seizure and confiscation of assets, even the death penalty are invoked as measures to counter corruption. For obvious reasons they are only applicable to adult offenders. The most recent comparative review of the impact of imprisonment on crime rates questions its effectiveness. Even more questionable is the impact of imprisonment and death penalty on corruption, which at best is unknown. Raising the stake in criminal sentencing by handing down these sanctions does not seem to be a decision that ultimately matters in countering crime, let alone corruption. Rampant as corruption is, its countering requires more incisive and tailored measures. This chapter looks from three perspectives (Western, Eastern and United Nations) into some of these measures and reviews respective recent developments reported by the State Parties to the United Nations Convention against Corruption. In conclusion, the author argues that the United Nations anti-corruption education for women and children is a promising path to follow. Two educational issues may decide about the character and effectiveness of that anti-corruption strategy: the prevalence of patriarchal or contractual features in any legal culture, and its accommodation of the sustainable development ideology, if both engage personal responsibility. At the end of the story all corruption acts are choices which do rest on it and on ethics. Accordingly, blending these three perspectives, the implementation of the United Nations goal of “peaceful and inclusive societies” envisioned for 2016–2030 in which countering bribery and corruption is included, will depend on how well in contractual and sustainable development terms the present and succeeding generation will personally muster anti-corruption ethical education for women and children.

*A true man cannot be corrupted by wealth, subdued by power, or affected by poverty.
People observe moral concepts and codes of behaviour only when they have regular
incomes from their property.
Meng Zi (327–289 B.C.E.)*

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1 Introduction

In the most recent analysis of punitivity in the world Professor Helmut Kury, a world authority in this regard, concludes: “Based on the results of international studies, punishment has, if at all, only a very limited deterrent effect, in particular for the prevention of serious crime” (Kury 2013, p. 161).

However, and secondly, he also quotes one of the recent very thorough meta-analysis of 700 methodologically most outstanding studies on harsh penalties that adds:

Moreover it appears that deterrent effects depend on the risk of being discovered and not on the severity of punishment and that they appear more often with minor infringements of norms. . .[that is] when administrative offences are investigated as opposed to crimes (Dölling et al. 2011, p. 315).

This finding does not cover sentences for corruption—a clandestine crime on which there is simply too little data anywhere. It thus may only be assumed that the harsh penal policy message on corruption is perfunctory: It hardly demotivates a corrupter and a corrupted to continue unabated their businesses in their habitual manner. Both have no incentive to change it. Neither one nor the other really calculates seriously the harsh penal implications, since corruption is hardly detectable and is not swiftly punishable. Both perpetrators have more to lose when they denounce one another than if they keep silent.

However and by analogy with the comparative effectiveness of administrative over penal measures in preventing serious crime, what about not only advancing anti-corruption into the stage of administrative offences, but—on a crime prevention plane—also for various potential actors and manifestations, that is into early formative stage of personal development when preventive education yields the highest returns to investment? (see in this book: Corrado et al.; Nores and Barnett).

2 Three Perspectives on Early Anti-Corruption Measures¹

It is not possible to answer this question without first emphasizing that early anti-corruption measures must take account of substantial differences between Western, Eastern and United Nations legal culture. While their point-by-point enumeration here is not possible (see further Glenn 2010; Reichel 2013), two clarifications may be helpful in the further analysis of educational² issues involved in the fight against

¹ The text is taken from the lectures delivered in 2014 at the law faculties at the Beijing Normal University, Zhejiang Gongshang University (Hangzhou); South-Central University for Nationalities and Zhongnan University of Economics and Law (Wuhan).

² In this article, “education” is a broad term that “comprise[s] all deliberate and systematic activities designed to meet learning needs [and] involve[s] organized and sustained communication designed to bring about learning” (UNESCO 1997). It includes formal education (pre-school,

corruption: the prevalence of patriarchal or contractual features in any legal culture, and its accommodation of the sustainable development ideology.

Regarding “patriarchalism”, it is as an interpersonal social justice concept. It includes kinship and tribalism (filial relationships), originating from early law codes based on property/hereditary relationships. It is a transitional form to “an association of service” or “contractualism”—an impersonal social justice concept that involves independent personhood (Hegel 1822-3/2011, pp. 102–103; Heinemann 1964; Walsh 1973; Adler 1994; Mitchell 2004; Sultan 2004; Wong and Tsai 2007; Cumminskey 2008; Stearns 2008; Fassbender 2009; Annan 2014; Bakken 2014). Both concepts, originally restricted to men but presently gender-neutral, appear to capture well the cross-cutting thematic and disciplinary spectra of the interrelated issues.

“Contractualism” is particularly well known in criminology due to Cesare Beccaria’s seminal work *“Dei delitti e delle pene”* (1764) to which the UN Crime Prevention and Criminal Justice Programme credits its humanistic crime prevention origin. Now, this concept includes in the UN a moral component: “At the national level, the rule of law is at the heart of the social contract between the State and individuals” (A/66/749, para. 4).

“Patriarchalism” and “contractualism” interplay with the progressive implementation of the UN Charter. They practically contribute to the UN normative way of non-secular modernization set out by art. 55 (international development of economic and social welfare). This provision is subordinated to the provision on the “maintenance of international peace and security” (art. 1), and, next in the same sentence, to “justice and international law”, also a subordinate concept in this context (see further Månsson 2007, p. 226).

Regarding “sustainable development”,³ it is now a broad practical and theoretical pursuit (see in this book: Mitrofanenko; Zhang) in which security, the rule of law, justice administration and crime prevention should be treated as renewable resources. Their vital energy is the social energy. That energy is not only produced by each generation for its own use, but also transmitted intergenerationally. Intergenerational transmission of cultural patterns of behaviour, whether positive or negative (crime and violence), is a part of the question of social, people-centred sustainable development and the energy it releases that should drive crime prevention (Redo 2012, pp. 78, 82 and 233).

The above clarifications may help to sort out interculturally the aspects of justice that involve early anti-corruption education for women and children. The following section⁴ takes up these anti-corruption aspects. In three subsections it focuses on the

primary, secondary, tertiary) and non-formal, i.e. outside the formal education system (i.e. nursing, kindergarten care, human rights training sessions, workshops, seminars and webinars), and informal education through other life and work experience.

³ The origin of the concept sometimes is credited to the UN Charter (Schrijver 2007, pp. 593–594; Simma et al. 2002, Vol. I, p. 36).

⁴ Subsections 2.1-2-3 in their generic early crime prevention points draw on an earlier article by the author (Redo 2014), modified and refocused on anti-corruption.

pre-school intergenerational and intercultural legal education and on governance: from Western, Eastern and United Nations perspective. This is a start-up component for the overall developmental framework of “Culture of Lawfulness”. Without that component in the various configurations, subsequent anti-corruption measures for women and children can mostly be reformative, but not formative.

2.1 *Western Perspective*

From the Western perspective, the following definition of “Culture of Lawfulness” covers anti-corruption education for anybody across various legal cultures, i.e.:

that the population in general follows the law and has a desire to access the justice system to address their grievances. It does not require that every single individual in that society believe in the feasibility or even the desirability of the rule of law but that the average person believes that formal laws are a fundamental part of justice or can be used to attain justice and that the justice system can enhance his or her life and society in general. Without a Culture of Lawfulness, the population will have no desire to access the system and may resort to violence to resolve grievances. For the rule of law to be fully realized, the population needs to follow the law and support its application voluntarily rather than through coercion (USIP 2009, para. 7.9.1).

Results of various Western early crime prevention projects (starting from the delivery-assistance through nursing schools to tertiary schools) show that helping in the creation of an environment in which equity and fairness are at the core of education is pivotal to a Culture of Lawfulness. Those projects (several from the USA) employed a variety of tailored efforts aimed at reducing the risk of maternal deprivation and gaining taught skillsets that would prepare children to proceed successfully from primary through tertiary education. Depending on the age group of children, all these projects in one way or another aimed to equalize the life chances of economically underprivileged kids, among whom they were many of Hispanic and African-American descent.

The following results should be noted:

First, at the child’s delivery stage, criminological birth cohort studies proved a significant correlation between criminal violence and birth complications followed by parental deprivation. They emphasize that in violence reduction biosocial interventions are important through, *inter alia*, obstetrician-assisted reductions in birth complications and nursing because both can reduce maternal rejection (Redo 2014, p. 710).

Second, various other experiments tested this on toddlers and older children who were given or taken an object. In one experiment comparing the respective reaction of toddlers (1–2 years old) and pre-schoolers (3–4 years old), toddlers apparently recognized possession as a basis for asserting control rights but not respecting the same rights of others (Gintis 2009, p. 207). In another experiment among toddlers, children (2–3 years old) and pre-schoolers (3–4 years old), the latter protested much more often than the younger group when the object was taken from them (Rossano

et al. 2011). Still another experiment with children between the age of 3–6.5 years showed that their ability to deal with insincerity (cheating) emerges gradually during the preschool years with an increasing level of difficulty, from fantasy to politeness situations, and a notable amount of variability not equally distributed among the tasks (Airenti and Angeleri 2011).

The above suggests that before toddlers become acquainted with bargaining, trade, money and markets, they first start developing a sense of the property rights of others on the basis of their own possession. At the age of 3 children begin to understand the normative dimensions of property rights of others, hence what components of otherness there may be.

Third, at the infant-level, early crime prevention projects involved visits to the child and the family at home to support mothers and assist them in their child's learning. Significant improvement in children's subsequent educational performance was reported (Corrado et al. in this book).

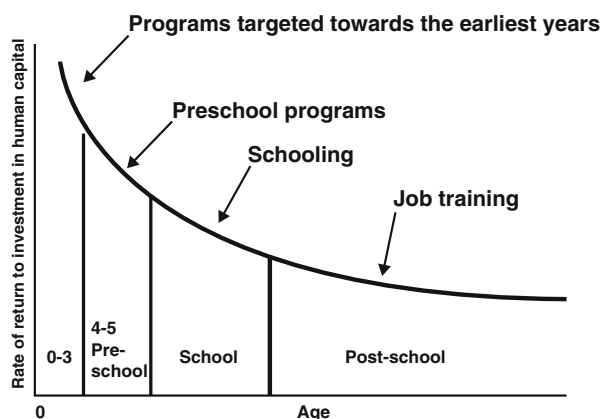
According to one Western developmental psychologist, already at the age of 20 months a child experiences some moral emotions—feelings triggered by right and wrong (Warneken and Tomasello 2008). The critical transition point between a less formative and a more reformatory phase of assisting in a child's education occurs in the age bracket of 5–10 years old, with the most critical age being age 8 (Grusec and Redler 1980). At that point reinforcing in a child the right behaviour by emphasizing the child's character ("*You are a helpful person*") rather than the action ("*That was such a helpful thing to do*") may be a viable departure point for a subsequent gradually self-sustaining law-abiding life. Any earlier or later age bracket for the Western view of "Culture of Lawfulness" does not seem to be so viable for forming in the adolescence the sense of right and wrong.

Fourth, at the school-level, assistance additionally focused on reducing prejudice towards others by involving the opposite groups in working for the common good. This was demonstrated by a seminal "Robber's Cave Experiment" (Sherif 1954/1961) that involved highly appealing tasks whose attainment was beyond the resources and efforts of any group alone. Through various methodologies and observational findings (on the connivance at breakfast and lunch through the seating rearrangement, acceptance of performing activities together), the experiment produced an extraordinary increase of friendly relationships between members of the different groups and a dramatic decrease in rejections of out-group members. The "Robber's Cave Experiment" is a very good example of conflict resolution and better mutual understanding and cooperation brought about by attaining agreeable overarching common objectives.

As a follow-up to a successful longitudinal evaluation of several such projects' crime prevention returns to (in)formal education, Professor James J. Heckman (2008), Nobel-Prize winner in Economy (2002), argues that the highest returns are up to 36 months of age (3 years), and then the investment to crime reduction ratio gradually decreases, as it continues through adolescence to adulthood when the crime prevention education returns are the lowest (Fig. 1).

Finally, thanks to this and similar criminological studies on early childhood crime prevention measures, it was found that in terms of cost-benefits ratio,

Fig. 1 Crime prevention returns on educational investments. *Source:* Heckman JJ (2008) *The Case of Investing in Disadvantaged Young Children. Big Ideas for Children: Investing in Our Nation's Future, First Focus, Washington, D.C. 2008, pp. 49–58*



expressed in percentages converted from national monetary units (national currencies), the returns on early crime prevention interventions ranged from 0.38 to 7.16 %, between pre-natal and later (3–4 years) cognitive development stage (Welsh 2003).

While in each and every case these values differed, the lowest return (on -pre-natal and birth planning phase) should not be overlooked. It points to the very start of the development of a normative cognition process which is criminologically relevant because of the afore noted recognition insincerity (cheating) and property rights. Parents who cheat their children may facilitate their children's cheating.

While in each and every situation the effects (returns) and implications will be different in every country and legal culture, the value of those findings cannot lie in their accuracy but in the topicality of questions, like “deterrence”, “returns to investment”, “formative vs. reformatory crime prevention” and so on—questions important for “peaceful and inclusive societies” anywhere in the world.

However, for a long time and squarely, that “anywhere in the world” has mostly been pursued from a Western perspective only.

A case in point is the famous study of Lawrence Kohlberg (1970), US developmental psychologist (1927–1987). He and his research team confronted various groups of young and adult respondents by asking them to determine whether the right to life is above the right to property in the following case:

a woman was near death from a special kind of cancer. There was one drug that the doctors thought might save her. It was a form of radium that a druggist in the same town had recently discovered. The drug was expensive to make, but the druggist was charging ten times what the drug cost him to make. He paid \$200 for the radium and charged \$2,000 for a small dose of the drug. The sick woman's husband, Heinz, went to everyone he knew to borrow the money, but he could only get together about \$ 1, 000 which is half of what it cost. He told the druggist that his wife was dying and asked him to sell it cheaper or let him pay later. But the druggist said: “No, I discovered the drug and I'm going to make money from it.” So Heinz got desperate and broke into the man's store to steal the drug-for his wife. Should the husband have done that? (Kohlberg 1963/2008, p. 12).

Those originally interviewed on the above “Heinz dilemma” were a group of 72 boys aged 10, 13, and 16, from both middle- and lower-class families in Chicago, then the experiment expanded to a sample of younger children, delinquents, and boys and girls from other American cities, and from other countries. In the recurrent exercises, the group of respondents grew to adults from many more countries and cultures, whereby the dilemma was adapted to those cultures.

Generally, there were “yes” responses to the right to life understood in the dilemma as caring for others. Their consolidated analysis of results suggested that on the developed eventually 7-stages scale of upward moral orientation (from the most elementary (“pre-conventional punishment and obedience orientation”) through the most advanced (“post-conventional meta-ethical ontological orientation”)), the evaluated progress rate favoured Western-minded respondents.

In particular, regarding critical for the difference between patriarchalism and contractualism stage 5 which tested the latter (“social contract legalistic orientation”), the results seemed to indicate that Western respondents scored higher. But this was because that stage of moral development was assessed only on the basis of the Western concept of justice posited by the Heinz dilemma as a binary choice between “life or property”. When that dilemma was replaced by a number of non-dilemmatic methods, the statistical re-evaluation of the above study plus a separate meta-analysis of 75 cross-cultural Kohlberg-scale based studies in 23 countries, both showed commonly shared between Eastern and Western respondents stages of moral development and cross-cultural justice values (Gibbs et al. 2007, pp. 454 and 491).

In this connection, the next sub-section considers some of the aspects of Eastern justice values relevant in anti-corruption education.

2.2 *Eastern Perspective*

Unlike in Western legal culture where nowadays filial relationships are for all practical purposes limited to close family (couples, siblings, parents-children), and in other personal configurations individuals are “a mere aggregate” (Ruskola 2013, p. 75), in the 2000-year old Confucian legal culture a broken filial obligation not only is regarded an emotional failure of a filial duty but also violates intergenerational relationships that are far more important than business relationships beyond the family. In all Confucian interpretations the lineage of property involved only male kinsfolk (ibidem). Property is managed by them in the overarching patriarchal spirit of social harmony (benevolence, righteousness, propriety, wisdom and faith), the spirit believed to be the five greatest traditional inspirations for codes of ethics in Asia,⁵ like also the five related patriarchal principles of filial piety—a “graded love” continuum of: *Ruler to Ruled, Father to Son, The Husband to Wife, Elder Sibling to Younger Sibling, Friend to Friend* (Fan 2010,

⁵ Also in Buddhist and Hindu interpretations, see further Glenn 2010, pp. 153–172; Kee 2007.

pp. 203–205). These principles permeated the traditional hierarchical structure of Chinese society with its four social classes, ranked in the following order of priority: officials and intellectuals, peasants, workers, and, finally, businessmen.

In modern China the growth and repositioning of the latter class is now at the focus of public and governmental attention and action because of the growing corruption of the new middle class. Accordingly, those who stress “the moral malaise of the West” that erodes those time-honoured intergenerational relationships urge to resurrect the moral insights of Confucian thought, as if their old strength would suffice to control corruption better (*ibidem*, p. ix). Presently, this is a serious moral and governance challenge and concern, *inter alia*, exemplified by various counter-corruption actions—many in vain in the long run.

And, indeed, in the Eastern world “good governance” is a different concept from the Western one. Before sharing some insights how to counter corruption from the United Nations perspective that accommodates the Eastern perspective with its legitimate concern, it should be first acknowledged that, indeed again, the Confucian sense of “good governance” is less contractual and more filial or interpersonal (*ren zheng*—human governance).

Developmental psychologists have documented the source of this difference through cross-cultural parent–child experiments conducted in China and Iceland, as a modification of the “Heinz dilemma”. In two such experiments a sizeable group of pre-selected, psychologically, socially and linguistically classified Icelandic and Chinese children was separately interviewed on two dilemmas: a moral one on friendship obligations and another one on interpersonal responsibilities in a parent–child relationship.

In the friendship dilemma a protagonist had to choose between keeping a promise to a best friend or accepting an interesting invitation from another child of the same gender, but new in the class (Keller et al. 2005).⁶ The dilemma, experimenters inform, involved an interesting offer made by the friend or the new child (the hedonistic concern), the moral obligation to keep the promise or the arrangement with the friend, interpersonal responsibilities of care (the long-term friendship and the needs and feelings of the close friend) and, finally, the responsibilities towards the third child who is alone. The experimenters concluded that as regards cultural differences in orientation to the principles of justice and care (reasoning about the option who is a “friend”), Icelandic participants were more frequently oriented towards the contractual aspect of the promise. However, the Chinese, apparently prompted by altruism, were more concerned with interpersonal responsibilities towards the friend.

In the parent–child dilemma a mother has promised her daughter that she can spend the money she has earned herself or received as a present on a movie or a concert. At the last minute the mother claims the money from the daughter because

⁶ Some aspects made the situation psychologically more complicated. For example, that the meeting with the friend is on their special day or that the old friend appears not to like the new child, and that he or she wants to talk about something that is important for him (Keller et al. 2005).

it is needed to buy things for school. The daughter lies about the amount of money and goes to the movie or concert—with the knowledge of her sister. The dilemma focuses on the sister (first tested at the age of 12, then at the age of 15) who has to decide whether she should tell her mother the truth or be silent about it when the mother asks her about the sister's whereabouts.⁷ The interview strategy concentrated exclusively on the moral judgment and the reasons supporting it. In addition, however, respondents were asked for justifications that might support an alternative moral judgment of a fictitious third person.

The experimenters further concluded that in evaluating the results of that dilemma, it turned out that the contractual aspect between the mother and her daughter had for 15-year-old Icelandic students a somewhat greater significance than for the corresponding Chinese group. But, more important, a closer look at the arguments in both groups suggested a bigger significance of fairness over sibling loyalty in the Icelandic parent-child relationship. For the Chinese children it was their preference of parental authority (not fairness, but submissive filial piety) over sibling loyalty—penultimate on the list of the five Confucian bonds. In contrast, for the Icelandic group's conduct it appears that fairness was a part of an emerging moral egalitarian contract between a parent and a child.

The bonding amongst Chinese children and the kinship instinct between them and parents (in short, interpersonal obligations or patriarchal norms) was stronger than in the legal culture of Icelandic families. In Iceland, children's moral sense of intergenerational obligation towards parents seemed to be more contractual, as if driven by a state rather than kinship instinct⁸ and motivated by the desire for more intergenerational equity—an idea of delivering fairness or justice in relationships between children, youth, adults and seniors, particularly in terms of treatment and interactions (Marshall et al. 1993, p. 119).

It is this light one may now see the seminal results of moral psychology studies of adolescents (ages 13–18 years) in Canada and China. (Helwig et al. 2003). These studies surprisingly confirmed the similar reasoning about autonomous and authority-based group decision-making in the peer group, family and schools for decisions that involved children, as measured by adolescents' and parent' attitudes to respect the majority rule vs. consensus. In this context, it was surprising to see the adolescents' like-mindedness in favouring consensus in taking decisions in family and by majority rule in larger groups (e.g. school classroom).

Even more surprising was the response to the question whether or not a child in a family should receive special tutoring on weekends (quite a common family practice in China). Chinese parents favoured consensus over exercising their own authority. This was justified by the argument to respect children's autonomy and

⁷ Again, the conflict contains different concerns. Beyond the issues of parental authority and the contractual norm of promise keeping the moral norm of truthfulness—not to lie to the mother, and interpersonal responsibilities such as care or loyalty to the sister are important concerns in the situation (Keller et al. 2005).

⁸ There is a wide body of well-referenced educational research on children born to Chinese or English parents which basically confirms the above finding (Westbrook 2012).

their right to make academic decisions on their own. Likewise surprising was the difference between Chinese and Canadian adolescents' opinion whether or not to decide by consensus on the educational curricula. While Canadian adolescents favoured that rule, Chinese peers favoured the majority opinion. This striking preference was apparently due to unease and distrust of certain authoritative educational practices involving the standardization of educational curricula and nationwide achievement examinations. Found overly authoritative, these practices were contested as non-participatory.

Other research with adolescents and adults in a non-Druze Islamic patriarchal community in Israel showed similar patterns of judgment about freedoms and rights (Helwig and Turiel 2002).

Finally, researchers have found that ethnic minority groups tend to promote interdependence, and European Americans tend to promote independence. Yet, evidence of both orientations has also been found within each ethnic group. One of the more recent studies of this genre corroborated this evidence for the coexistence of dimensions of independence and interdependence in parents' cultural models among African Americans, Chinese Americans, European Americans and Mexican Americans living in the US (Suizzo 2007).

Thus, in conclusion, the above findings suggest that across diverse cultures the fundamental conception of fair treatment through shared decision-making is appreciated and accepted where patriarchalism mixes with contractualism, albeit not necessarily to the same extent, for the corruptive attitudes are differently embedded in the various family models. Nonetheless, participatory decision-making, whether in property, education or other issues carries a universal moral appeal in the tested models. This appeal transcends the Occidental and Oriental values; therefore a fairer resource distribution ("distributive justice"—material and non-material) through that form of participation may be helpful in anti-corruption education. To some extent, this offers an avenue for modifying a patriarchal perception of justice in favour of a contractual one.

However, there are also clear limits for such modifications on the patriarchalism-contractualism spectrum; limits which show that Occidental and Oriental anti-corruption legal education must account for culture-specific, if not also gender-specific decision-making.

Last but not least, the results of empirical research involving another modification of the Heinz dilemma⁹ tested on 9–15 years old randomly sampled students from Beijing primary and secondary schools (Fang et al. 2003) delivered one more interesting finding. Namely, that while certain features of students' moral development are indeed universal in terms of family relationships, other features are more

⁹ "Judy's dilemma": "A mother has given a promise to let her daughter Judy go to a rock concert if she paid for the ticket with money she had earned herself. At the last minute, the mother withdrew her permission and requested that Judy used the money to buy a school dress. Judy decided to lie about the money she had earned and to go to the concert anyway. The question was whether her older sister Louise, who was informed about Judy's plan, should tell her mother the truth or not?". (Fang et al. 2003, p. 127).

dependent than in the Western setting on the filial piety between daughter and mother than between the two sisters. Consequently, comparing moral development across such diversified culturally students and countries should account for this Eastern patriarchal and normatively legitimate difference, without locking it through a Western lens into one moral development hierarchy.

This indirectly corroborates the intuitive claim that moral development of women and children is different than of males—overrepresented in the original Heinz dilemma (Gilligan 1982). This claim looks like belabouring the obvious. However, it suggests one important point: apart from these relational subtleties on the right to life in the context of patriarchalism or contractualism, there is otherwise precious little on the likewise relational issues involved in the right to property, whether understood in the Western or Eastern way. Therefore a similarly intuitive claim that anti-corruption education in property related issues for women and children of different cultures may require more tailored age- and gender-sensitive research and approaches warrants further consideration.

In its light, the following sub-section shows that from the UN perspective only very few inroads have been made into anti-corruption education for women and children, as far as property issues are concerned.

2.3 The United Nations Perspective

Disregard of the law may have various sources: contractual vs. patriarchal attitudes to it, the lack of knowledge of it (e.g. illiteracy is certainly one of the factors), the feeling of impunity—of being “above the law”, the feeling of borderless cyberspace with its own virtual law, etc. More often than not, contemporary youth, especially “digitally-native”, may be in the last group, while contemporary adult men and women in the other ones.

That little can be said about all people whether from East or West, or—using contemporary UN terminology—South or North. The North–south bridge provided by the United Nations Convention against Corruption/UNCAC (2349 UNTS 41) facilitates cooperation on criminal aspects of countering corruption. Understandably, in this regard it gives priority to any inter-State transfer of anti-corruption expertise relating to the training for the personnel responsible for countering corruption (art. 60), but not to education of the public along the other parameters, and even less to women and children. And yet, art. 13 of UNCAC only addresses (in)formal anti-corruption education in terms of single State-Parties and their territorially limited obligation to include in their public education “school and university curricula” to contribute to non-tolerance of corruption, whoever this public (adults or kids) is. In art. 5 UNCAC obliges State-Parties to collaborate with each other and with relevant international and regional organizations in promoting and developing the measures that promote the participation of society and which reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. That

collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

The UN Secretariat's review of the implementation of this article (CAC/COSP/WG.4/2014/2, paras. 17 and 80–83) shows that in countries which reported on it, its various anti-corruption authorities pursue the relevant work. For example, in France it includes universities and other institutions of higher education. In the Republic of Korea, annual meetings were held to communicate the content of the guidelines to the inspectors of central government agencies, local government bodies and educational institutions, so as to improve consistency and comprehensiveness in the implementation of the national anti-corruption strategy. The guidelines contained the priorities of the national anti-corruption policy for the upcoming year, best practices in implementation by government departments and an overview of the implementation level achieved by each public body in the previous year.

The Bolivarian Republic of Venezuela reported that since 2003 it had been implementing a programme entitled “The Comptroller goes to School”, in which school children were required to take action to exercise control over and supervise the correct administration of school resources. The programme, in which over 12,000 students from more than 1000 schools in 23 different states had participated, served to highlight to students the key corruption risks that existed within schools and how to combat those risks.

Similarly, Nigeria noted that it had put in place a number of measures to directly engage children in corruption prevention efforts. The Independent Corrupt Practices and Other Related Offences Commission collaborated with the National Educational and Research Development Council to develop a “national values curriculum” initiative aimed at infusing key anti-corruption ethics and values into the national educational system. The curriculum was integrated into school subjects at all levels of education, and work was in progress to extend the curriculum to polytechnical schools and universities. Additional measures included the introduction of 300 “anti-corruption clubs” in secondary schools, providing a forum in which students could discuss the impact of corruption in Nigeria.

In this regard, the implementation of the Convention on the Rights of the Child/CRC (1577 UNTS 3) lags behind the UNCAC. This is because while the CRC encourages children's right to participation in some decision-making and stresses their right to personal dignity and integrity by obliging the States to take the preventive and educational measures to counter their “mental violence” and other (non) criminal abuses (art. 19), it hardly pays attention elsewhere to more subtle educational aspects, namely how to educate relevant actors in meeting children's right to personal property—a departure point for any anti-corruption education.

The CRC seems to be more geared toward facilitating countering domestic violence than property crime, hence intergenerational equity is somewhat too restrictively interpreted. It stipulates the rights of children to dignified treatment by others through education and health care, the right to privacy, to protection from violence, and to political rights such as freedom of expression and religion, but not to a more participatory resource management.

Overlooking this restrictive interpretation, one CRC commentator applauds it as an impressive document “that not only states the moral sense of the global community, but also potentially creates political structures for fulfilling that view” (Melton 1991, p. 66). Surely, at the time of that writing, exclusively focusing on the prevention of “mental violence” that is at the core of the global moral sense should not be surprising. But as of this writing, no longer one may be so exclusive. Empirical evidence shows (see Kanningiser et al. in this book) that 3 years old children understand some crucial aspects of social norms (e.g. entitlements). Further, already from the age of two they have the ability to relate owners and their property and to make (basic) inferences about who owns what. Moreover, these children correctly assume that stealing does not transfer ownership.

However, even more limited than CRC on anti-corruption education will be the International Covenant on Economic, Social and Cultural Rights of 1966 (1993 UNTS 3). In art 13 it only speaks generally of the right to education in terms of its availability, accessibility, acceptability and adaptability (E/C.12/1999/10, Comment 13). Article 5(1)(a) of the UNESCO Convention Against Discrimination in Education of 1960 (429 UNTS 93) is likewise generally relevant because of its emphasis on tolerance. It reads: “Education shall be directed to . . . the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”. In 1974 UNESCO in its “Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms” (see Clark in this book) offered some generic advice on teaching Crime Prevention as part of the UN Peace Studies. In sum, save for the examples of art. 5 UNCAC cited above, in the United Nations legal instruments the new anti-corruption focus is absent.

That particular part of education across the world is left to other devices. However, when the focus is recast, it may be viable for the furthering of early anti-corruption strategies through international exchange.

3 Making the United Nations Anti-Corruption Law Work

While there has already been some UN progress in extending anti-corruption education from adult to children’s level, this progress has still been interculturally rather shallow and, at times, attacked. The devastating role of the Nigerian-born “*Boko Haram*” (“Western education is sinful”) may be a case in point for counter-ing anti-corruption education, but for each and every country such a point really stands on its own, particularly as regards the impact of contractual and patriarchal relationships on property management. “Property management” by children, that is early prevention educational policies at the core of which that “management” is (and about which little is known or done worldwide) should become a part of anti-corruption strategies across various legal cultures. Be it as it may, paying attention

to the property issues with due account of such intricate differences is the key for a more successful countering of corruption anywhere.

Educating in this way in “property issues” is not a technical skill, though. In essence it is eventually the question of good governance for sustainable development skills and effects—global, local and personal (Redo 2012). Researchers, educationists and educators must remember that at the core of these issues are various resource deprivations (material and non-material) which for the purpose of the United Nations sustainable development agenda have been intellectually short-cut to “poverty eradication”.

In reality, the post-2015 UN sustainable development agenda as far as anti-corruption education for women and children is concerned, must take account of these various facets of deprivations, including maternal and parental ones. Education starts with intimate contacts at home and school. The post-1945 research, first mandated by the United Nations and then carried out by the World Health Organization and numerous academics ever since, has abundantly documented in this regard the correctness of several earlier fragmentary findings, but also the common wisdom of previous times: Home and school are the places for intergenerational transmission of aspirations, norms, and values—the places for developmental anti-corruption (Redo and Platzer 2013, p. 296).

Since early education builds “the foundational truth” (Westbrook 2012, p. 140)¹⁰ for any young person, in the nascent United Nations treaty exchange of information and experience on early anti-corruption, each and every country deals with its own “truth” concerning formative features for living honestly. However, hardly any has operationalized it in sustainable development terms. This is documented by the afore reported country examples from Europe, Asia, Africa and Latin America regarding the implementation of UNCAC (art. 5). Countries with various legal cultures and socio-economic systems pursue very diversified concepts and methods of countering corruption. Country reports hardly give a sense of anti-corruption education for women and children in sustainable development terms.

In the interest of making this thin blue line more conducive for anti-corruption for women and children globally, the following recommendations may be considered:

First, in the interest of further exchange of information and experience globally, State Parties to UNCAC and others concerned may wish to publish the anti-corruption educational syllabi on the Internet;

Second, at the occasion of biennial conferences of UNCAC State Parties they also may wish to engage directly educationists and academics to discuss that experience through the so called “side events” (i.e. expert meetings organized around the formal conference agenda);

¹⁰ This colloquial expression is an intellectual shortcut for sharing with a child common wisdom, whereby at the very start a bivalent or multivalent way of thinking takes hold in the formative process and makes the headway.

Third, the United Nations publications, including manuals or handbooks, in an operative way should further develop the advice how to counter corruption, taking account of great cultural specificities and developmental challenges of a personal and socio-economic character. An example to follow is the “*ABC of Teaching Human Rights*” (UNHCHR 2000)—the publication which emphasizes that children are human beings whose rights are distinct. They should not be passive objects of care and charity. Such publications underline that children should learn what justice or fairness means through the appropriate methods in education (“equity”, fair grading, meeting other anti-corruption educational criteria; empowering of children), in culture (e.g. “a woman is not a property of a man”), and in sports (“fair play”). These are very elementary examples for formative age anti-corruption teaching and other institutional instruction, criminologically relevant because early symptoms of “underachievement” can later be important in terms of delinquency and dropping out of school;

Finally, UNESCO and the United Nations Children’s Fund (UNICEF) may here be the leaders with their various anti-corruption country projects, as well as the International Anti-Corruption Academy (IACA)—an authority in a more advanced (academic and non-academic) good governance training and education.

For the less advanced (elementary) level of anti-corruption instruction, there is still more in cross-cultural terms. “Taken together, research on young children’s understanding of different ownership rights has revealed that young children already grasp some ownership rights and distinguish between ownership transfers that are temporary (e.g. borrowing, playing with someone’s objects) and transfers that are permanent (e.g. gift giving, creating something new). Of course what counts as ownership rights and transfers, who may be entitled to ownership (individuals, groups, etc.), and what entities can and cannot be owned may vary between socio-cultural groups. But... children come prepared with the ability to acquire the specific ownership norms (just as all other norms) of their group” (Kanngiesser et al. in this book).

This research corroborates the viability of practical examples that meet the developmental requirements for countering corruption among older children (10–15 years old). For example, in California (USA) which has in its primary and secondary-level education various minority children, the authorities implemented a 60-lesson curriculum for the intermediate (primary/secondary) junior high school students. This was a follow-up to a shorter curriculum, from which “simply put... the students learned the lessons taught” (Kenney and Godson 2002, p. 439).

This meticulously structured, interactive Californian “*School-based Education to Counter Crime and Corruption*” (Godson and Kenney 2000) is, in fact, adaptable to many other societies. The educational curriculum involves meeting knowledge-based (cognitive) and affective or attitudinal/emotionally-based goals, that is children’s non-tolerance to crime and corruption. For those familiar with the researched and reported cultural differences in children’s cognition and affection in Eastern and Western legal settings, and how to respond to them constructively in those settings, that curriculum can be a springboard to develop specific domestically and locally-sensitive teaching and learning anti-corruption methods. The curriculum

may also help to project relevant anti-corruption instruction into pre-school, primary and university-level activities and classes in a culturally- and psychologically appropriate way. Consequently, and in principle, on the educational continuum one may comprehensively, with expertise and foresight, get at the core of anti-corruption formative and reformatory education in every country, with due account of age- and culture-dependent youth features, and other precepts, rule of law ones including.

4 Conclusion: How the United Nations Wants Us to Counter Corruption?

In conclusion, making connections across various legal cultures is important anywhere. The examples of the implementation of art. 5 of UNCAC seem to be inscribed into the above conclusion. Comprehensively and symbolically, this was underscored by the Secretary-General of the United Nations. In 2004 Kofi Annan emphasized that “the ‘rule of law’ is a concept at the very heart of the Organization’s mission”. (S/2004/616, para. 6). Two years later, he added that at the very heart of the United Nations is also ensuring that our individual rights must be preserved and respected (Annan 2014, p. 128). Now must be added that good governance for sustainable development should be the main orientation point in anti-corruption education for women and children, and for all.

The UN Culture of Lawfulness has its own multi-level normativity (individual, national and United Nations’) and communicates heartfelt universal values of all civilizations. Thus, as far as the UN concept of the Rule of Law is concerned, this normativity, partisan and complex as is, is not only contractual, but also interpersonal and global. This UN normativity owes its further complexity to the formulation of the UN post-2015 development Goal 16. It reads: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. As one of the sub-goals it envisages to “substantially reduce corruption and bribery in all its forms” (A/68/970, p. 22).

Both formulations seemingly contradict one another: promoting peace and social tolerance and increasing non-tolerance of corruption and bribery. But, in fact, they are flip sides of one coin. An eminent commentator of the UN Charter noted that inserting in it the link between “peace and security” put the Charter ahead of its time (Schrijver 2006, p. 10).

Since then, in the United Nations “justice” has not been at parity with “peace and security”. Only when none of the permanent members of the Security Council vetoes, “justice” may subordinately be delivered, e.g. in the fight against corruption or bribery, by this law enforcement arm of the UN, or in other mandated cases may be delivered by its various international criminal tribunals.

Likewise ahead of its time is now the UN 2016–2030 sustainable development agenda. In it countering corruption and bribery is linked to the development of

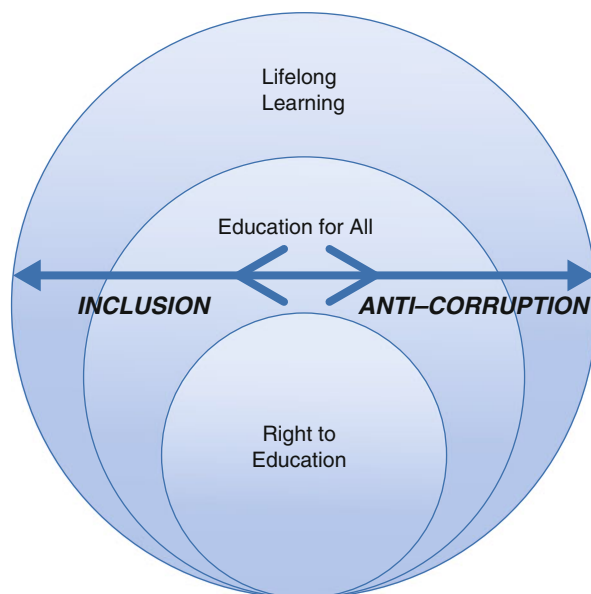
peaceful and inclusive societies. This was first signalled as such at the UN Security Council when its President reaffirmed that corruption is a threat to peace and security (S/PRST/2010/4, p. 2). It appears that the supposedly overarching UN concept of the Rule of Law has been subsumed under “peace and security”.

It may thus be generally concluded that the legal and cultural non-tolerance of corruption is the hallmark of a peaceful society, while the hallmark of social inclusion is the further legitimization of otherness in whatever culturally available way it may show itself. Inclusion entails implementing and creating new abiding civic commitments to the essential similarities and, paradoxically, differences everywhere. In essence, the progressive associative impact of contractualism implies pursuing inclusiveness and education, rather than the unbounded tolerance of diversity, especially when it facilitates “uncivil societies” (see further Redo 2012, p. 153). When in such “societies” violence and crime: transnational, organized, modern and traditional; terrorism and the hatred of otherness is manifested in excess, then this fundamentally offends our civic consciousness, may undermine peace and security and the rule of law.

In this connection, other proposed sustainable development goals accordingly emphasize the role of education and life-long learning, both very important for social inclusion (Fig. 2).

It is the above context in which one can now appreciate the two great minds of “the philosophers of the heart”, one Chinese—Meng Zi (Latinized as Mencius, 327–289 B.C.E.),¹¹ and the other—the eighteenth century Swiss Jean-Jacque

Fig. 2 How the United Nations wants us to counter corruption. *Source:* Adapted from Biermann J (2013) The United Nations Convention on the Rights of persons with Disabilities. Implications and Challenges for National Education Systems. In Platzner M, Idomir ML (Eds.), UN Agencies Reaching out to the Academia and the Civil Society, Favorita Papers 01/2013, ACUNS-UNIDO-CTBTO-Diplomatische Akademie Wien, pp. 237–252



¹¹ The most accepted date (Wang 2009).

Rousseau (1712–1778),¹² in whose times corruption was still as normal as drinking water and eating rice or bread. Both in their own ways believed in the existence of a natural law (in Chinese *Tien-lei* or *lei*) and *shè huì qì yuē*—a social contract (Shin 1957). Both also provided for their constituencies various arguments for peace and justice as a part of a universal endowment, for empathy as a driver for positive human and international relations, for natural goodness of a person, for governance as an agreement between the ruler and the ruled for the sake of their welfare, and against corruption. As the second motto of this chapter illustrates, Mencius’ eventual message on countering corruption is very clear. He has been probably the first one who conveyed in this way the essence of sustainable livelihood (more: Zhang in this book).

But Mencius and Rousseau went even further. Mencius said: “*The great man is he who does not lose his child’s heart*” (Book 4, part II in Lau 1970, p. 130). Rousseau who wrote a book on natural education of children (“*Emile, or about Education*” (1782)), recalled there the thirteenth century Mongol invasion of China. He then warily observed that: “*A philosopher loves the Tartars so as to be spared having to love his neighbours*” (Rousseau 1979, p. 39). By this he meant that personal empathy is in short supply among neighbours, but only with more of it can we appreciate others, and integrate them into our societies.

The welfare of people, their life and, in some cases, the way they die, their honesty and empathy depend on educating ourselves and the succeeding generation in a greater cultural tolerance with more balanced sustainable development whereby excessive economic inequalities are prevented. In this way, indeed, societies can, technically speaking, be less criminogenic and become more peaceful and inclusive. This is what the projected UN post-2015 sustainable development agenda calls for. Even if, paradoxically, that agenda’s implementation depends also on educating ourselves in the culture of non-tolerance to corruption. This educational priority is at the heart of the reply to the question “How the United Nations wants us to counter corruption”.

Five Questions

1. What is your opinion about the role of legal culture and sustainable development as issues relevant to anti-corruption education of women and children?
2. Why does early prevention matter more than crime prevention later?
3. Would you agree that the concept of “Culture of Lawfulness” notwithstanding its Western origin may aptly cover the anti-corruption education of women and children across any legal culture?
4. What is the difference between a patriarchal and a contractual approach to anti-corruption education for women and children?
5. Why should property management related issues be at the core of anti-corruption education for women and children?

¹² Credited for his contributions to the Universal Declaration of Human Rights (Morsink 1999, pp. 290–291; Høystad 2011, p. 183).

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Proactive Strategies to Prevent Child Sexual Abuse and the Use of Child Abuse Images: Experiences from the German Dunkelfeld Project

Klaus M. Beier

Abstract The contribution describes a German prevention approach which aims at improving proactive strategies to protect children from sexual exploitation by online offenses, such as the consumption or distribution of child abuse images (so-called “child pornography”), and hands-on contact child sexual abuse. Prevention strategies include research on individuals at risk to commit first or persistent sexual offenses against children, at the same time offering preventive assessment and treatment. As it is acknowledged that many offenders against children remain undetected by legal authorities in the “Dunkelfeld” (literally “dark field”) and are therefore not included in any official statistics, this program focuses on those who admit a longstanding sexual interest in prepubescent and/or early pubescent children, so-called pedophiles and hebephiles, self-motivated by the distress experienced due to their sexual preference (cf. www.dont-offend.org). It will be shown that these groups are reachable (given that they can rely on anonymity and the professional pledge of confidentiality) in order to improve the prevention of child sexual exploitation, because sexually deviant interests have been identified as a major risk factor for first or persistent sexual offending against children. Therefore, public health services have a real chance of encouraging the concerned persons to seek professional help before any kind of sexual offense against children is committed.

Abbreviations

BEDIT	Berlin Dissexuality Therapy
CAI	Child abuse images
CSA	Child sexual abuse
DRF	Dynamic risk factors
DSM	Diagnostic and statistical manual of mental disorders
ICD	International classification of mental and behavioural disorders

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PPD	Prevention Project Dunkelfeld
PPJ	Prevention Project for Juveniles
TUK	ThinkUKnow

1 Introduction

The chapter describes the German prevention approach which aims at improving proactive strategies to protect children from sexual exploitation through online offenses, such as the consumption or distribution of child abuse images (CAI), and hands-on contact child sexual abuse (CSA). Official statistics account for only a fraction of all CSA and the use of CAI, inappropriately called “child pornography offenses”. Those cases not reported to the authorities constitute the largest part of sexual offenses against children and are referred to as the “Dunkelfeld” (literally “dark field”) in German. Consequently, preventive efforts must consider both primary prevention in the case of potential offenders and secondary prevention for self-referred offenders in the “Dunkelfeld”.

Since its beginnings, the German prevention approach was based on the knowledge that in sexual offending against children two groups can be distinguished: On the one hand those showing no sexual preference disorder, but who, for different reasons, sexually abuse children, and on the other hand those showing a sexual preference disorder, namely pedophilia (i.e. the sexual preference for prepubescent minors) and/or hebephilia (i.e. the sexual preference for early pubescent minors).

Sexual preference usually manifests itself during adolescence and remains stable thereafter. This is true for pedophilia and hebephilia. Thus, pedophiles and hebephiles will always be at risk of offending and/or re-offending, mainly in the “Dunkelfeld”. Furthermore, empirical data suggest that pedophiles and hebephiles show high levels of co-morbidity and distress due to the problems associated with their sexual preference. As a result, they are more likely than other sexual offenders to seek treatment. However, community-based specialized diagnostics and therapeutic programs for these self-referred individuals remain scarce.

For that reason, the Institute of Sexology and Sexual Medicine in Berlin (Germany) developed a prevention approach to encourage self-identified (but officially not registered) pedophiles and hebephiles to seek professional help to avoid committing CSA and the use of CAI. As part of the project, a media campaign was designed in order to reach the target group.

Between June 2005 and March 2015, on average 15–20 individuals contacted the research office in Berlin per month, resulting in 2,181 applications, 906 assessments, and treatment offers to 459 individuals. The smaller number of assessments was due to geographic distances—the applicants came from all over Germany and many of them were not able to commit to attending treatment sessions on a weekly basis. As expected, the vast majority were either pedophiles or hebephiles. Half of them had already committed child sexual abuse and three quarters admitted to the use of CAI in the “Dunkelfeld”.

In a specialized one-year treatment program, the participants learn to ensure impulse control by using cognitive-behavioral techniques, sexological tools (integrating the attachment dimension in terms of an increase in social functioning), and pharmaceutical options (mostly androgen deprivation therapy). The evaluation of the Prevention Project Dunkelfeld (PPD) was performed in a non-randomized waiting list-control design with multiple assessments for 75 participants. It revealed that the primary prevention approach

- reduces risk factors for child sexual abuse,
- prevents sexual offending against minors and reduces the number of contact offenses,
- reduces the frequency and severity of the consumption of CAI.

Currently, the PPD is being expanded. In addition to the one in Berlin, nine further contact points in other German states have been successfully established.

In addition, there are aims of expanding on an international basis, because pedophilia and hebephilia represent a part of human sexuality and can therefore be found in any culture and in any country. Subsequently, a huge “Dunkelfeld” can be assumed in every country, too. Furthermore, particularly the use of child abuse images is a topic of international concern. Despite the fact that the legislation in Germany regarding the non-mandatory reporting practice concerning CSA and the use of CAI is crucial for the success of this preventive program (according to German law, it is considered a breach of confidentiality for the treating therapist to report either committed or planned CSA or use of CAI), the current situation in other countries—even those with mandatory reporting laws—would allow at least to focus on potential or real users of child abuse images in the “Dunkelfeld” for preventive purposes.

The use of child abuse images is an indicator for a pedophilic and/or hebephilic inclination and therefore the user is an important target for prevention. The PPD shows that it is possible to reach pedophiles/hebephiles from the community and to encourage these men to change their habit of using CAI. Furthermore, it indicates the probability of preventing a crossover to hands-on child sexual abuse—which would be a promising primary prevention approach for this cause. But, of course, it will only work, if trust is achieved and confidentiality reliably guaranteed.

2 Child Sexual Exploitation

Child sexual exploitation, i.e. child sexual abuse and the production and consumption of child abuse images, belittlingly and inappropriately called child pornography (even by the United Nations; see [United Nations, General Assembly A/55/297](#)), may constitute acute and persistent harm for the victims (Finkelhor et al. 2005). Results of a representative survey within the general public in Germany suggest that 2.8 % of men and 8.6 % of women are sexually traumatized in terms of contact offenses prior to the age of 16 years (Wetzels 1997). A review of 38 prevalence

studies in 21 countries resulted in prevalence rates of recalled childhood sexual victimization of approximately 20 % for women and 10 % for men (Pereda et al. 2009). These high prevalence rates of child sexual exploitation go along with a growing understanding that the prevention of CSA and the use of CAI is a critical public health issue (Whitaker et al. 2008). In an American study, 91 % of victims of child sexual abuse had not reported their abuse (Henry and McMahon 2000). According to the United States Department of Justice, over 56,000 cases of child sexual abuse were reported and substantiated in the USA in 2007, but only approximately 30 % of cases were reported to the authorities.¹ Therefore, the majority of actual incidences involving sexual abuse of children is never reported to the police, is thus not registered by the judiciary and criminal prosecution authorities, and remains in the “Dunkelfeld”.

In a recent comprehensive meta-analysis combining prevalence figures of child sexual abuse reported in 217 publications published between 1980 and 2008, including 331 independent samples with a total of 9,911,748 participants, the overall estimated CSA prevalence was 127/1000 in self-report studies and 4/1000 in informant studies. Self-reported CSA was more common among female (180/1000) than among male participants (76/1000). Lowest rates for both girls (113/1000) and boys (41/1000) were found in Asia, and highest rates were found for girls in Australia (215/1000) and for boys in Africa (193/1000). The results confirm that CSA is a global problem of considerable extent (Stoltenborgh et al. 2011).

Strong evidence identifies deviant sexual interests as a major risk factor for child sexual exploitation (Hanson and Bussière 1998; Mann et al. 2010). Offenders committing CSA differ from other men (sex offenders with adult victims, non-sex offenders, and non-offending volunteers) in their sexual responses to stimuli depicting prepubescent or early pubescent children in the laboratory (Blanchard et al. 2001; Blanchard et al. 2006). In addition, indicators of sexual interest in children are strong predictors for sexual recidivism among identified sex offenders in clinical or correctional samples (Hanson and Morton-Bourgon 2005). With respect to child abuse images, their use is regarded as a valid indicator of pedophilia (Seto et al. 2006).

3 Terminology and Phenomena

3.1 Sexual Preference

In general, human sexual preference can be described as being sexually attracted towards the gender and body age of one's partner and also the responsiveness concerning certain sexual interaction and practice with the partner. Besides the individual's self-concept, these characteristics are clinically revealed through the

¹ National Sex Offender Public Website (2012), accessed 12/10/2012.

exploration of sexual fantasies and behaviors. Due to cultural norms, self-concept and behavior may differ from sexual fantasies. Social desirability regarding deception of oneself and others is important if characteristics of the sexual preference are socially sanctioned and have to be kept private.

3.2 Characteristic of Preference: Body Age

The relevance of the physical developmental age for the description of sexual preference has been widely accepted (Banse et al. 2010; Freund et al. 1972; Ponseti et al. 2012). Often, this body age preference is determined by mature secondary sexual characteristics of an adult. The sexual preference for the adult, fully developed body age is referred to as teleiophilia (gr. “teleos”—fully grown) (Blanchard et al. 2000). In addition to teleiophilia, there is a distinguishable sexual responsiveness toward the sexually immature or not fully mature developmental age, especially among men.

Since Krafft-Ebing (1912) the sexual preference for prepubescent minors is referred to as pedophilia (gr. “pais”—child). Sexual preference for early pubescent minors was termed hebephilia (from the Greek goddess of youth “Hebe”) by Glueck (1955). This sexually preferred physical age is characterized by the stage of transition from the prepubescent to an early pubescent body age, represented by the development of the secondary sexual characteristics (according to Tanner stages 2 and 3; cf. Tanner 1962). Typical for this transition is the incipient breast development with a slight warp in glandular tissue around the areola (so-called breast buds; i.e. “thelarche”). The beginning genital development is characterized by a small amount of pubic hair in form of downy hairs with slight pigmentation around the labia majora or around the root of the penis with no or only little growth of the penis or the labia. The term hebephilia has to be distinguished from ephebophilia (gr. “ephebos”—young man) and parthenophilia (gr. “parthenos”—virgin). Both refer to the sexual preference for male or female adolescents with mostly late pubescent body age (Tanner stages 4 and 5) and are subtypes of teleiophilia (Blanchard et al. 2000; Hirschfeld 1906).

Sixteen years ago, the onset of puberty (male genital development/female breast development) was around the age of 11 in Germany. Recent studies indicate an earlier onset of puberty as well as an acceleration of physical maturation. At the age of 10, half of the girls and more than one third of the boys report a beginning growth of pubic hair. The average age for reaching the late pubescent or adult pubic hair (Tanner stages 4 and 5) was age 12.3 or 13.4 for girls and age 13.4 or 14.1 for boys (Kahl and Schaffrath Rosario 2007). Blanchard and colleagues (2009) were able to distinguish pedophilic, hebephilic and teleiophilic preferences with penile plethysmograph measurement in large groups of delinquent sex offenders ($n = 881$), but also reported an overlap between these preference patterns. In earlier studies, this

work group showed that men with a hebephilic preference had different characteristics (IQ, education, left-handedness, body height, and head injuries before the age of 13), i.e. exactly between the group of pedophiles and teleiophiles (overview cf. Blanchard et al. 2009).

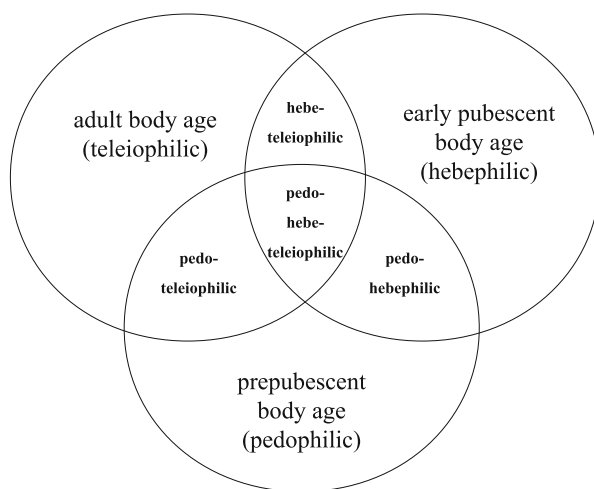
3.3 The Berlin Classification

The exploration of the sexual preference for body age based on sexual fantasies often leads to a variety of different preferred ages. In addition to the exclusive types of sexual preference for a prepubescent, an early pubescent, or an adult body age, men report several fantasized body ages, e.g. proportionally existing sexual fantasies regarding the prepubescent and the early pubescent body age in one individual. In Fig. 1, possible combinations of preference are schematically displayed and exemplified in the following case studies (Beier et al. 2013).

3.4 Sexual Preference Disorder

Both the DSM and ICD list sexual preference for physically immature sexual partners with different diagnostic criteria in differently headlined groups (APA 2013; WHO 1993). In DSM-5, the term “Pedophilic Disorder” is defined as “sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger)” and belongs to the category “Paraphilic Disorders”.

Fig. 1 Sexual preference for body ages according to the Berlin classification: teleiophilic—hebephilic—pedophilic and mixed forms



In ICD-10, pedophilia is defined as a “sexual preference for children, boys or girls, or both, usually of pre-pubertal or early pubertal age” and belongs to the category “Sexual Preference Disorders”. A sexual preference for early pubertal children as a separate diagnostic category is not provided in the DSM-5 classification. In ICD-10 this preference is summarized under “pedophilia”. The ICD-10 classification has, on the one hand, the advantage of considering prepubescent as well as early pubescent body age, and on the other hand, the disadvantage of not allowing for a terminological differentiation. In the ICD-10 classification, as well as in the DSM-5 classification, a sexual preference or paraphilic disorder is not diagnosed unless the sexual preference or paraphilia goes along with a clinically significant degree of distress or impairment. It needs to be taken into account that pedophilia fulfills characteristics of a disorder even without the existence of a threat of endangering others (real offenders vs. non-offenders). Comparing pedophilia to other paraphilias, the acting out of the preference can be seen as an idiosyncratic clinically relevant criterion (Blanchard 2010).

The underlying consideration is that refraining from this socially sanctioned form of sexual interaction constitutes sufficient impairment of social functioning inevitably causing psychological distress to the person involved. DSM-5 claims that the individual has to be at least 16 years old and at least 5 years older than the sexually abused child. A significant part of distress in pedophilically inclined persons is the final realization that their often unwanted and internally rejected sexual preference is stable over a longer period of time. According to present knowledge, the sexual preference of a person in its individual characteristics manifests itself during puberty and is marked by constant sexual fantasies over the life span. Therefore, Seto (2012) recently discussed the conceptualization of a sexual preference for minors as a “sexual orientation”, similar to gynaeophilia (attraction to females) or androphilia (attraction to males). He identified a pubertal onset, associated sexual and romantic behaviors with the desired partner, and the relative stability over the life time as core features of a sexual orientation, and described some relevant empirical data on detected offenders that support this conceptualization. Therapeutic efforts to change characteristics of preference such as the preferred gender of one’s partner showed no effects, especially not in the long term (Spitzer 2012). Regarding the ability of therapeutically influencing characteristics such as the body age or the sexual practice preference, there is disagreement concerning the consistency; nonetheless, there has been no evidence so far as to the ability of changing this preference.

Therefore, it needs to be understood that the sexual preference structure of any human in its individual characteristics (standard norm to paraphilic) is established in adolescence and, according to present scientific knowledge, from then on remains manifest and is not categorically changeable, i.e. an orientation toward the adult male gender cannot be transformed into an orientation toward the adult female gender, a fetishist orientation cannot be erased, etc. (cf., e.g., Seto 2012; Spitzer 2012).

This is also expected to be the case in pedophiles, and to date there is no convincing evidence to the contrary.

In a recent study on the stability of sexual preference in pedophilic men (Müller et al. 2014)—implementing phallometric measurements over a course of time in altogether 43 participants—, the authors came to the conclusion that changes would have come about in time (on average there were 50 months between two measurement settings). However, the authors were vehemently criticized due to methodological weaknesses (e.g. unrecorded faulty measurement variance; classification of control groups on the basis of the initial characteristic on the dependent variable; significantly different entry levels of pedophilic arousal of the two groups; a high proportion of convicted offenders), arguing that the generated effects were merely the result of technical faults in measurement within the course of this generally weakly rated study design (Cantor 2014; Lalumière 2014; Bailey 2014).

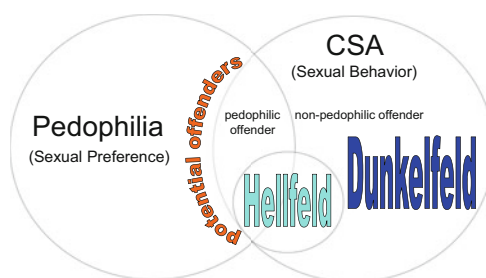
Analyzing self-reports of participants in the Berlin PPD at different stages in time (three measurements with averagely 1–2 years' time lapse), there was no recording of any significant changes in sexual preference (Grundmann et al. 2016).

With respect to the use of CAI, most self-identified pedophiles reported that CAI is sexually arousing and many acknowledged using these materials at some point in their life (Neutze et al. 2010; Quayle and Taylor 2002; Riegel 2004). Also, detected “child pornography offenders” showed pedophilic patterns of sexual arousal. By comparing phallometric test results of 100 “child pornography offenders” with those of 178 sex offenders with child victims, a group of “child pornography offenders” showed significantly greater sexual arousal to children than did a group of offenders against children. Overall, 61 % of the “child pornography offenders” showed a preference for depictions of children over depictions of adults (Seto et al. 2006). Thus, the use of child abuse images is a valid indicator of pedophilia, because men generally choose to view pornography corresponding to their sexual interests.

On the other hand, the diagnosis of pedophilia is not applicable to all child sexual abusers or the users of child abuse images (Seto 2008). Approximately 60 % of men detained for sexual abuse of children cannot be diagnosed as having a preference disorder in the sense of pedophilia. Offenses are often committed as a substitute activity for sexual interaction with desired adult partners who are, for various reasons (e.g., sexually inexperienced adolescents seeking a surrogate; mentally retarded persons and those with antisocial personality disorders; or perpetrators within generally traumatizing family constellations), not available. By contrast, approximately 40 % of men sentenced for child sexual abuse fulfill the diagnostic criteria for pedophilia (Beier 1998). Pedophilia and offending against children are also not synonymous.

As shown in Fig. 2, there are pedophilic men who manage to restrict their desire for sexual contact with children to fantasies only, as well as others who realize that fantasizing does not satisfy their needs and fear their impulses getting stronger, eventually leading to child sexual abuse. These latter are potential offenders and some of them wish to avoid that their impulses overwhelm them and therefore seek therapeutic help. It is helpful to be aware of the fact that men with this pedophilic inclination have been living with sexual arousal fantasies about children's bodies since puberty, and that they have had to control these impulses in order not to

Fig. 2 Pedophilia and sexual offending against children



"Dunkelfeld": cases not officially registered; "Hellfeld": officially known cases

become an offender and not to traumatize children, not even in the internet by using child abuse images. Furthermore, it is necessary to consider that most sexual assaults happen in the "Dunkelfeld" (whereas "Hellfeld" cases are reflected by official statistics).

Several typologies of not sexually motivated online offenders have been suggested in the literature. For example, it is suggested that some online offenders access child abuse images out of curiosity, by accident, or in order to shock people, without a specific sexual arousal function. Others create and distribute CAI solely for financial gain (Krone 2004; Lanning 2001).

Finally, because most research on pedophilia is based on forensic mental health or correctional samples of sex offenders, little is known about pedophiles who are not formally involved with the criminal justice system, and even less is known about the factors that distinguish those who act upon their sexual interest in prepubescent or early pubescent children from those who do not.

However, as pedophiles have been found to have a greater risk to recommit CSA or to use CAI, particularly at an early age (Eke et al. 2010), it must be assumed that these individuals also have a greater life-time risk for initial offending, and therefore they are considered to be an important target group for prevention approaches.

The relevance of a sexual preference for children regarding sexual offending behavior is all the more worrying considering data from the general population, which revealed that one fifth of university males reported some sexual attraction to small children, and one tenth had fantasized about having sex with children (Briere and Runtz 1989). Using phallometry, researchers have found that non-pedophilic men also show penile response to pictures of early pubescent and prepubescent images of children (Quinsey et al. 1975). Over a quarter of community participants in another study indicated pedophilic interests via self-reporting or phallometric response (Hall et al. 1995). Lykins and colleagues studied sexual arousal in a clinical and forensic sample of 214 men sexually attracted to females. Participants (no child sexual abuse and/or "child pornography offenders") showed physiological arousal to early pubescent and prepubescent girls, as measured by phallometric testing. Arousal to prepubescent girls was greater than to neutral stimuli (Lykins et al. 2010).

Many, but not all, child sexual offenses were committed by pedophiles. Phallometric research revealed that about half of first-time child sex offenders were not pedophilic (Blanchard et al. 2001). This underlines the importance of a reliable assessment of sexual orientation in child sex offenders, given that treatment strategies for child sex offenders depend on the offenders' sexual preferences. Assessment of sexual preferences in child sex offenders is also important for the prediction of recidivism, because the probability of re-offending is much higher in pedophilic child sex offenders than in non-pedophilic child sex offenders (Hanson and Bussière 1998; Hanson and Morton-Bourgon 2005).

Recent research has shown that pedophilic interests can be assessed using specific brain response measurement to visual sexual stimuli (Ponseti et al. 2012). Thus, automatic pattern classification of MRI scans could be a promising advance in the objective measurement of pedophilia.

Recent epidemiological data state that the prevalence of a pedophilic inclination is between 0.37 % and 6 % of the male population (Ahlers et al. 2009). In comparison: 1 % is the prevalence of Parkinson's disease in the German male population. While many people may know someone who is suffering from Parkinson's disease, only few will be consciously aware of knowing a pedophilic person: pedophilia cannot be (visibly) identified and those affected do not admit to it for fear of social discrimination; not even when they have never offended against children.

It is important to acknowledge that no one can "choose" his or her sexual preference—it is a matter of "fate, not choice"—, which is why it would be wrong to pass moral judgement on it. Moral judgement is only permitted—and then by all means—when someone acts on his or her sexual interest in children, thereby damaging the individuality and integrity of a child. Moreover, clinical experience suggests that sexual age and gender preference manifests itself at a young age as part of sexual identity and remains unchanged over the lifespan (APA 2000; Beier 1998; Wille 1968).

Thus, from their late teens or early twenties on, individuals sexually interested in children have to cope with the ramifications of their unusual sexual preference (Schaefer et al. 2010). Facing these challenges time and time again, the development of clinically significant distress at some point would not be surprising. Thus, non-offending pedophiles and pedophilic offenders in the "Dunkelfeld" appear to be ideal target groups for the prevention of sexual offending against children: they are at-risk individuals, some of whom are motivated for treatment due to distress and therefore reachable (Beier, Ahlers et al. 2009; Schaefer et al. 2010).

4 Dynamic Risk Factors and Treatment

Dynamic risk factors (DRF) have been described to be associated with the likelihood of re-offending and potentially responsive to interventions. A number of meta-analyses have shown the importance of addressing DRF in the treatment of

sexual offenders (Hanson and Bussière 1998; Hanson and Morton-Bourgon 2005; Mann et al. 2010).

DRF are included in contemporary theories of sexual offending against children or pathological internet use, and are considered to be important treatment targets within prevention approaches aiming at detected sex offenders (Davis 2001; Ward and Beech 2006; Quayle and Taylor 2003). In past research on CSA offenders, a set of DRF has been identified (Hanson and Harris 2000; Hanson et al. 2007). It was suggested that sexual reoffending is predicted by three major types of dynamic risk factors: (1) emotional or intimacy deficits; (2) offense-supportive cognitions such as the belief that children benefit from sex with adults; and (3) problems with sexual and general self-regulation (e.g., sexual preoccupation, poor cognitive problem-solving skills, impulsivity) (Hanson et al. 2007). However, the extent to which identified recidivism risk factors are applicable to pedophiles at risk to initially offend or to undetected pedophile offenders has not yet been established (Duff and Willis 2006). Other factors such as denial, minimization, poor victim empathy, or low self-esteem could not be empirically supported, although clinicians deem them to be core elements of sex offender treatment. These factors might enhance treatment responsivity through motivation for treatment and help to constitute therapeutic alliance (Marshall et al. 2006).

5 Primary and Secondary Prevention Efforts

Conventionally, primary prevention efforts focus on children, families, teachers, youth welfare and social service workers, and others who may be in a position to intervene. Educational programs have been most successfully delivered through schools and have recently also been adopted by other organizations (Finkelhor 2009). The main goal is to teach the difference between acceptable and unacceptable touching and how to disclose to a trusted adult if sexual touching occurs. Evaluation data suggest that school-based programs increase knowledge about sexual abuse and protection strategies, and participants are more likely to report experiencing sexual abuse (Gibson and Leitenberg 2000; Rispens et al. 1997). A more recent meta-analysis on studies evaluating school-based programs in North America found improvements in knowledge and protective behaviors in simulated at-risk situations among children asked a short time after participating, but also revealed increased anxiety (Zwi et al. 2007). Regarding prevention of the use of CAI or additional online offenses against children (e.g., grooming), approaches such as the ThinkUKnow (TUK) program provide internet safety advice to children aged between 5 and 16 years, parents, and professionals. However, first evaluation data on a non-stratified sample of 1,718 children (aged 11–16) do not suggest a decrease in risk-taking internet behavior after participating in TUK (e.g., interaction and sharing personal information with strangers). Also, more than half of the program participants report difficulties to recall the safety messages well or over time, and even if they do, they do not always act on the advice

(Davidson et al. 2009). Thus, educational approaches addressing the prevention of internet offenses need to be expanded with an appropriate quality management including evaluation.

Primary prevention can also be focused on at-risk individuals, including persons who are pedophilically or hebephilically inclined and who have not yet sexually offended against children. That is why the general idea of primary prevention is to prevent the offense itself, no matter how. Therefore, targeting pedophiles at risk to commit initial offenses could also be seen as a proactive primary prevention approach, given that strategies provide successful preventive treatment to these individuals (Beier, Neutze et al. 2009; Beier and Neutze 2012). There are few clinical data suggesting that men sexually interested in children may be reached for prevention offers before initial child sexual offending behavior occurs. For example, a Canadian outpatient clinic for men with paraphilic sexual disorders was contacted by 26 non-offending and self-referred pedophiles (Fedoroff et al. 2001). It is a fact that these patients, as well as some self-referred patients in another study (Bogaert et al. 1997), sought professional help because they experienced distress related to their sexual preference for minors. Regardless of whether these patients were distressed out of fear of society, or out of a sense of being sick or dangerous to society, their distress was clearly related to their sexual preference (Schaefer et al. 2010).

Despite this, some authors have defined preventive work with at-risk (not yet offending) individuals as secondary (Seto 2008). This does not hold true, because secondary prevention is called for to prevent a relapse if an offense has already occurred—even if it has not been detected and took place in the “Dunkelfeld”. One approach dealing with at-risk individuals in a primary and a secondary preventive way is the “Stop It Now!” campaign that uses social marketing strategies to reach persons who are at risk of committing sexual offenses against children in order to convince them to seek treatment and to encourage non-offending adults to intervene if they suspect that child sexual abuse may take place. With numbers of up to 1,960 self-identified potential ($n = 313$) or “Dunkelfeld” ($n = 249$) offenders voluntarily contacting the campaign office within a four-year period, and 34 % of all calls addressing the use of CAI or other internet offenses, the results of the “Stop it Now!” campaign indicate a similar demand for comparable prevention approaches (Stop it Now 2009).

Other strategies try to mobilize third parties (family members, friends, and colleagues of either victims or offenders) to detect situations where abuse is actually or potentially occurring and to intervene or report the situation. Some surveys have shown that overall community knowledge and attitudes about sexual abuse can shift in the wake of advertising campaigns (Chasan-Taber and Tabachnick 1999).

However, a fundamental problem with the hot line and self-referral strategy for potential offenders is that, given the current statutory and retributive environment of most countries, it is difficult to promise or persuade an offender that he will receive confidential help.

6 Legal Framework Conditions in Germany

In Germany, all those working in community-based treatment programs are subject to the requirement of confidentiality (section 203 of the Criminal Code: “Violation of private secrets”—imprisonment for not more than 1 year or a fine), which also includes information regarding sexual abuse (the only explicit exception is the treatment of previously convicted offenders in the context of so-called supervision of conduct, section 68a (8) of the Criminal Code).

The requirement of confidentiality also applies to possible future child sexual abuse, since it is not listed in section 138 of the Criminal Code (“Failure to report planned crimes”)—in contrast to, among others, serious trafficking in human beings, murder, manslaughter or other crimes against personal liberty (in which case the failure to report would constitute a punishable offense).

However, with reference to section 34 of the Criminal Code (“Necessity as justification”), medical confidentiality can be broken and the case reported to the police if the therapist is convinced, in the context of a community-based treatment relationship, that a patient will commit a sex offense. The clinician can then invoke the fact that, upon weighing the conflicting interests, the protected interest that is in danger (abuse of a child) substantially outweighs the one interfered with (the requirement of confidentiality). Nevertheless, under the Criminal Code this only applies to the extent that reporting the matter “is a proportionate means to avert the danger”. That is questionable, since the person reported will deny any motivation whatsoever to commit the offense when official investigations are instituted, and permanent deprivation of liberty cannot be justified on this basis. In addition, one must remember in the context of self-referred pedophiles who seek self-motivated professional help, that these individuals want to prevent anything from happening, which is the experience taken from the PPD (see below): A conflict could only arise if different assessments were made of the risk that the impulse can no longer be controlled and the participant does not act on the means of averting the danger recommended by the therapist. But even in such a case (which, to date, has never occurred in the PPD), the participant would not reveal his inner life to the authorities if he were reported, and he would no longer be accessible for interventions.

For that reason, the legal situation in Germany must be regarded as an extremely favorable starting point for prevention work in this field, because it enables a protective framework which leads to potential offenders or real undetected offenders being prepared to accept help in the first place. Since, however, these offenders certainly do exist and the probability that they would commit their first or further sexual offenses or use of CAI would be much greater if they did not accept help, it is definitely better to have the opportunity to begin an intervention than not to gain any access to this target group at all.

With regard to prevention work, Germany is in a privileged position compared to other countries, since in other countries therapists working in community projects are subject to the requirement of disclosure if they become aware of acts of

child sexual abuse or the use of CAI, or if they have reason for suspecting their patient to commit such acts. An ethical debate on this matter would raise the question of whether utilitarian principles (choice of the lesser evil) in view of the benefit achieved (being able to prevent offenses against sexual self-determination) permit a procedure obligated more to protecting children than a strictly normative orientation (duty to report cases on account of the interest being in danger), which is also linked to the restriction of civil liberties (lifting of requirement of confidentiality).

The ethical dilemma is therefore not about the question of whether or not a therapist reports one single individual to the authorities in order to try to protect one single child. The ethical dilemma is about the question whether a society creates or obstructs circumstances which allow a higher number of individuals to face their problems, giving professionals the opportunity of protecting a greater number of children.

7 The Prevention Project Dunkelfeld (PPD)

In 2005, the PPD was launched as an approach for the therapeutic prevention of sexual offenses against children. At the beginning, it was supported by the foundation “Volkswagen Stiftung”, the child protection organization “Hänsel und Gretel”, and the advertising agency “Scholz and Friends”. Since 2008, it is funded by the German government.

Through a media campaign, self-identified, judicially unknown pedophiles and hebephiles were encouraged to seek professional help to avoid committing CSA and using CAI (Beier, Ahlers et al. 2009). The media campaign encouraged the necessity of an empathic, non-judgemental, non-discriminating, non-pathologizing, non-criminalizing approach, assuring anonymity and resulting in the following message: “You are not guilty because of your sexual desire, but you are responsible for your sexual behavior. There is help! Do not become an offender!” (see Fig. 3).

Individuals are screened by trained interviewers with respect to basic socio-demographic data, sexual interests, criminal history, use of sexually non-explicit and explicit materials for sexual arousal, and data on current and lifetime involvement with the authorities related to sexual offending behavior (Beier, Ahlers et al. 2009). Also, appointments for information on the treatment and further assessments are offered. The clinical interview serves primarily to assess aspects of psycho-sexual development, criminological data to verify the presence of pedophilia or hebephilia, and to verify the absence of the treatment exclusion criteria (see below).

Questionnaires are administered in order to assess previously identified risk factors including offense-supportive attitudes, empathy deficits, loneliness, intimacy deficits, coping strategies, sexual and general self-regulation, personality measures, self-reported psychopathy, perceived self-efficacy to control problematic



Fig. 3 Image from the Berlin Prevention Project Dunkelfeld's media campaign. Text translates as: "Do you like children in ways you should not? There is help free of charge and confidential. Charité—Institute of Sexology and Sexual Medicine". The TV spot is available under www.dont-offend.org

behavior, and attitudes towards the use of CAI (Neutze et al. 2010). In addition, questionnaires are administered to investigate the individual's motivation for starting treatment and to establish the preconditions for an evaluation of the treatment results.

Finally, decisions regarding the inclusion of an individual into the treatment evaluation study are made following a clinical case conference. Individuals with acute drug or alcohol problems, psychotic disorders, or developmental disabilities are excluded from the treatment program, as resources for appropriate treatment or management of their special needs are not available. Volunteers who had currently been involved with the legal authorities (e.g., being investigated for sexual crime, being under parole) are also excluded.

A treatment program was developed, the *Berlin Dissexuality Therapy* (BEDIT 2013). According to the integrated theory of sexual offending, the group-based treatment program using a broad cognitive-behavioral approach was developed as a multimodal program comprising pharmacological (particularly androgene deprivation treatment), psychotherapeutical, and sexological intervention strategies to prevent child sexual offending behavior in pedophiles and hebephiles (Ward and Beech 2006; Beier and Loewit 2013). Cognitive-behavioral interventions include

aspects of the relapse prevention, the self-regulation, and the good-lives model (Pithers 1990; Ward and Gannon 2006; Ward and Hudson 1998, 2000). Treatment targets comprise motivation for change, self-efficacy, self-monitoring (including sexual fantasies and interests), sexualized versus adequate coping strategies, emotional and sexual self-regulation, social functioning, attachment and sexuality, offense-supportive attitudes, empathy with children involved in CSA or the use of CAI, and relapse prevention strategies and goals. The written manual provides strategies to deal with threats of contact child sexual abuse during therapy.

The BEDIT is a treatment approach in line with current practice in the United States of America and Canada, where most treatment providers for detected sex offenders identify themselves with a broader cognitive-behavioral approach (McGrath et al. 2010). However, adaptations of previously existing treatment approaches were required in order to meet basic assumptions derived from years of clinical experience gained at the Berlin outpatient clinic with individual treatment of clients suffering from sexual preference disorders. These basic assumptions are (Beier et al. 2005; Beier and Loewit 2013):

1. The sexual (body) age and gender preference, and additional paraphilia-associated sexual arousal patterns are unchangeable components of an individual's personality. An individual is not responsible for their existence, but for behavioral consequences thereof. Thus, dealing with inappropriate sexual impulses directed at prepubescent or early pubescent children is linked to lifelong demands regarding sexual self-regulation and behavioral control.
2. Because sexual fantasies are genuinely integrated into an individual's personality structure, sexually deviant fantasies can undermine self-esteem and lead to personal devaluation, which, in turn, impedes the development of a socially adequate coping strategy for dealing with one's sexual impulses.
3. Based on a multi-dimensional understanding of sexuality (three dimensions: desire, reproduction and attachment), it needs to be taken into account that pedophilically inclined individuals try to achieve fulfilment within the dimension of attachment (focusing on the bio-psycho-social needs for acceptance, security and warmth) with a child as a partner. Therefore, it is necessary to establish other relationships in order to receive these emotionally stabilizing factors, even if those persons are not attractive on the level of sexual desire according to the sexual preference structure.

In summary, the treatment program BEDIT is based on three pillars that represent the bio-psycho-social nature of the preventive approach: sexological interventions help participants to accept their sexual interest by integrating their fantasies into their self-concept in order to assume responsibility for sexual behaviors; cognitive-behavioral therapy improves the participants' general and sexual self-regulation by restructuring attitudes toward sexuality and increasing coping and social skills; with the aid of pharmacotherapy, sexual impulses and fantasies can additionally be reduced (Beier et al. 2010; Amelung et al. 2012).

8 First Results from the Prevention Project Dunkelfeld (PPD)

Between June 2005 and March 2015, on average 15–20 individuals contacted the research office in Berlin per month, resulting in 2,181 applications, 906 assessments and treatment offers to 459 individuals. The decrease was mainly due to geographic distances.

The applicants came from all over Germany. As expected, the vast majority were either pedophiles or hebephiles. Half of them had already committed CSA, and three quarters admitted to the use of CAI in the “Dunkelfeld”.

The men seeking help were on average 38 years old. They belonged to all levels of society, most of them were single at the time of questioning, one third had children of their own. They have all become aware of their pedophilia at an average age of 22 years.

In a pilot study within a sample of self-identified help-seeking pedophiles and hebephiles from the community participating voluntarily in the PPD, the effects of a one-year group treatment program were examined. Applying a non-randomized waiting list control design, a treatment group and control group were assessed before and after a twelve-month treatment/waiting period, respectively. Within-group and between-groups comparisons were conducted to evaluate treatment change (Beier et al. 2015).

Analyses of pre-treatment dropouts indicated no selection bias for the observed sample and distance to the location of the program as a major obstacle for participation. Characteristics of dropouts from treatment pointed at problems including men with additional paraphilias, and a selection bias towards better-educated participants. Treated individuals showed multiple changes on dynamic risk factors in the desired direction.

After treatment, participants reported less loneliness, less emotion-oriented coping, less emotional victim empathy deficits, less CSA-supportive attitudes, less coping self-efficacy deficits, and less sexual preoccupation compared to their pre-treatment scores. Treatment change was distributed differentially over lifetime offender groups. Lifetime mixed offenders seemed to have benefited the most. In contrast to the hypotheses, self-esteem deficits, cognitive victim empathy deficits, and sexualized coping did not improve significantly over treatment.

Relapse occurred for both CSA and the use of CAI with rates in the treated group of 20 % and 91 %, respectively. No initial offending occurred for CSA. However, 24 % of men with no history of the use of CAI reported the first-time consumption of these materials over treatment. Single item analyses showed a trend towards a reduction of severity of persistent CSA behaviors for treated individuals.

Regarding the sample composition, most outstanding was the absence of women applying for the project. Given the focus on sexual preference disorder rather than sexual behavior, this finding might underline an assumed difference between male and female sexual offenders. On the other hand, female pedophiles may not have felt addressed by the media campaign depicting a man feeling aroused by children.

The psychometric results are in line with previous research on modulation of dynamic risk factors through therapy in sexual offenders (Beggs and Grace 2011; Wischka 2013; Edwards et al. 2012; O'Reilly et al. 2010). With lifetime mixed offenders, a high risk group showed the greatest benefit from the program. This finding may point at differential needs in pedophiles and hebephiles in the "Dunkelfeld".

Given that the treatment manual was based on manuals for convicted sex offenders, it appears reasonable that this high-risk group's needs were best addressed. The seeming loss of self-esteem in the overall treatment group represents a change towards normative scores and is thus difficult to interpret. Whether on a behavioral level the numbers represent a "change for the better" remains unanswered. Strikingly, only cognitive empathy with child sexual abuse victims before treatment differentiated persisters. The phenomenon is not new. Barnett et al. (2012) found only weak relationships between psychological markers and recidivism, and pre-treatment more helpful than post-treatment scores.

Regarding the use of CAI, approx. 90 % of the sample reported further consumption of child abuse images and were therefore classified as persisters. Of further concern are men taking up the consumption of these materials. This obvious lack of effect on child abuse image use may result from an iatrogenic effect, e.g., that non-offenders learned how to offend online when participating in group treatment with real offenders. This cannot be ruled out, as the original design did not provide for a differentiation of group participants according to their offense history.

Given the small sample at hand and short observation period, it would be premature to draw any firm conclusions. Furthermore, the relation between self-reported behaviors and recidivism in detected offenders is complex. Concerning recidivism in terms of offenses known to the legal authorities, the recidivism rate within the PPD was 0 % for CSA and for the use of CAI, as none of the self-reported offenses during the course of treatment was detected or reported. This finding underlines the significance of the "Dunkelfeld" for both research on child abusive behaviors and the sexual traumatization of children.

However, the German primary prevention approach shows that it is possible to reach pedophiles and hebephiles from the community and it is widely accepted by the public. Since July 2012 with the help of Google AdWords, potential consumers of child abuse images are guided to the therapeutic offer of the PPD by typical search keywords. Since the beginning of the project in 2012 until the year 2015, there have been more than 20 million Ad Impressions and more than 240,000 clicks on the website (www.dont-offend.org).

Currently, the PPD is being expanded. In addition to the one in Berlin, nine further contact points in other German states have been successfully established. One of the exclusion criteria of the PPD was the age limit of over 18 years. This—as well as the success of the PPD—has encouraged the launching of a further project at the Institute of Sexology and Sexual Medicine of the Charité in Berlin (Germany) in November 2014: the Prevention Project for Juveniles (PPJ). The project aims at this target group with the help of a media campaign and with the same proactive

prevention approach in mind, but focusing on the special particularities of adolescents (Beier et al. 2016). This new project will also be funded by the German government.

9 Outlook and New Challenges

It is commonly known that there are cultures in which girls get married before being at the developmental stage of an adult woman (although it is not a hallmark of most cultures; see Buss 1989). However, this should be no reason not to differentiate between a sexually erotic responsiveness toward the body of a child (in the sense of pedophilia) as a motivational reason for sexual contact to minors, and social traditions, in which men who marry their wives as a child are not automatically responsive toward the body of a child. In the latter case, their sexual interest in the partner usually awakens when she develops the body scheme of an adult woman.

Rather, the aim and intention must be to reveal the pedophilic inclination in the person concerned in order to ensure that this preference toward children is not acted out on the behavioral level. In this sense, it is necessary to relieve the individual by making it easier for them to come forward and take responsibility by learning to reliably control their behavior, if necessary—and in most cases called for—with therapeutic support. Yet, one can only expect pedophilic individuals to take this step, if the underlying social and legal framework allows for such an opening, i.e. if fear of social stigmatization is minimized.

Conversely, those social stratifications need to be considered, which promote the realization of sexual contact to children by pedophiles. To give an example, the caste system in India reduces the likelihood of victims of sexual assault or abuse (in particular if they belong to a lower caste than the offenders) to come forward and confide in law enforcement authorities, because their trust in these institutions is low and they feel that they can hardly hope for support (Harendra de Silva 2007).

Further obstacles for this are the lacking (health) structures of supply that could help victims to get over their experienced traumatization. This is all the more to be deplored, given that study results concerning psychological consequences of trauma strongly indicate that neurobiological changes in brain structure might (negatively) influence the future lives of the victims. This involves, for instance, measurable cortical thickness in the somato-sensorial cortex exactly in those areas responsible for the sensitive interconnection within the genitals (Heim et al. 2013).

The comparatively riskless viewing of child abuse images due to the various opportunities offered by the internet will in the near future lead to a situation where, at an early stage (i.e. during adolescence) practically every pedophile and hebephile will have been exposed to the temptation of using these images and will be a more or less experienced consumer. This makes the consumption of CAI a crucial target for primary prevention, especially because the group of “child pornography offenders” will then be likely to already include those later committing contact

offenses. There should be no contradiction between law enforcement and the promotion of preventive strategies, and detected “child pornography offenders” should regularly be assessed to secure prevention on a reliable basis to avoid crossover (hands-on) offenses.

The fact that a certain social framework is basically in a position of promoting sexual violence, which does not only involve danger and harm for children, but also for women, can currently very impressively be seen from the example set in India, where a number of rape cases of women (partly by groups of men, and some with lethal outcome) have become public and, as a result, have led to massive protests within the community. It is most likely that rapes such as those have taken place in the past, but were not made public. There are possibly very different reasons from the point of view of the rapists for their actions and these should and could be very carefully analyzed. From a sexological point of view, it is to be assumed that the offenders experience sexual arousal by acting out coercion and violence, and by experiencing power, this being a characteristic of their sexual preference structure. Other elements of these crimes are circumstantially related to a depreciatory perception of women, indicating insecure male identities in an ever changing world in which, in reality, there are even societies distinguishing themselves by their endeavours to obtain gender equality.

The availability of information via new media and internet technologies, particularly in a country like India, also encompasses the availability of pornographic contents and, along with that, contrasting role images of men and women, which are highly focused on sexual interaction and depict (by film) the consumatory aspect of other human beings obviously being degraded and treated as mere objects. The fact that all this reaches a young, maturing generation having access to all this film and image material on the internet, is a huge challenge for the next decade. There is no way of stopping technological development, so it should be the aim to steer it in a reasonable direction by implementing well-conceived and effective counter measures for the benefit of society.

There can definitively be no doubt that the prevention of sexual violence against children and women is a global health issue and should be regarded as such.

10 Conclusions

The importance of the first results from the Berlin Prevention Project Dunkelfeld (PPD) for current policy is highlighted in the following:

1. A significant number of pedophiles and hebephiles from the community are not known to the justice system and have no contact with preventive services. These pedophilic and hebephilic men are either potential offenders or real offenders. However, they remain undetected in the “Dunkelfeld”.
2. Many pedophiles and hebephiles who are not known to the justice system would be willing to participate in a treatment program aiming to prevent child sexual

abuse and the use of child abuse images, provided they know how to access it and feel they can trust on anonymity and the pledge of confidentiality by experts specialized in assessment and therapy of their disorder.

3. A media campaign is able to communicate these goals.
4. The legislation in Germany regarding the reporting of child sexual abuse and the use of child abuse images is an advantage for the success of this preventive program: According to German law, it is considered a breach of confidentiality for the treating therapist to report either committed or planned child sexual abuse or use of child abuse images.
5. The current situation in countries with mandatory reporting laws concerning CSA and the use of CAI would allow at least to focus on potential offenders, and, in those countries with mandatory reporting laws only concerning CSA (but not the use of CAI), in addition even on real users of child abuse images in the “Dunkelfeld” for preventive purposes. The use of child abuse images is an indicator for a pedophilic inclination and therefore the user is an important target for prevention. The PPD shows that it is possible to reach pedophiles/hebephiles from the community and to encourage these men to change their habit of using child abuse images. Furthermore, it indicates the probability of preventing crossover to child sexual abuse—which would be a promising primary prevention approach for this cause. It will work, if trust is achieved, i.e., by ensuring anonymous and confidential access to prevention offers.

Five Questions

1. Pedophilia is a sexual preference disorder according to the ICD-10 of the World Health Organization. Why is it socially stigmatized, even if the person has never acted out his sexual impulses towards children?
2. Which obstacles need to be overcome in other countries in order to establish the German primary prevention approach there?
3. Why do victim-based and offender-based prevention measures often seem contradictory?
4. How is it possible to involve all social forces in the fight against sexual exploitation, regarding it as a serious public health problem in societies all over the world?
5. Why is it so difficult to effectively stop the worldwide distribution of sexually abusive images depicting minors, including posing material?

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Women and Children as Victims of Sex Offenses: Crime Prevention by Treating the Offenders?

Gunda Wößner

Abstract In the context of crime, women and children are very often discussed as victims of sex crimes such as rape or sexual abuse. This chapter provides an overview of the number of sex crimes in comparison to other crimes, the problem of the dark figure, and discusses how valid these data are. As a measure of victim protection, one of the most important aspects of offender treatment is crime prevention. Sex crimes can have long-lasting negative effects. What can be done to reduce this damage? Does it help to treat the offender, and what are the effects of these treatment programs? Does offender treatment facilitate a reduction in the number of sex crimes or should sex offenders be incarcerated for longer periods, perhaps even for the rest of their lives? How can we predict a sex offender's potential "dangerousness" after release in these cases?

1 Introduction

In the last decades, sexual violence against women and children has become the focus of political and public concern in numerous countries. First and foremost, the United States of America, where by 1996 all states and the District of Columbia had introduced some kind of sex offender registration statute and public notification system (Silverman 2011), deserve particular mention. In Europe, England and Wales tightened its sentencing policy (Harrison 2014), France and Germany introduced, at least and partly temporarily, mandatory treatment for incarcerated sex offenders and follow-up measures to better monitor released sex offenders (see Haverkamp and Wößner 2014; Hirschelmann 2014). Other countries still embrace surgical castration, defying objections raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, see Škvain 2014). As can be seen, different countries have tried to find answers to

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sexual offending in order to protect the public from these crimes. But are harsh sentencing practices and control measures an appropriate answer? Is offender treatment an effective means of victim protection in the field of sex offenses or does it embody mere social romanticism that runs contrary to victims' needs?

Given the tremendous traumatizing effects sexual victimization can have on victims, it is undoubtedly justified to do as much as possible to prevent sexual crimes and to respond to sexual violence appropriately. Victims of sexual violence frequently develop posttraumatic stress disorder (PTSD), a mental health disorder that is defined by three clusters of symptoms: extreme fear, helplessness, or horror resulting from a serious threat of injury. The symptoms include recurrent and intrusive recollections and dreams of the incident, hyperarousal, such as an increased startle reaction, sleep and/or concentration difficulties, and trying to firmly avoid cues or reminders of the trauma. Avoidance symptoms may also encompass emotional numbness, i.e., the inability to feel any positive emotions such as love, satisfaction, or happiness (Keane et al. 2009).

In addition to this general concept of trauma, Burgess and Holmstrom (1974) identified a specific *rape trauma syndrome* that usually implies a two-phase reaction: the acute phase of disorganization with a wide range of expressive emotions such as shock, disbelief, fear, and anger (demonstrated by sobbing, crying, restlessness, and smiling) which might alternate with a controlled behavior right after the rape occurred, and the second, long-term phase “when the woman begins to reorganize her lifestyle” (p. 982). The consequences of sexual victimization are not only restricted to severe affective disorders such as PTSD, anxiety, depression, or substance (ab)use: They may also encompass reproductive and physical health problems, chronic pain, gastrointestinal and gynecological complications as well as sexually transmitted diseases. Other possible long-term effects are financial loss and economic hardship (Dignan 2005; Zinsstag 2014). Such long-term effects are also found in victims of child sexual abuse (for further details see Shirwadkar in this volume).

Specific negative effects of sexual violence victimization arise for victims of armed conflicts (see Nikolic-Ristanovic and Stevkovic in this volume). Not all individuals who experienced sexual victimization will develop the described disorders. Psychological strain as a result of sexual violence depends on the severity and frequency of the assault(s) as well as on the victim's individual disposition of resilience and coping with the crime (Fischer and Riedesser 1998; Putnam 2003). Particularly important protective factors are the support of significant others, especially close emotional support, attachment, and satisfaction (Thornberry et al. 2013). It is also important that the victim's experiences with the criminal justice system are not re-traumatizing.

There is a widespread assumption that sex offenders—especially those who have abused children—exhibit a particularly high risk of reoffending (Hood et al. 2002) and this assumption might be one of the driving forces for the continuous attention to sex offenders and the upsurge of punitive actions against them. This increase of measures of control and retribution has been critically discussed among scholars.

But is sex offender treatment an appropriate response to sex offenders and does offender treatment really impact victim protection?

2 The Extent of Sexual Violence

Sexual violence is a ubiquitous phenomenon in all societies through all social classes. It can be assumed that every third woman worldwide has experienced some form of sexual violence in her life (Willman and Corman 2013, p. 5). The extent of sexual violence, however, can only approximately be determined since collecting data on sexual violence faces different issues. Data sources can encompass official police records, victim surveys, self-reports on delinquency, and incarceration rates. Survey rates on sexual violence largely depend on the willingness to report such crimes (thus, depending on the method of the survey) and the definition of the crime. Official data focus on a very specific number (such as reported sex crimes, the number of suspects, the number of incarcerated sex offenders). Nonetheless, some consistent trends from a number of national and international crime surveys have regularly indicated that—looking at lifetime prevalence—up to half of the female population of Western societies has experienced sexual victimization of some kind (Kury et al. 2004a). According to Heiskanen (2010, p. 24), Southern Africa, Oceania, and North America exhibit the highest recorded rape rates with a large variability between different states.

In 2006, rapes accounted for 0.8 % of the *police recorded crimes* in the United States. In Sweden, 1.2 % of the police recorded offenses were sexual assaults (Kristensen et al. 2011). In France, this number amounted to 1.5 % in 2010 (Ministère de la Justice et des Libertés 2012). In England and Wales as well as in Germany similar numbers (i.e., 1 %) are reported (Grubin and Thornton 1994; Bundesministerium des Innern 2014). Reported sex crimes per 100,000 inhabitants differ from country to country: In 2006, Denmark reported 60 sex crimes per 100,000 inhabitants (rape: 12, see Kristensen et al. 2011, p. 252). Equivalent rape rates for other countries are 3 for China (2000) and Russia (2012), 17 for France (2004), and 92 for Australia (2003, Australian Bureau of Statistics 2003).¹

Victim surveys usually provide higher numbers: The average 1 year prevalence victimization rate (being a victim of any kind of crime in the last year before the survey) for 30 countries was 16 % according to the *International Crime Victim Survey* (ICVS) 04/05 (van Dijk et al. 2007). Almost 2 % of the surveyed women reported having experienced sexual assault, 0.5 % of the surveyed men did too. This means that 10.6 % of all female victimizations concerned sexual assault, but only 3 % of male victimizations. However, the survey only covered subjects aged 16 or older and referred to the previous year only. The ICVS applies the same questionnaire in different countries, thus facilitating the comparison of the numbers. The

¹ Statistical analyses based on miscellaneous sources, e.g., www.nationmaster.com.

number of women aged 16 and older who reported having been sexually assaulted in the previous 5 years in a survey period between 1992 and 1997 yielded—not surprisingly—very different prevalence rates. In Africa, 4.5 % of Ugandan but only 0.8 % of Batswana women reported that they had been a victim of sexual assault in the previous 5 years. In South America, prevalence rates ranged between 1.4 % in Bolivia and 8 % in Brazil. In Asia, the percentage of women reporting sexual violence ranged from 0.3 % in the Philippines to 2.7 % in Indonesia. Finally, the reported frequency of having been a victim of sexual violence in Europe varied from 2 % in Hungary to 6 % in Albania (Jewkes et al. 2002, p. 151). However, in general victim surveys, items referring to sexual victimization are embedded in an array of questions on all kinds of victimization and attitudes toward crime. Victim surveys regularly yield smaller prevalence rates of sexual victimization than studies with more sophisticated methods (see Kury et al. 2003; Young et al. 2009). Prevalence rates for sexual assault vary greatly, not only between different nations but also within nations. In the USA, for instance, between 17 % and 25 % of women reported a life time prevalence of rape (see Campbell 2008); in Germany between 3 % and 16 % reported attempted or completed rape (see Kury et al. 2004a).

Concerning *child sexual abuse*, a meta-analysis including studies from 22 countries showed that about 19 % of the female population and about 7 % of the male population experienced some form of child sexual abuse (Pereda et al. 2009). Prevalence rates for both sexes differed substantially between continents: Africa: 34.4 %, America 15.8 %, Asia 10.1 %, Europe 9.2 %, and Oceania 23.9 % (Pereda et al. 2009). Due to methodological, cultural, and definitional differences, direct comparisons should, however, only be drawn cautiously. In China, for instance, incest is a taboo (Lung and Huang 2004, p. 557). Consequently, it comes as no surprise that in Taiwan only about 10 % of all sex offenses were child sexual abuse cases compared to approximately 80 % rape cases in the years from 1999 to 2001 (Lung et al. 2007). Methodological problems arise from the retrospective character of most findings or the selection of the sample. When using a clinical as opposed to a nonclinical sample, for instance, it is very likely that male subjects (boys and men) are underrepresented (Putnam 2003). In a German study, the range of child sexual abuse varied between 2 % for boys and 20 % for girls (Kury et al. 2004b). A recent German study on sexual abuse victimization with a representative sample of subjects between the age of 16 and 40 years examined the prevalence of sexual abuse during childhood and adolescence (i.e., before the age of 16, Bieneck et al. 2011). Between 1 % and 4 % of the participants reported having been sexually abused, depending on the type of inquired incident (exhibitionism, touching, penetration). In a longitudinal comparison of the numbers of reported child sexual abuse victimization that included several studies, Casey and Nurius (2006) found divergent trends. Some studies yielded a decline in the prevalence rates (e.g., Dunne et al. 2003), others an increase within the period under scrutiny between the 1980s and 1990s or from the beginning to the end of the 1990s.

Prevalence rates of sexual violence pose a particular problem in regions where the *indigenous population* has been displaced by immigrants (Native Americans in the USA, Inuit in Canada, Maori in New Zealand, or Indigenous Australians, and

finally, in South Africa). In Canada, for instance, First Peoples represent over 19 % of the incarcerated male population but only 3.7 % of the adult male population (Helmus et al. 2012, p. 857). Cossins (2006, p. 320), with reference to the Australian Institute of Health and Welfare, reports of a higher incidence of child sexual abuse in Indigenous Australian communities compared to the non-Aboriginal population. Dysfunctional family structures, drug, alcohol and other substance abuse, experiences of parental separation, and inappropriate sexual behavior seem to promote a milieu conducive to abuse and neglect (Ellerby and MacPherson 2002).

Likewise, *countries in war and conflict* exhibit particularly high rates of sexual victimization unsheathing the full dimension of this heinous crime (see Nikolic-Ristanovic and Stevkovic in this volume). In the civil-war like conditions of the 1980s, 70 % of the Ugandan women in Luwero District fell victim to rape (UN Secretary General 2006).

In general, the extent of sexual offenses in comparison to other crimes is very low and amounts to approximately 1 % in police records. Survey data provide higher rates. Especially with regard to sexual victimization, it is common criminological knowledge that the dark figure is even higher (see van Dijk as well as Schröttle and Vogt in this volume).

Turning to the *incarceration rates of sexual offenders*, again figures vary enormously between different countries. In Germany, in 2012 only 7 % (Statistisches Bundesamt 2012) of the prison inmates were convicted of sexual offenses. Lower rates can be found in Turkey (1 %, Turkish Statistical Institute 2011) or Denmark and Finland (3–5 %, Kristoffersen 2010, p. 24), whereas in the vast majority of prisons worldwide sex offenders have a higher share in the population of incarcerated offenders: Almost 8 % in Chile referring to 2001 (Jiménez 2009), 15 % in England and Wales (Berman and Dar 2013, p. 21), 16 % in Iceland (Kristoffersen 2010, p. 24). According to Hirschelmann (2014), France exhibits a comparatively high rate with 22 %. Incarceration rates in the USA vary strongly between states with Utah exhibiting the nation's highest percentage of incarcerated sex offenders with 33 % (Bench and Allen 2013, p. 411). In California, in 2010, only 9 % (2012: 10 %) of the inmates were sentenced for sex offenses (Carson and Golinelli 2013, p. 5). Different rates of incarcerated sexual offenders can be partly traced back to different prevalence rates of sexual offenses, but other important factors contribute too, such as definitional and legal differences and of course differences in the total incarceration rate.

Of particular interest is the group of adolescent sexual offenders. In 2008, 36 % of the police recorded sexual offenses in 34 states of the United States were committed by juvenile sex offenders (Finkelhor and Shattuck 2012); in France almost 13 % of all sentenced sex offenders in 2010 were under the age of 16. The majority of adolescent sex offenders stop sexual offending in their 20s. However, there is evidence that about half of all adult sex offenders already committed a sex crime (not always detected) during their youth (Chu and Thomas 2010).

3 Treatment Programs for Sexual Offenders

Nowadays, sex offender therapy is a constant for managing sex offenders in many countries worldwide. Yet, having said this, a good number of countries have not integrated sex offender treatment. Since sex offender therapy was introduced, it “has changed and improved with new research and information” (Mann and Fernandez 2006, p. 155). Some of the current strategies are based on paradigms that are well-established in other therapies. In its early days, literature on sex offender therapy had more of an anecdotal character (Mann and Fernandez 2006), yet in recent years, it has become virtually impossible to keep track of the numerous publications that deal with sex offender treatment.

3.1 *The Advent and Development of the Treatment Notion*

In its early days, sex offender therapy relied mainly on a psychoanalytic approach. The focus was on working on and resolving the inner conflicts of the offender (see Mann and Fernandez 2006). Especially in Europe, i.e., in Belgium, the Netherlands, and England and Wales, the psychodynamic model was endorsed (van Beek and Mulder 1992, p. 155; Palmucci 2006, p. 382). The emphasis was put on the personality of the offender (van Beek and Mulder 1992, p. 155). After a controversial discourse about the benefits of psychoanalytic therapy (see García García and Sancha Mata 1985, p. 149), the focus soon shifted to behavioral approaches, since evaluation research could not substantiate the proper effectiveness of psychoanalysis with sex offenders. Though in Germany, until the 1990s (Rüther 1998) and in France (Hirschelmann 2014) and parts of Switzerland (Endrass et al. 2012) still today, psychoanalytic one-on-one therapy has still been and is currently endorsed; as a matter of fact, treatment of sex offenders in French prisons draws largely upon psychodynamic approaches (Hirschelmann 2014). Other European countries have had a long tradition in psychodynamic approaches, too, such as Austria, Italy, Spain, and Scandinavia (Frenken 1999). The shift to behavioral approaches initially happened with very limited notions of how to treat sex offenders. It was hypothesized that deviant masturbatory fantasies affect the development and maintenance of sexual deviation (Evans 1968; McGuire et al. 1965). Consequently, *aversion therapy* was the first choice of sex offender therapy (Marshall 1973; Quinsey and Earls 1990).

In 1990, Quinsey and Earls in the *Handbook of Sexual Assault* (Marshall et al. 1990) provided an overview of interventions that aimed to reduce and modify inappropriate sexual preferences. Usually, an electric shock was delivered during the presence of paraphilic stimuli (i.e., slides of a nude female child). Quinsey and Earls (1990) conclude that there are “variations in the effectiveness of these methods of changing erectile patterns” (p. 284) and that “[o]ne of the disturbing aspects of the literature on electrical aversion is that the literature itself appears to

have dried up” (p. 285). *Covert sensitization*, a method where an imagined aversive event is simultaneously linked with the paraphilic stimulus, is another technique that was popular in the 1980s. Evidence of effectiveness, however, has remained unimpressive (Quinsey and Earls 1990). Finally, *satiation* was used as a typical practice of behavior therapy in the 1970s using, i.e., the excessive fantasizing about sexually inappropriate stimuli while masturbating to orgasm (see Quinsey and Earls 1990).

3.2 The Rationale of Sex Offender Treatment

Over the years, sex offender treatment therapy has become more and more comprehensive. The behavioral approach was gradually extended by cognitive building blocks. Gene Abel and colleagues as well as William Marshall and colleagues are the pioneers of comprehensive sex offender treatment programs (see Mann and Fernandez 2006). Over time, criminological research contributed to the further development of sex offender treatment. The identification of core treatment targets largely relied on retrospective recidivism studies that had identified risk factors for reoffending (e.g., Andrews et al. 1990; Gendreau et al. 1996). There are risk factors that are (sex) *offense-specific* (deviant sexual interests in the case of sexual recidivism) and risk factors that are *offense-unspecific* (prior criminal history, young age, negative peer associations, substance abuse, and antisocial personality, respectively antisocial attitudes, Hanson and Morton-Bourgon 2004). Therapy for sexual offenders should target *dynamic* risk factors that are associated with the risk of reoffending and that are amenable to change (Andrews et al. 1990); *static* risk factors such as early onset of criminal behavior, prior criminal history, or features of past victims are not modifiable. Thus, dynamic risk factors are risk factors that are amenable to change. With regard to general offending, Andrews and Bonta (2010) identified eight key dynamic risk factors: antisocial personality pattern, procriminal attitudes, procriminal associates, work/school problems, family/marital problems, poor use of leisure/recreation time, and substance abuse. Hanson and Harris (2001) refined this approach and identified the following dynamic risk factors that should be addressed in sex offender treatment: 1. sexual self-regulation, 2. general self-regulation, 3. intimacy deficits, 4. compliance and understanding for the need of treatment and control, 5. existence of supportive significant others, and 6. distorted attitudes or attitudes tolerant to sexual violence. Particularly important dynamic risk factors for sex offenders include sexual deviant interests, sexual preoccupations, emotional congruence with children, and intimacy deficits (Hanson and Morton-Bourgon 2005; Mann et al. 2010). These dynamic risk factors are defined as *stable dynamic* risk factors and can be tested with the instrument Stable-2000 and its advanced version, Stable-2007. Stable dynamic risk factors “are relatively persistent characteristics of the offender, which are subject to change” (Craig et al. 2005, p. 65). In addition, scholars discern *acute dynamic* risk factors: dynamic factors that are less persistent and can rapidly change, such as

substance abuse, isolation, or negative emotional states (Craig et al. 2005; Hanson and Harris 2000). The specific dynamic of acute risk factors is that they “can signal the onset of offending” (Ward and Maruna 2007, p. 46).

The most prominent model of sex offender treatment is the *Risk-Need-Responsivity* (RNR) model of offender treatment (Andrews and Bonta 2010; Andrews et al. 1990). What works in (sex) offender treatment, according to the authors, are interventions that reflect key psychological principles: 1. treatment should be aimed at higher risk offenders, 2. treatment should target criminogenic needs, and 3. treatment styles and modes should match the clients’ learning styles. Andrews and Bonta (2010) identified the above-mentioned “Big-Eight” covariates of criminal conduct that are also considered as criminogenic needs (antisocial personality pattern, procriminal attitudes, procriminal associates, employment/education problems, family/marital dysfunctions, poor use of leisure/recreation time, and substance abuse). Even though the authors state that personal strengths and resilience (e.g., intelligence, supportive relationships) are important factors to reduce recidivism (Andrews and Bonta 2010), the RNR-model very much focuses on risk-factors—a fact that has increasingly been criticized.

A more recent model on the other hand, is closely linked to this perspective of stressing the importance of protective factors in the dynamics of reducing recidivism. The authors of the *Good Lives Model* (GLM) theorize that the promotion of specific goods and goals will automatically eliminate or modify commonly targeted dynamic risk factors (Ward and Brown 2004; Ward and Marshall 2007; Ward and Maruna 2007). It is a strengths-based approach grounded on the theoretical assumptions that offenders—as all other human beings—strive for primary goods, that motivation to change is facilitated by focusing on benefits (primary goods) rather than criminogenic needs, and that interventions that pursue positive goals will help to protect offenders from risk factors (Ward and Maruna 2007, p. 108). Thus, sex offender therapy should be aimed at the primary human goods of: 1. life (healthy living, physical functioning, and sexual satisfaction), 2. knowledge, 3. excellence in play and work, 4. excellence in agency (autonomy and self-directedness), 5. inner peace (freedom from emotional stress and turmoil), 6. relatedness and community (intimate and family relations), 7. spirituality, 8. happiness, and 9. creativity. To date, little is known about the concrete implementation of GLM concepts in practice (Willis et al. 2014, p. 59). Motivational interviewing with sex offenders is one approach to bring about the motivation for personal change (see Prescott 2009). It should be noted that some authors emphasize the complementarity of the two theoretical approaches (e.g., Wilson and Yates 2009). In sum, both theories relate to the rehabilitation of offenders as opposed to the reintegrative aspects of correctional interventions. Rehabilitation focuses on changing an offender’s personality or habits in order to prevent him/her from recommitting a crime whereas the opportunities to participate in social life and the enhancement of a prisoner’s ability to return and “function” in civil society are key to the notion of reintegration (see van Zyl Smit and Snacken 2009, pp. 83, 106; compare with the resettlement concept, Maguire and Raynor 2006).

3.3 *Established Treatment Approaches*

Over the last decades, several sex offender treatment programs have evolved following the RNR rationale that treatment targets should be defined by dynamic criminogenic factors, i.e., those factors that are amenable to change and have been empirically linked to the risk of recidivism (Mann and Fernandez 2006). Mann and Fernandez (2006, p. 158) criticize this approach as atheoretical since this rationale may result in the treatment of several therapeutic goals that, however, lack a “unifying underlying theory of sexual offending”. Ward and Maruna (2007, p. 27) also complain that “for much of its history the practice of rehabilitation has taken place within a theoretical vacuum.” The authors miss clear explanations of how the process of change works.

As key issues for sex offender treatment, the following subjects have been identified (see Mann and Fernandez 2006):

Sexual arousal factors

Especially paraphilic² child molesters (i.e., persons who present with the mental disorder of pedophilia, a sustained sexual orientation toward children) are only sexually aroused by children, in most cases preferably boys.

Dysfunctional attitudes related to sexual assaults

So-called rape myths, negative views of women, sexual entitlement, or dysfunctional cognitive distortions related with sex with children in the case of child abusers.

Interpersonal deficits

Low self-esteem in sex offenders may foster beliefs about negative expectancies of themselves and others, under-assertiveness, emotional loneliness, attachment and intimacy deficits.

Self-regulation deficits

Poor self-regulation is a critical risk factor in criminal behavior in general, and as such also for sex offenders: Lack of emotion regulation, lifestyle impulsiveness, and poor problem-solving are relevant factors and thus treatment targets.

Singular treatment approaches that have attracted widespread attention are the *Reasoning and Rehabilitation Program* (R&R), *Relapse Prevention*, and the *Sex Offender Treatment Program* (SOTP).

Ross et al. (1988, p. 30) found that many offenders are not skilled in anticipating the consequences of their behavior and in reasoning how to achieve their goals. They tend to impulsive, action-oriented, egocentric, and non-reflective problem-

²Paraphilias are mental disorders including recurrent, intense sexually arousing fantasies, sexual urges, or behaviors that are targeted toward nonhuman objects, the suffering or humiliation of a person involved, or children respectively other non-consenting individuals (e.g., exhibitionism, pedophilia, voyeurism, sadism). The diagnosis requires personal distress about the person's interest, another person's psychological distress, injury, or death, or a desire for sexual behaviors involving unwilling persons or persons unable to give legal consent. It is important to note that not every unusual sexual behavior is a paraphilia.

solving. Based on the identification of these deficits, Ross and associates developed the *Reasoning and Rehabilitation Program* (R&R) consisting of nine interrelated modules (Ross and Ross 1995, p. 93): problem solving, values enhancement, social skills, critical reasoning, negotiation skills, skills in review, creative thinking, cognitive exercises, and the management of emotions. Even though the use of social skills training not only in general offender therapy but in the treatment of sex offenders is appealing, a number of authors have criticized the lack of theoretical foundation. To date, it has not been substantiated that sex offenders lack social skills in general (even though some authors found evidence for social skills problems in sex offenders, see, in sum, Robertiello and Terry 2007). Mann et al. (2010) conclude that the social skills deficits of sexual offenders are more “specifically related to intimacy deficits and hostile attitudes toward women, rather than to poor dating skills or problems negotiating routine social situations” (Mann et al. 2010, p. 208).

The *Relapse Prevention* (RP) approach is originally a method to maintain therapeutic gains of substance abusers. It was described by Marlatt and colleagues in the late 1970s and early 1980s to increase self-control among substance abusers and was later extended to the work with sex offenders (see Pithers et al. 1983). The core ideas that were transferred to the RP approach with sex offenders are the identification of crucial situations and decisions preceding a relapse and the development of strategies to avoid or cope with these problematic issues. Thus, RP is a highly individualized approach requiring thorough assessment to determine the central issues for an offender (Pithers 1990, p. 349). Therapy consists of the identification of a sex offender’s high-risk situation, including seemingly irrelevant decisions in constructing these situations, the specification of his/her skills to cope with these situations, and the precursors of the sex crime. Based on these analyses, strategies to avoid further reoffending are worked out (i.e., stimulus control procedures, avoidance strategies, coping responses, escape strategies, coping with urges, skills-building interventions, cognitive restructuring, contracting, see Pithers 1990, p. 352). In sum, RP is a self-management approach that is meant to improve an offender’s self-control.

In England and Wales, the *Sex Offender Treatment Program* (SOTP, see Grubin and Thornton 1994; Mann and Thornton 1998) focuses on a cognitive-behavioral approach. The cognitive aspects include exploring and reframing the offender’s distorted thinking patterns and attitudes toward sexually deviant behavior (sexual entitlement, rape myths, abuse myths). The program also seeks to determine on how these issues are related to the sex offenders’ self-esteem. A key aspect is the identification of the thoughts and beliefs precedent to the offending behavior similar to RP. Other central elements are (victim) empathy, social functioning, and sexual preferences. The offender is to understand that his behavior has consequences. In this sense, in most SOTPs offenders discuss their crimes, what led to the crimes, what the consequences were, and what their thoughts and attitudes with regard to the crimes are (Brown 2010). Methods include role-play, modeling, and disputing irrational thoughts. SOTP was introduced in 1991 into the English prison system (Mann and Thornton 1998). It covers a Core Program (for repeat sex

offender), an Extended Program (providing special needs interventions), and a Booster Program (delivered prior to release, focusing on RP). Allocation to treatment is based on the diagnostic assessment of risk of reoffending and seriousness of the offense (Grubin and Thornton 1994). A special feature of SOTP is that it was developed right from the start to be delivered by trained lay personnel. Since prison officers have the advantage of observing and interacting with the offenders between treatment sessions they can more easily verify whether treatment contents are transferred; they also serve as role-models on a daily basis (Grubin and Thornton 1994).

Most cognitive-behavioral programs are “delivered in a group format” (Mann and Fernandez 2006, p. 157) even though only few scholars have attended to the question whether group therapy prevails over individual therapy.

Next to this general sex offender treatment programs, specific treatment approaches have evolved during the last decades. Juvenile offenders, for instance, pose a particular focus group with age specific needs and concerns (e.g., Letourneau et al. 2009). However, it remains largely unclear, to which degree treatment approaches developed for adult offenders can be transferred to adolescent offenders without knowing whether they are effective for a younger focus group. After child sexual abuse in the Catholic Church has emerged as a virulent problem, it has been discussed by a few authors how clergy offenders may be reached and may benefit from treatment (Kelly 1998; Keenan 2012; Rossetti and Müller 1996). This overview should not hide the fact that, even though there are general trends and programs that are geographically spreading out, sex offender treatment approaches are eclectic and very often run on a small scale. Likewise, there cannot be any doubt that there is diversity in interpretation of treatment approaches that bear the same name.

3.4 Treatment of Mentally Ill Sex Offenders

Many countries favor a twin-track system, i.e., sanction systems that provide measures of prevention and correction as one pillar and penalties as the second pillar. Thus, next to the penitentiary treatment of sex offenders, a mental hospital order is possible for mentally ill sex offenders or—to be more precise—sex offenders whose criminal responsibility was diminished or non-existent at the time of the offense.

A specialized measure of prevention and correction is preventive detention. The focus of preventive detention and comparable measures is to protect society from dangerous offenders. It is important to note that according to the ECtHR it is unlawful to retroactively apply preventive detention (Haverkamp and Wößner 2014). In addition, there has to be a “distance” between the living conditions of prisoners and preventive detainees. The distance requirement is based on the fundamentally different objectives and legal grounds for both sanctions and demands a manifest difference between the execution of imprisonment and the

conditions of preventive detention (Haverkamp and Wößner 2014, p. 34). The Netherlands has been at the vanguard of humane long-term treatment of dangerous offenders. “Ter Beschikking Stelling” (TBS) is a measure for offenders who committed a certain violent crime and who were suffering from a mental illness at the time of the crime while a causal context between the illness and the crime is not a necessary prerequisite for the application of the underlying law “Beginselenwet Verpleging TBS-gestelden (BVT)” (Braun 2013). The objectives of this TBS-measure are the protection of the public at large, the reduction of reoffending, and the resocialization into an autonomous situation. Pharmacotherapy, psychotherapy (mainly cognitive-behavioral), sociotherapy, creative therapy, behavioral training, and work therapy are the main building blocks of forensic treatment in the TBS-setting. The Netherlands has additionally established long-term forensic care for dangerous offenders who exhibit 6 years of unsuccessful treatment with regard to reducing the risk of reoffending, who were treated in at least two different clinics, and who are not expected to change. These prerequisites have to be established by the clinic and an independent committee (Braun 2013). The Longterm Forensic Psychiatric Care (TBS-LFPC) focuses on the security of society, the stabilization of the psychiatric and clinical situation of the inhabitant (this is the term used for individuals who live in TBS-LFPC), and the optimization of life including slow preparation for further possibilities (Braun 2013, see also de Jonge 2012).

While the Dutch longterm forensic care is a very innovative approach, forensic psychiatric treatment of mentally ill offenders in general is widespread and can be found all over the world (e.g., Palmucci 2006, p. 218). During the past decades, an increasing awareness of the special needs of sex offenders with intellectual disabilities has developed (see e.g., Murphy and Sinclair 2009). Interventions for this focus group adapt key features of cognitive-behavioral therapy and psychoeducation to the intellectual capabilities of these offenders. Treatment facilitators need to be specially trained when working with these offenders.

3.5 A Global Perspective of Sex Offender Treatment

As can be seen, Anglo-American players have been the motor of sex offender treatment and the programs have spread from there to countries that were also inclined to facilitate offender treatment as a means of realizing the sentencing objective of offender reintegration. In Europe, in addition to England and Wales, initiatives from the Nordic countries have influenced the discourse of offender treatment (Palmucci 2006; Stürup 1960; van Beek and Mulder 1992; Wößner 2014). The vast majority of sex offender treatment literature has always originated from English-speaking countries, first and foremost the USA, followed by Canada, the UK, Australia, and New Zealand. Ross and Ross (1995), for instance, estimated that “by the end of 1994, R&R had been delivered to more than eight thousand offenders world-wide” (p. 3). The information what sex offender treatment looks

like in other countries on different continents is rather rudimentary. A general review of the literature suggests that most of the countries worldwide, for which offender treatment has become an important means of victim protection and offender reintegration and rehabilitation, endorse some kind of variation of the aforementioned English language concepts of the so-called Western World. R&R is applied in Western European countries such as Spain (Redondo et al. 2012) or Germany (Haverkamp and Wößner 2014). An overview of general correctional treatment approaches that are not specifically aimed at sex offenders in the Ibero-American regions of the world also suggests that R&R is known, at least partly, in the Spanish-speaking areas of the world (Rodríguez Mesa 2012). With regard to sex offenders, Terol Levy (2009) also relies on programs that have worked in other countries and, in doing so, refers exclusively to Anglo-American programs and literature to infer interventions for sex offenders in Spain (see also Garrido Genovés 1993, p. 234). Still, in the 1970s and 1980s there were only isolated interventions in single prisons using specific approaches such as psychodrama or non-directive therapy combined with relaxation techniques (García García and Sancha Mata 1985, p. 148). Subsequently, these initiatives were replaced by Anglo-American treatment approaches. In 1987 and 1988, some correctional facilities implemented for the first time cognitive and skills programs (aimed at juvenile delinquents, see Garrido and Sanchis 1991, p. 111).

Italy, however, seems to have refrained from adopting treatment approaches from Canada and the USA (Gulotta 2011, p. 389) even though equivalent approaches are discussed and correspondent psychometric measures are endorsed (Gulotta 2011; Palmucci 2006). France favors and applies a clinical and psychodynamic approach for sex offender treatment administered in a one-on-one setting (Hirschelmann 2014, p. 26). Additional psychotherapeutic tools are used; they were developed in single penitentiaries and combine mindfulness, psychodynamic, and cognitive-behavioral techniques on a group level (Hirschelmann 2014, p. 26). The Netherlands has also developed special approaches (e.g. van Beek and Mulder 1992, see also above: TBS). In Germany, sex offender treatment primarily takes place in so-called social therapeutic facilities, independent prison units or separate prison wards; the interventions are mainly based on cognitive-behavioral therapy, include (social) work and leisure time measures, and are realized in a social-therapeutic milieu, a key element in the logic of this treatment approach. More and more general correctional treatment approaches have been adapted to fit sex offenders, with most of these approaches stemming from English speaking countries as well (Haverkamp and Wößner 2014, p. 35). After the German government (temporarily) introduced the mandatory treatment of certain sex offenders in social-therapeutic facilities that were initially not meant to focus on sex offenders, practitioners gratefully assimilated these treatment approaches originating from the UK, Canada, and the USA.

Fifteen years after Frenken (1999, p. 87) stated that “[p]ublications in international journals about sexual offender treatment efforts in European countries are scarce”, this is still today’s status quo. This makes it difficult to draw a comprehensive picture of sex offender treatment. This is especially true for former socialist

countries in which women's rights movements, which led to the advent of sex offender treatment, were absent (Frenken 1999, p. 90). Still today, little is known and probably little is done with regard to modern correctional treatment in former socialist countries, especially in the case of sex offenders (Parti et al. 2014; Safin and Salagev 2014). Doubts against more "lenient and humanitarian means and measures" seem to prevail in these countries (e.g., Zalewski 2014, p. 51). Thus, it comes as no surprise that some authorities such as lawmakers in the Czech Republic advocate testicular pulpectomy or bilateral orchidectomy (known as physical castration) as a useful sex offender treatment approach—even against the Committee for the Prevention of Torture's objections (Škvain 2014). Androgen Deprivation Therapy (ADT, i.e., chemical castration)—the less intrusive measure in trying to lower testosterone levels of men—is more widespread e.g., in Poland (Zalewski 2014). In 2005, the Croatian Prison System introduced sex offender treatment as a pilot project in two Croatian penitentiaries. The program incorporated Dutch approaches and includes relapse prevention, learning social skills, empathy training, psychosexual education with the focus on cognitive-behavioral approaches (Muzinic and Vukota 2011).

Looking at Asia, the knowledge about treatment approaches is even less detailed. After several heinous group rapes shattered Indian society recently, India has also started to discuss the introduction of chemical castration (Gill and Harrison 2013). In recent years, China has also started to offer special care for sex offenders, even though little is known about the structure and content of the measures (Lung and Huang 2004, p. 557).³ The Criminal Code of Taiwan mandates the completion of treatment programs for all incarcerated sex offenders before being paroled or released from prison (Lung et al. 2007). According to a survey conducted by Lung and colleagues (2007), the Taiwanese treatment method focuses on the prevention of sexual recidivism, i.e., it aims at "learning to control their behavior to decrease the risk of recidivism" (p. 344). The survey also showed that sex offender treatment in Taiwanese prisons is still in its infancy.

According to Carranza (2012), Latin American and the Caribbean Countries have faced increasing prison overpopulation over the last two decades. The author argues that both rising crime rates and punitive law reforms have contributed to this development (adding to the particular problem of incarcerated persons without conviction). There is a need for very basic reforms of the penitentiary system in these countries (Carranza 2012), and the necessity of implementing offender treatment, and especially sex offender treatment, is not of first priority. At the same time, some scholars in these countries have recognized the importance of correctional interventions for sex offenders to decrease the risk of reoffending (such as Chile, see Jiménez 2009).

As mentioned above, indigenous sex offenders present a virulent problem in societies where white settlers have immigrated to. Some of these nations, such as

³ <http://www.chinapost.com.tw/taiwan/national/national-news/2012/06/15/344424/Protests-halt.htm>, accessed 1 July 2014.

Canada (which has always been at the forefront of developing sex offender treatment programs), have also developed programs for this special target group. Single research results substantiate the notion that programs that give special attention to the cultural background of these target groups are more effective than mainstream sex offender treatment programs. Stewart et al. (2015) demonstrated that a culturally specific treatment program for Canadian First Peoples including both cognitive-behavioral methods and traditional Inuit healing knowledge was more effective in reducing recidivism than the alternative programs or no treatment at all. The program also takes into account further related issues such as family violence or substance abuse. Such results point to the importance of an appropriate cultural embedment of treatment; it can prevent treatment attrition and thus improve sex offender treatment outcome (see e.g., Olver et al. 2011).

There surely is a vast array of different treatment programs and treatment approaches for sex offenders all over the world. This overview makes no claim to be complete. Its aim was to show the different levels at which different countries operate in treating sex offenders and the influence that Western stakeholders have in this field.

4 Sex Offender Treatment and Recidivism?

4.1 *Recidivism Rates of Sex Offenders*

It is a particularly difficult challenge to produce recidivism rates of sex offenders. Being aware of the problem of the dark figure of sex crimes (see above and Selmini in this volume), it is common knowledge among criminologists that the reoffending rate of sex offenders is relatively low, in fact for both sexual and non-sexual offenses (e.g. Hood et al. 2002). Another aspect that has to be considered is the distinctive feature that the recidivism rate of sex offenses increases with a longer follow-up period. While non-sex offenders usually reoffend in the first months or 1–2 years after release, the risk of sex offenders committing another sex crime is more elevated *after* this time frame (e.g., Hood et al. 2002, p. 375).

The standard that is applied to the effectiveness of sex offender treatment is whether these interventions are associated with reduced rates of reoffending. Much attention has been given to the meta-analytical study of Hanson and Bussière (1998), who found an overall sex offense recidivism rate of 13 % within an average follow-up period of 4–5 years. The general recidivism rate for violent offenses was 12 %. For both sex offense recidivism and violence offense recidivism the reoffense rate varied between rapists and child molesters: The sex offense recidivism rate for rapists was 19 %, that of child molesters was 13 %; the reoffense rates for violent offenses were 22 % for rapists, and 10 % for child molesters. With regard to any reoffense as the crucial indicator for recidivism, 36 % of the total sample recidivated, 46 % of the rapists, and 37 % of the child molesters. Even though the

most common measures of recidivism were officially registered reconvictions, the meta-analysis included studies that used other indicators such as self-reports, parole violations, indexes, or did not provide the source of the data on recidivism. An overview including more recent studies, however, shows that reoffense rates do not only vary significantly *between* offense types but also *within* offense types. Vess and Skelton (2010, p. 543) cite studies with a range of recidivism rates for rapists between 5 % and 35 % and for child abusers between 3 % and 43 %. The authors themselves conducted a 15-year follow-up study and found the lowest overall reoffense rate for offenders with child victims (11 %, compared to 13.5 % for offenders with adult victims and 17.7 % for offenders with mixed victims). There was a rapid linear increase as the level of actuarial risk increased with the high-risk offenders showing reoffense rates of 35–39 % in the three offense type categories (p. 546).

As mentioned above, reoffense rates very much depend on the considered follow-up period. Studies that use shorter follow-up time frames usually yield smaller recidivism rates. In a study by Hood et al. (2002) only 1.1 % of released sex offenders were imprisoned for a new sex offense 2 years after release, 4.3 % after 4, and 8.5 % (which amounts to 1 in 12 cases) after 6 years. However, 18.1 % were reconvicted and imprisoned for another offense (all in all, 30.9 % of the follow-up sample were reconvicted at some time but without a custodial sentence). However, a comparable ratio of a 5 % reconviction rate with sex offenses was found by Friendship and Thornton (2001) in a 4-year follow-up period. In an earlier study by Marshall (1994), 7 % of 402 sex offenders recidivated with a sex offense 4 years after prison release. The same author detected a sex offense related reconviction rate of 10 % in a follow-up study analyzing a 5-year post-release period (Marshall 1997). All things considered, it is impossible to find a valid and condensed reoffense rate for sex offenders since its calculation depends on many parameters that vary between studies. In borrowing a sentence from a Norwegian recidivism study, it can thus be concluded that sex offense related recidivism is quite low and “can often be viewed as part of a criminal career which includes multiple kinds of crimes” (Weihe 1998, p. 138).

4.2 Does Sex Offender Treatment Have an Impact on Recidivism?

The difficult question, though, remains whether sex offender treatment reduces the risk of reoffending after the sex offenders’ release from prison. As shown above, the risk of committing a new sex offense is relatively small and varies for different offenders. It is important to have these small base rates in mind when discussing the success of interventions based on recidivism rates. Various research results as to whether sex offender treatment has proven to be effective or not have been controversially discussed. Meta-analyses tend to show a treatment effect. In

general, i.e., not only sex offender specific, the most effective treatment programs are cognitive-behavioral models that are well structured and theoretically-based (see Rodriguez Mesa 2012).

In Schmucker and Lösel's (2005, p. 225) meta-analysis, studies with the best internal validity exhibited the lowest differences in reoffense rates between treated and untreated sex offenders. The authors thus conclude—on the basis of the only few experimental studies—that no unambiguous conclusions about the effectiveness of sex offender treatment can be drawn. The authors established the greatest effectiveness for cognitive-behavioral programs that are specifically targeted toward sex offenders (Schmucker and Lösel 2008): 11 % of treated and 17.5 % of untreated control subjects reoffended, which amounts to a sex offense specific re-offense rate difference of 37 %. But even though there is a small overall positive effect to be detected, due to the heterogeneity of the study outcomes Schmucker (2004, p. 259) warns against exaggerated optimism. Rice and Harris (2013) as well as Eher and Pfäfflin (2011) are even more cautious. They arrive at the conclusion that there is no treatment effect left, once all confounding variables are taken into consideration. Factors influencing the outcome of the results include an array of factors such as: authors' affiliation to the treatment program, offense type, voluntariness of treatment participation, treatment termination or drop-out, sample size, control group formation, source of recidivism data, treatment approach, treatment setting (only outpatient treatment was effective), publication status (published versus unpublished), and design quality (Schmucker and Lösel 2008). Likewise, Hanson et al. (2009) did not infer any treatment effect. Marques et al. (2005), who conducted one of the few "Gold Standard" RCT studies, also failed to provide evidence for sex offender treatment effectiveness. It has to be kept in mind that the gauge for effectiveness is always the reduction of reoffense rates. With regard to this measure, a stable and robust effect of sex offender treatment can only be claimed very cautiously.

Only recently, scholars have turned their attention to the relationship between treatment change and recidivism. Beggs (2010) conducted a review of publications on within-treatment outcomes among sexual offenders from 1994 to 2007 and found that the majority of the included studies resulted in prosocial treatment change. Only three of the included studies analyzed the relationship between therapeutic change and recidivism. In these studies, only single effects between prosocial change and reduced recidivism could be found; thus, there was no overall relationship between therapeutic change and reduced recidivism. The studies that have—since then—addressed this issue produced inconclusive findings as well. Some researchers found individual treatment changes of the measures under scrutiny but no relationship with recidivism (Beggs and Grace 2011; Woessner and Schwedler 2014). Barnett and colleagues (Barnett et al. 2012, 2013) analyzed the treatment outcome of 3402 sex offenders who had been treated in a community program with regard to recidivism. According to their first study, a few single test scores at pre- or posttest level correlated with recidivism. Their second study yielded comparable recidivism rates for sex offenders who showed a clinically significant or reliable change and those who did not show such meaningful

improvements on the various psychometric measures. In addition, recidivism could not be predicted after the single scale measures were combined into domains.

For the sake of completeness, we need to briefly discuss whether Androgen Deprivation Therapy (ADT; chemical castration or pharmacotherapy) produces the intended effects. It has been argued that ADT is only designed to treat pedophiles. Sexual arousal plays a crucial role for offender types with a preferential paraphilia, e.g., pedophilia. In such cases it might be useful to deplete the sexual arousal for children. In contrast, rapes involving adult victims are only very rarely based on sexual arousal per se, they are most likely associated with anger, power, or a lack of emotional coping and problem solving skills, and cognitive distortions (see Gill and Harrison 2013, p. 171). Thus it is crucial to identify whether the sex offender indeed presents with a problem that can be treated with sex drive depressant pharmaceuticals (Gnoth and Borchard 2012, p. 370).

In closing, we will draw our attention to specific features that scholars found to be associated or not to be associated with treatment and its benefit for recidivism. Hood et al. 2002 (p. 387) found that denial of treatment is not associated with increased reoffense rates. Recidivism rates vary depending on the type of offense. Sex offenders who offend against boys, for instance, exhibit a particularly high reconviction rate, sex offenders who offended against a child in their family a particularly low reconviction rate (e.g. Hood et al. 2002; Vess and Skelton 2010). Paraphilic offenders, not only including pedophiles but also offenders who present a sexual sadistic disorder, are in general difficult to treat (Garrido Genovés 1993). It has also been a long-term discussion that offenders with personality disorders are a particular challenge for correctional treatment.

In sum, only a few studies have investigated whether therapeutic change is indeed related to recidivism. This may surprise, since the logical fundament of most offender treatment programs is the supposition that correctional treatment should improve dynamic (changeable) criminogenic risk factors and thus lead to reduced recidivism. At the same time, there is solid empirical evidence that dynamic risk factors are associated with reoffending. Albeit the heterogeneity of the results, something works with regard to the effects sex offender treatment exerts on reducing reoffending even though the effects are small. It is important to note “that it is still difficult to draw firm conclusions about the efficacy of these programmes [...] and [...] that it is unlikely that firm conclusions can be easily drawn in the future given the wide range of methodological issues that make evaluating the programmes problematic” (Brown 2010, p. 100). Differences in control and comparison groups are an important issue that may account for the small outcome effects. In addition, appropriate evaluation research should—in theory—distinguish between different types of sex offenders in order to detect the “real” effectiveness for more homogeneous subgroups: A demand that fails because subsamples will become so small that statistical analyses and conclusions become very difficult. However, trying to detect a treatment effect for such a heterogeneous group as sex offenders is almost impossible. Finally, researchers can only determine what really is hidden behind sex offender treatment when a clear cut manualized treatment program is delivered—which hardly ever is the case—and it is very

unlikely that these are the programs that sex offenders benefit the most from. No matter if a manualized or more comprehensive intervention is delivered, most of the evaluation studies solely focus on the relationship between whether an intervention took place and its effects on reoffense rates.

Rarely does any study look into the quality of treatment delivery. After all, discouraging therapy effects may also result from weak treatment delivery, a high personnel fluctuation, and many other aspects that are closely linked with what is “inside” the treatment box. Lastly, a particular group of sex offenders that exhibits high-risk and high-needs is thus, at the same time, a group that is the least likely to complete treatment (Olver et al. 2011). It is a specific challenge for this high-risk and high-needs group to benefit from treatment and to be able to transfer the acquired competencies to real-life even years after prison release. Summing up, sex offender treatment approaches that have yielded the largest effects with regard to reducing recidivism comply with the Risk-Need-Responsivity principle by Andrews and Bonta (2010) and endorse cognitive-behavioral treatment.⁴ More recent approaches such as the GLM have—to date—not been satisfactorily tested (see Willis et al. 2014). Each sex crime that can be prevented by treating an offender is an asset, thus practitioners and researchers alike should not stop trying to improve our knowledge on what works in sex offender treatment and how it actually works.

5 The Dangerousness of Sexual Offenders

According to the basic assumptions of the RNR-model, sex offender treatment should be directed at the risk-level of offenders. Therapy aims to reduce the dangerousness of sex offenders. Thus, once a sex offender is to be released, it is equally important to determine the risk of reoffending. Sex offenders in general have become the “folk devils” of society (Cohen 2002). They are perceived as omnipresent perpetrators (McAlinden 2010, p. 381), who are ready to lunge out at any time. This general public attitude has impeded the rehabilitation of released sex offenders, as the release of sex offenders into a community sparks fear and opposition. The realities of sexual violence are vastly biased to a large degree due to the media’s constant trend of recent years to sensationalize sex offenses (Della Giustina 2009). Thus, since the 1990s the risk management approach has boomed (Golding 2010). Excessive and preventative sentencing, multi-agency public protection programs, sex offender notification and registration laws, and electronic monitoring of released sex offenders have mushroomed (Golding 2010; Harrison 2014; Haverkamp and Wößner 2014; Thomas 2005). Gradually, the punitive turn has spilled over from the US to Western Europe, first to the UK but also to other countries, such as France and Germany, albeit to a different extent. This

⁴ However, the abovementioned evaluation biases have to be kept in mind, that is, that authors who are affiliated to treatment programs tend to yield more positive findings.

development has entailed the need for risk assessment in order to identify dangerous offenders. There are several tools that assist the diagnostician in so doing. These tools represent the wish to manage this crucial and difficult assessment of whether a given sex offender is still dangerous or not.

The assessment of dangerousness is mainly concerned with the question whether released sex offenders will commit future sex or violent offenses. There are a number of risk assessment instruments to measure this, most of which focus on *static* risk factors (remember, these are historical factors that are no longer changeable, see Sect. 3.2 in this chapter). Actuarial risk assessment tools use statistical results in order to predict the likelihood of future behavior. Crucial items, established to be associated with recidivism, are scored (mostly in “absent” or “present” items), summed up, and result in a determined risk-level (e.g., low, medium, high; Craig et al. 2009). Some of the most prominent actuarial risk assessment tools are the *Rapid Risk Assessment for Sexual Offense Recidivism* (RRASOR, Hanson 1997), the *Static-99* and its successor *Static-2002* (Hanson and Thornton 2000, 2003), the *Sex Offense Risk Appraisal Guide* (SORAG, Quinsey et al. 1998), or the *Sexual Violence Risk-20*⁵ (SVR-20, Boer et al. 1997). Actuarial risk assessment tools are quite popular since they are very effective in predicting sexual reconviction (Hanson and Morton-Bourgon 2005). Dynamic assessment instruments measure stable and acute factors that can be modified. The *STABLE-2007* (Hanson and Harris 2007a) covers six stable dynamic dimensions (social influences, intimacy deficits, attitudes supportive to sex crimes, cooperation with supervision, sexual self-regulation, and general self-regulation). The *ACUTE-2007* (Hanson and Harris 2007b) is an instrument that measures acute risk factors (e.g., emotional distress, substance abuse, and sexual preoccupations). Most of these tools aim at adult offenders, thus, youth-specific instruments were accessorially developed such as the *Juvenile Sex Offender Assessment Protocol-II* (J-SOAP-II, Prentky and Righthand 2003) or the *Estimate of Risk of Adolescent Sexual Offense Recidivism* (ERASOR, Worling and Curwen 2001; Hoge and Andrews 2006).

Similar to sex offender treatment, risk assessment tools stemming mainly from Canada, the US, and England and Wales have since been used in other countries (and continents), too. This gives rise to the question whether these instruments are still valid in other cultural settings. In a study on the suitability of the widely used *STABLE-2007*, Helmus et al. (2012) showed that some of the *Stable-2007* items, an updated version of its original predecessor *STABLE-2000*, are not predictive for Canadian First Peoples sex offenders (a subgroup of sex offenders who is overrepresented in Canadian prisons). Especially the items aiming at antisocial personality traits were less predictive for First Peoples. This result substantiates that we should transfer such assessment tools with caution to any other cultural setting.

⁵ The SVR-20 is not a true actuarial tool since it allows for the assessment of three acute dynamic risk factors and does not use a final score to determine the risk-level.

New Zealand researchers also stress the cultural insensitivity of risk assessment instruments (Tamatea et al. 2011, p. 313).

France has developed its “own” assessment tools and hardly uses actuarial instruments (Hirschelmann 2014, p. 25). A Dutch research team developed a structured assessment tool to measure protective factors for violence risk which may add to the risk assessment of sex offenders (SAPROF, de Vogel et al. 2007). Research on the implementation of sex offender risk assessment has indicated that these measures are not always properly administered (Lanterman et al. 2014). Given the tremendous consequences false applications can have, it is important to warn against misuse and inadequate use of risk assessment instruments. The risk assessment tools are not theory-based. Some of them suggest a simple but undue sum-up of scores. In addition, it is difficult to discern in which cases a prognostic criterion has a stark impact or not. Finally, the application of risk assessment tools is associated with running the risk of disregarding other factors that might be additionally important to predict sex offenders’ probability to reoffend. Scoones et al. (2012) showed, for instance, that proper and comprehensive release planning is associated with a decreased rate of recidivism.

6 Some Concluding Reflections: Where Do We Stand and Where Are We Going?

In the last decades, managing sexual offenders has emerged as a crucial issue of criminal policy in many countries. Among both the public at large and politicians an increased punitive trend has evolved, accompanied by the call for harsher sanctioning, i.e., longer or lifelong sentences or even the death penalty. However, those demands are short-sighted. It has to be kept in mind that long-term detention in a total institution such as a correctional facility is inevitably associated with major side-effects that are not conducive to offender rehabilitation. Long-term incarceration in general “raise existential problems of coping” (van Zyl Smit and Snacken 2009, p. 50). That said, it is important to note that the impact long-term imprisonment has on an inmate is influenced by both the prisoner’s individual characteristics and the prison’s and society’s characteristic (van Zyl Smit and Snacken 2009, p. 50). But still, long-term detention has detrimental effects: psychological regression toward childlike behavior and dependence on staff, emotional regression and instability, passivity and apathy, psychosomatic symptoms, and fear of release (van Zyl Smit and Snacken 2009, p. 51). However, there are also studies suggesting that long-term imprisonment does not have detrimental psychological effects (see, in sum, van Zyl Smit and Snacken 2009, p. 52). Since sexual offending is to a great extent associated with a dysfunctional coping style, one can imagine that long-term incarceration does not work against but for the risk of reoffending. The same applies to the fact that long-term incarceration can lead to decreased self-esteem or increased acting-out: low self-esteem might increase the risk of child

abuse; hostile thinking patterns are likely to be a prerequisite of sexual aggressive behavior. Incarcerated sex offenders in particular are very likely to start masturbating to fantasies surrounding the offense that led to their conviction; a problem that is discussed by several authors (see Epps 1994; Marshall 1989). Such mechanisms are very likely to reinforce deviant and/or violent sexual behavior. Long-term incarceration may—especially for sex offenders—have a detrimental effect on their ability to relate to others, to develop intimate relationship skills, and to develop a healthy sexuality. Thus, a long incarceration will not contribute to healing the intimacy or attachment deficits some sex offenders exhibit (see Epps 1994; Marshall 1989). Thus, a longer period of incarceration as an alternative to correctional treatment does not present an alternative and is out of the question with regard to the rule of law, even though qualitative research has shown that imprisonment may elicit a positive personal change preventing some sex offenders from continued offending and forcing them to reflect about themselves and their behavior (Elisha et al. 2012). While noting the pitfalls of long-term imprisonment, this is not a plea for the release of all sexual offenders. Some sex offenders clearly present a real danger and our knowledge on how to distinguish sex offenders who present a continuous risk for women and children has to be steadily improved to decrease both false negative but also false positive prognoses. However, given the comparably low numbers of sex crimes, the relatively small recidivism rates, and the fact that the majority of sex crimes are committed in the direct vicinity of the offender, it is desirable that the discussion about incapacitation, treatment, and dangerousness of sex offenders should experience a *rational* rather than a *punitive* turn.

The history of correction has seen different phases from “nothing works” (Martinson 1974) to “something works” (Ross and Gendreau 1980). Although skepticism as to whether sex offender treatment is effective remains, it can be concluded that the “negative effect of punishment has in fact overpowered its positive effects” (Sarangi 2000, p. 96). Punishment alone usually removes the punished behavior only as long as punishment occurs. However, how do we reach a balance between punishing criminal behavior and resocializing the offender? A basic rationale of correctional intervention is the idea that prisoners—after their release from prison—will only be able to desist from reoffending if they are permitted to reassimilate and reintegrate into the community and find their place and way in “mainstream” society (see van Zyl Smit and Snacken 2009, p. 106).

The strong urge for public protection has led to measures that interfere with rehabilitative objectives. Sex offender residence restrictions, for instance, have devastating effects on rehabilitation, virtually precluding reintegration due to housing instabilities, limited accessibility to employment opportunities, and severed social support (Levenson and Hern 2007).

So, with this plea in mind, what will future sex offender treatment entail? Spirituality as an important building block for a new life without delinquency has been recently detected by Ward and colleagues (GLM, see above). Sarangi (2000, p. 97) also emphasizes that different meditational and yoga techniques have been introduced to Indian prisons in order to help prisoners maintain their

psychophysical homeostasis. The author argues that especially the ancient meditation technique “Vipassana” (“insight”) has “much potential for reforming criminal behavior”. The inmates are encouraged to analyze and observe themselves in order to realize “negative dimensions of their personalities”. But not only is the inner analysis of negative aspects of importance. It might also be promising to increase the motivation to change since it brings a sense of wellbeing and a notion of what kind of person the prisoner wants to be into the life of the inmate. Sarangi (2000, p. 98) argues that “Vipassana” reduces hostility and helplessness. In some parts of India, it is believed that “Vipassana” has a “tremendous impact in changing the lifestyle [...] of the prisoners in a positive way” (Sarangi 2000, p. 98). Beech and Gillespie (2014) emphasize that the problematic attachment and further formative developmental experiences in sex offenders lead to neurobiological impairment and that these conditions should be taken into account when treating these offenders especially with regard to the emotion regulation skills. The authors propose adding mindfulness and breathing therapy to classic cognitive-behavioral treatment since the physiological underpinnings of emotion regulation and controlled breathing suggest a benefit for prefrontal neurobiological conditions of emotion regulation. It is all but impossible to keep track of further alternative approaches that have doubtlessly been established all over the world. Interestingly, although meta-analyses support—however with small effect sizes only—cognitive-behavioral approaches, singular interventions stemming from a different therapeutic discipline have been adopted, i.e., attachment-based psychodynamic psychotherapy (Haley 2010) or systemic psychotherapy (Shelton 2010).

It should be welcomed that stakeholders constantly try to improve interventions that aim to prevent further sex crimes. Further discussions may profit from the criticism of the treatment models, for instance that the RNR-model stresses the “negative”, i.e., risk factors of individuals. Even though traits such as self-control, agreeableness, or extraversion play a central role in the measurement of risk, need, and responsivity (Ward and Maruna 2007, p. 84), a person and his/her motivation to change cannot be reduced to these traits. More novel approaches take the personality as a whole into account, thus stressing the role of the narrative identity. Self-narratives are expected to shape and guide a person’s behavior, as persons act in ways that agree with the stories or myths they have created about themselves (Ward and Maruna 2007, p. 85). The narrative identity is an active information processing structure including sets of cognitive schemas that evolve over time on the grounds of the experiences a person makes and the people a person deals with. Sex offender therapy—as opined by Maruna (2001)—may benefit from including this approach into treatment in that it helps offenders develop a more adaptive self-narrative and “change their habitual ways of understanding their life” (Ward and Maruna 2007, p. 86). At most, it is an important concept in understanding desistance from crime and for opening up to innovative approaches to sex offenders (e.g., restorative justice (see Kury in this volume).

Sexual violence against women and children not only affects the victim and the offender. Sexual violence may also have a bearing at an institutional or community level. Communities and society at large respond to sex crimes, as can be shown

more in the form of punitive and disintegrating reactions. Sex offender treatment and rehabilitation and reintegration efforts are deeply linked to this community level. There is universal reluctance of some professionals to treat sex offenders (Frenken 1999) thus impeding the treatment of sex offenders in the community. This is astounding since outpatient treatment proved to be the most efficient therapeutic approach to sex offenders. In addition, outpatient treatment may serve as a preventive measure before a crime occurs. Furthermore, it may take a while for societies with prevailing patriarchal values to introduce and realize sex offender treatments that work with rape myths, or a gender balanced attitude toward women—key issues in the interventions that address cognitive distortions and belief systems of offenders and change coping patterns. Finally, sex offender treatment approaches have for the most part been developed for and applied to ethnic majorities, not minorities.

In closing, it has to be emphasized that sex offender treatment is an important means of crime prevention even though research regularly yields finite results. Too little is known as to the question how programs actually work. There is a tremendous need to increase this knowledge since offender treatment is an important fundamental aspect of a humane society—and incarceration increases the likelihood of reoffending (see Soyer 2014, p. 91). The expectations of bringing about changes to individuals in a total institution (prison) should not be too high. The base rate of sex offender recidivism is comparatively small—even though this statement should not hide the fact that the implications sexual victimization have can be devastating. However, long-term imprisonment or lifelong detention can only present an alternative for the most dangerous offenders. We have to make sure those mistakes with regard to the identification of high-risk offenders and with regard to the treatment and management of sex offenders are constantly reduced. In order to do so, it helps to take a differentiated look at sex offending, sex offenders, and treatment and incarceration effects to improve offender reintegration prospects and at the same time victim protection.

Five Questions

1. How can sex offender treatment be improved in order to increase victim protection and which contents and methods should future sex offender treatment entail?
2. What are the actual mechanisms of treatment change and its transfer to post-release desistance?
3. What are appropriate measures of successful interventions for sex offenders to evaluate the benefits of sex offender treatment and by means of which methodological approaches can we improve the evaluation of sex offender treatment and prognosis?
4. Do sex offenders need specific therapeutic attention and what are the key treatment targets for different subgroups of sex offenders? Is it justified to transfer treatment programs from one cultural setting to another or from adults to adolescent?
5. What is the link between sex offender therapy and theoretical knowledge about sex offending?

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Women and Children at the Centre of Preventing Organised Crime

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Abstract There are constant debates about what organised crime is and how to define it, and this despite the fact that organised crime has accompanied humanity from the beginning of early civilisations. The development has seemed to be more affecting the role of women in organised crime groups than the behavioural aspects of the criminal activities in which organised crime groups engage in; technological advances have affected the modus operandi, yet the core activities of smuggling, white slavery, forced prostitution and other acts have remained the same. This can also be stated for children that were always exploited by organised (crime) groups. On the other hand, evolution and an ever-changing degree of female emancipation in legal spheres of societies are reflected in criminal activities undertaken by women. The more active the roles that women have, which can be achieved legitimately in society, the more power they can also achieve in the hierarchy of organised crime. However, organised crime can also give strength to women in societies that hamper the formal acquisition of power for women, therefore making organised crime an attractive alternative. Egalitarian societies have provided possibilities for women to engage in business or politics and this has translated into possibilities for them to also be engaged in organised white-collar crime. Victims of white-collar crime are not gender specific, but children probably are affected most since their health and future is more fragile. Yet, ironically, it is the moral quality and knowledge of future generations that can change society for the better. We see education and knowledge as the most important factor for prevention. Yet in the end, it all depends on the integrity of policy makers.

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1 Introduction

Due to the many attempts by scholars, preventive and investigative practitioners and international organisations to coin a valuable and useful definition of organised crime (see e.g. United Nations Convention against Transnational Organized Crime and the Protocols Thereto 2004; see also von Lampe 2014) it has become somewhat crucial to first note its deliberate absence in this chapter. This chapter includes the old historical accounts, decades of ideas, notations and views of scholars and societies on the phenomena of organised crime, a definition that would suit or be equal to the picture of organized crime that was in the minds of scholars when they write about organised crime cannot be given. We did however strive to maintain coherence by acknowledging the time period, behavioural aspects of organised crime described/included crimes and insights from works that are not cited here but are part of the opus of authors that were used as references. We also allowed ourselves to do this because firstly, the aim of the chapter is to present a general overview, hence a detail description of standpoints and views, and mostly because every single prevention focused approach or idea listed here could take up numbers and volumes by itself. Secondly, because the lack of a unified and worldwide accepted definition of organised crime has never hindered the research or investigation of organised crime to a great degree until now.

Throughout the chapter, we use the terms *classic organised crime* and *white-collar organised crime*. The first we use to label and include behaviours that are “typically” ascribed to organised crime. These are crimes such as drug, weapon or human trafficking, racketeering, usury etc. We use the term *white-collar organised crime* when speaking of deviant acts that are done by a respected or influential member of society. This is somewhat similar to the view held by researchers that use the term *organised crime of the elites*, *elite organised crime* or *elite deviance* when describing these acts. There are some socio-psychological differences among such organised crimes and more “classic” organised crime, which impinge on our point of interest, which is the position and role of women and children, and should be kept in mind.

Both organised crimes and gender/sex defined roles are complex issues and much researched subjects but also strongly influenced by stereotypes and (mis) perceptions due to various factors. The perception of *what is organised crime* is heavily influenced by popular culture and media mis-representation (Allum and Siebert 2003; Kanduč 2006; Finckenauer 2007; Clinard and Meier 2011). It is stereotyped or associated to a Mafia-like structure that deals with drugs, arms and human trafficking and often excluding economic or corporate crimes (Woodiwiss 2003; van Duyne 2010). At the same time, the gender and sex based roles are dominated by socio-cultural characteristics of society itself or as Ritter and Terndrup (2002) note, by acknowledging the views, opinions, rhetoric and empirical finding of many scholars, the fact that most men or women are classified on the basis of physiological characteristics and then linked to the role that is expected in the society is undeniable.

Both primary and secondary socialization educates individuals on the basis of the social construction of gender roles, which defines the socially acceptable behaviour of men and women. However, in the process of socialization, ethnic origin, culture, religion, education, etc. also contribute a large part. Consequently, this does not just affect how we as member(s) of the social community behave or are expected to behave but also influences the (mis)perceptions of who victims or perpetrators *should be* instead of seeing *who* they actually *are*. This in turn also affects the gender based differences and actual usage of defence and justification mechanisms of crime commission (Steffensmeier et al. 2013). When we speak of “longer lasting” cycles of crimes the evolvment or mimicking of criminal/victimisation behaviour can appear. This is most evidenced in cases when children from abusive or violent families become family abusers (or victims) themselves. That children model and interiorise the behaviour of members of their primary family and society or even the media is often used to explain this cycle behaviour and is based on Bandura’s idea of modelling and social learning (Jasinski 2001).

Organised crime can also be one of longer lasting or recurring types of crimes and here the “evolution” of the roles occurs most often when victims of traffickers become recruiters of future victims. In white-collar organised crime, facilitation factors such as a corporation setting or informal rules are at play. While only adult men and women can fall under the spell of facilitating factors of organised white-collar crime, classic organised crime engages and (ab)uses children in a variety of roles.

1.1 *Children and Organised Crime*

Children are either seen as victims of organised crimes groups or victims of circumstance (e.g. they “help” organised crime groups due to the catastrophic socioeconomic state in which they live) and this “help” role of children in organised crime is diverse. They are being exploited in the informal economy in sweatshops or other labour tasks. They are frequent victims of human trafficking (including for illegal organ harvesting) and sexual exploitation. In some tragic cases children are hurt or even lose their lives as collateral damage to turf wars, intimidation or disposal of witnesses, or just because they were in the wrong place at the wrong time (e.g. see entries on Coll, Vincent “Mad Dog”; Colombian Mafia and “Cuban Mafia” in Sifakis 2005). They are also often used as drug (or weapons) mules and for corner street dealing and the fact that they are children it will be considered a mitigating circumstance in potential trials. Children and especially young boys are easily convinced to participate in such activities because of the prestige, power and impression of wealth surrounding organised crime members (Kanduč 2006; D’Andria 2011). Also economic or sociological benefits that are derived from being part of a group (see e.g. Logonder 2013) are great motivational factors. Additional motivations such as beautiful women that accompany organised crime

members (Kanduč 2006; Finckenauer 2007) are particularly attractive for adolescent boys.

Not many (if any at all) countries are immune to the exploitation and recruitment of children by organised crime. Even in highly developed western democracies street gangs appear and exploit children in different manners. DeVito (2005) for instance writes that the age of the BLOODs and Crips (United States) street gang member rang(ed) from 8 to 35, and the 8–18 year olds were the most violent since they strive(ed) to impress older members. These are strong and long-lasting gangs, in contrast to the majority of those discussed in Weerman et al. (2015), who report that the majority of current gang membership is short-lived., also because they actually allow members to leave the gang. However, in both cases there are strong (mainly negative) social and psychological dynamics that are present in these gang groups that affect the larger social life and future of not just the gang members themselves but also their parents, friends, teachers and potential victims.

1.2 Women, Organised Crimes and White-Collar Crimes

When considering the roles of women in classic organised crime the recognised perception is that they are either victims, wives¹ or just “*appendixes to their male counterparts, as their mistresses, as sex objects, or as femmes fatales*” (Arsovska and Begum 2014 p. 91).² However, is this really the case? Historic research and probing into various sub-activities and behaviours, that are today hastily and non-critically ascribed to organised crime has shown us that the roles of women in either traditional-classic or modern white-collar organised crime forms and activities are far more complex as they may first seem. This is best illustrated in the case of prostitution.³

¹ Whose primal role was and is to take care of children and to educate them about the informal (social) laws, while the marriage itself in some cases serves as a tool for creating partnership, alliances or strengthen comradeship (Siegel 2014). However, van San (2011) on observing Curaçao women who are in relationships with criminal men, makes another observation very important for prevention purposes: that such women will with great possibility raise their sons to become dangerous men involved in crime, who once again will attract women that like (or perhaps even believe that they need) such men. Thus, a vicious circle takes place.

² And van San (2011) shows that this attraction of danger, power and possibility of financial safety that surrounds organized crime group member and attracts women into their arms, is as much present today in the Netherlands and Curaçao as it was in the 1940s in America.

³ We agree that perhaps the synonym *sex worker* would be less stigmatising; unfortunately the term *prostitution* is more recognised and focused on one type of sex work. The sex industry also includes stripping, pornography, hotlines etc., and men and women employed in such industries are actually all sex workers (see Ditmore 2006), and though organised crime can be (and almost always was) involved in all these activities (ibid.), discussing its role in proper details is by far too comprehensive a task for this chapter.

Prostitution, which is believed to be one of the oldest professions, is usually seen as a female occupation (Ditmore 2006). Moreover, it is seen as the main activity of organised crime or as crime in general in many countries. However, that was not always the case. In the nineteenth century prostitution took place in brothels in the U.S.A., which were “largely owned and operated by women and were one of the few means by which women could attain wealth independently of men. In the latter half of the 19th century, control began to shift away from female brothel owners to male vice entrepreneurs, particularly ones who had strong connections to law enforcement, politicians, and other vice industries (such as gambling, rum-running, and narcotics)” (Ditmore 2006, p. 339). Even before that the picture was different from today’s perception, as we can read in Newton’s chronology of organised crime: “In c. 594 B.C.E., the Greek statesman Solon (638 B.C.E. – 558 B.C.E.) establishes publicly funded brothels in Athens to “democratize” the availability of sexual pleasure. Greek literature describes three classes of prostitutes: slaves (pornai), freeborn streetwalkers and educated prostitute-entertainers (hetaera). The first two classes included both males and females, while the third was strictly female.” (Newton 2011, p. 10). Firstly, this shows that there are constant diverse evolutions of geopolitical attitudes towards prostitution taking place and secondly, that there have always been different types of prostitution and therefore different types of victims or even absence of victimisation. Admittedly, here one collides with the theories that freewill prostitutes are in reality victims of certain socio-economic factors and that is the reason that they do not actually recognize themselves as victims. Today, when economic factors play even a stronger role, there are many reports of women that voluntarily travel abroad even though knowing full well of the type of work they will have to engage in (Weitzer and Ditmore 2010). This demonstrates that prostitution is by far too complex an issue and cannot be resolved with ad hoc repression based approaches inspired by a lack of knowledge and insight.

Prostitution that was taken from the management of women and given into hands of men presented one of the main sources of income for organised crime groups in the U.S.A. in the “golden era of organised crime” (Ditmore 2006), that is in the 1920s and 1930s, the times when the Italian mafia emerged as an archetype of organised crime. At that time, among their ranks, women were also engaged in assistant roles (not greatly punishable by law)⁴ (Arsovska and Begum 2014).

Yet this is not typical just for organised crime since the use of female attractiveness for diversion or the exploitation of the perception of women being less dangerous or suspicious is recognised beyond the organised crime sphere and was always frequently used in other criminal activities (Steffensmeier 1983). The development and evolution of the emancipation of women and/or social roles of

⁴ For instance they were used as “bagmen”—persons that used to carry (usually) large amounts of money from and to a certain person/place. Probably the best known woman in that role was Virginia Hill, who was involved with numerous mafia-related people and later questioned in front of the Kefauver Committee (Sifakis 2005).

women in society is reflected in the type and frequency of occurrences of women as organised crime member(s). For instance, street gangs in the USA that have appeared in the 1970s and onwards quite often include female members and there were even all-female fractions (DeVito 2005).

Even in Argentina some all-women thief groups or groups lead by a women appeared (Rossi 2007). Institutions and scholars (e.g. Arsovska and Begum 2014) noticed that since 1990 women became even more engaged in organised criminal behaviour, especially in regard to human trafficking, showing the same or even more viciousness as male recruiters and conductors of these sorts of activities.

Cases of Svetlana (Ceca) Raznatovic,⁵ Maria Licciardi⁶ and others⁷ show the development and the highest degree of female involvement in organised crime matters. However in patriarchal societies, the women remain mostly in the background of criminal activity (Beare 2010). This continues to be the case in Albanian organised crime (Arsovska and Begum 2014) or in the case of modern-day⁸ Yakuza. Even though Japanese women are a very active and emancipated part of society (Otomo 2007), wives of Yakuza members play more psychological but very important financial and other strong support roles by managing family matters while their male partners engage in criminal matters (Otomo 2007; Alkemade 2013).⁹

Somewhat similar is the picture of women and white-collar crimes. Here the victimisation is not gender specific, however among perpetrators, official or research statistics state that men usually dominate, and this is noticed even in egalitarian countries (e.g. for some insights in gender/women and white-collar crime in Norway see Gottschalk and Glasø (2013); for the USA see Steffensmeier

⁵ Svetlana (Ceca) Raznatovic took over one of most notorious and successful Serbian organised crime group after her husband, Zeljko Raznatovic-Arkan, (war criminal, paramilitary leader and politician) was killed. During a house search of her premises numerous illegal weapons and information on economic crimes related to the football club they owned were found. Later on she was only convicted to a few months of house arrest and a fine of EUR 1.5 million (Logonder 2013; Arsovska and Begum 2014). Arsovska and Begum (2014) also (in our view justifiably) see Ceca's husband's godmother, Stanislava Cocorovska-Poletan as a women strongly involved in organised crime in the Balkan region.

⁶ Who was once on the list of the 30 most wanted Italians. She successfully took over the leadership of a Camora clan after all of the high position males were arrested and/or killed in the war among clans. She also expanded the criminal activities of her clan from the drug trade to include prostitution as well. She was arrested in 2001 (DeVito 2005).

⁷ For some historical as well as contemporary examples of positions, roles and attitudes of different organised crime groups towards women see van San (2011), Siegel (2014) and (Fiandaca 2007).

⁸ This must be emphasized because from the description of (Otomo 2007) it, it becomes obvious that in the not too distant Yakuza history there were several significant and important women in more leading roles.

⁹ However, it would be foolish to think that these women do not know in detail about their husband's or partners' affairs, especially if they are in a relationship with a more higher ranking member of the organisation, and this is true for Yakuza or other Mafia type organisations (Alkemade 2013; Arsovska and Begum 2014; Siegel 2014). In addition, in lower ranks and less organised groups such support and the absence of discouragement or disacceptance in a way reinforces and supports the criminal behaviour to a higher degree than perhaps first perceived (van San 2011).

et al. (2013) and, on a somewhat different note, about politically successful Argentinian women that have turned to crime see (Rossi 2007)).¹⁰

The reasons of “male dominance” can be partly ascribed to the inability of women to actually occupy positions that would enable them to perform white-collar criminal acts and also, because there are socio-psychological (ethics) differences in female leadership and management¹¹ (Steffensmeier et al. 2013). Gottschalk and Glasø (2013, p. 30) summarize this well: *“When addressing the low fraction of female white-collar criminals (a mere 9 percent) to qualified audiences, the following reasons are typically mentioned: Women have less opportunity to commit white-collar crime. Women are less opportunistic as they are more committed to relationships and rules. It is more seldom that women are invited by criminals to participate in crime. For example, a criminal will prefer to bribe a man rather than a woman. Women have a greater sense of risk aversion, rather than risk willingness. Companies are typically registered in the name of the husband, rather than the wife. Women are more readily perceived as victims of crime rather than perpetrators. Female criminal acts tend to carry lesser legal penalties. Women are not as efficient as men are in terms of successfully applying neutralization techniques. It is commonly recognized that women’s career prospects are worse than those of men.”* A closer look into the white-collar cases where women were one of the significant offender(s) shows that there are not many differences after all in the form of damages and the actual carrying out of the criminal activity, yet one must keep in mind the problems of researching white-collar crime (see footnote 10) and the low number of white-collar cases with female leaders (or significant involvement) (Dodge 2007).¹²

¹⁰ It is to be agreed with Steffensmeier et al (2013), that the problem of *what is white-collar crime* and *what types of crimes or what sorts of offenders* to include in statistics or sample heavily affects the picture(s).

¹¹ There is a recurring empirically based notion that there is less corruption in environments where there are more women in leading roles (Dollar et al. 2001), but there are always certain sociological and cultural predispositions that have to be considered (Swamy et al. 2001; Esarey and Chirillo 2013). From a preventive perspective the idea/question is well exposed by Steffensmeier et al.: *“Would more women in positions of corporate leadership and power reduce corporate fraud?”* (Steffensmeier et al. 2013 p. 471). The authors believe that there is good reason for a positive answer. However, indoctrination into a (criminogenic) corporate or business culture must also be considered (Koehn 2005; Davis and Rothstein 2006; Thoms 2008) as well as general social norms. The latter because as Rafidah Aziz (Malaysia’s trade minister from 1987 to 2008) quoted in Morrison (2001, p. 67) eloquently said: *“What is corruption to one person, may be the norm for the other.”* It is known that in some countries cheating and bribing is (or worse, it is starting to) becoming a normal social norm. This is worrisome because damage of corruption is not short reached and also affects future generations because—and here we agree with (Lambsdorff 2007)—profit-oriented behaviour could have an influence on the future education of young people, who instead of studying engineering and similar trades, would prefer disciplines such as law, as it equips them better for working in profit-oriented societies willing to exploit legal loopholes.

¹² A thought occurs if perhaps the characteristic of female management and approach to business (less risk prone, more detailed approach, strategic exploitation of femininity etc.) doesn’t reflect also in the (better) *modus operandi* for the commission of crimes, and the low number of discovered cases is the result of the fact that women are just better criminals.

In sum, women in organised crime do not always take over just passive or victim-like roles, but can also be very active leaders and organisers. They engage in organised crime because of poverty or other economic factors, substance abuse, desire of gaining informal power or simply because they “need to step in” when the male perpetrators are somehow absent (Otomo 2007; Rossi 2007; Beare 2010; van San 2011; Alkemade 2013; Gottschalk and Glasø 2013; Arsovska and Begum 2014). Yet involvement in organised crime is more likely to occur if society in general enables them to do so (e.g. see Arsovska and Begum 2014). If society gives women a chance to engage in all forms of legal businesses, economic and social activities, this usually also reflects in their engagement in illegal activities as well. This all shows that it is to be agreed with Steffensmeier (1983, p. 1016) that: “... *sex-segregation in the underworld is variable, being more prevalent in some crime groups and in some kinds of criminal enterprise than in others*”.

2 Prevention of Organised Crime with a Focus on Women and Children

The preventive measures described in more detail in the following pages are roughly based on the three staged preventive approach proposed by Brantingham and Faust (as quoted in Fisher and Lab 2010) and to some level modified by van Dijk and de Waard (1991), i.e. primary, secondary and tertiary prevention.

We focus more on the elements that we see as the most important in the prevention of organised crime, but it must be said that prevention that aims to decrease or remove facilitating factors in other crimes must also be considered and acknowledged (see Levi and Maguire 2004). These measures affect the sub-activity of organised crime or prevent organised crime from later engaging in other activities, to relocate to a different/new area, or hamper its development capacity.

2.1 Primary Prevention

In the primary prevention stage, the identification, search and possible removal of crime facilitating factors takes place. This can only be done with (more or less scientific) research. In case of women for instance, researchers should investigate why [women] “commit crimes and seek leading positions on the criminal ladder” (Siegel 2014, p. 46), or to investigate how different dynamics of exploitation truly work; or why women do not identify themselves as victims of human trafficking or

forced prostitution; or even why later on, they help recruit future victims. Here criminology, but more victimology and its theories can shed some light (Mandisa and Lanier 2012). Those who are involved in prevention and giving support to victims of such cases should be equipped with knowledge from victimization studies, criminology, psychology and other sciences. Granted, some NGO workers who are first “at the scene” develop some common sense insights, yet is this enough? Or worse, there is also the danger that they are not listened to by academics or bureaucrats who are engaged or tasked on these matters, but only from theoretical and distant sterile positions. In addition, properly designed and practice driven research is not just preventive but also useful in investigations, even in the investigation of organised crime. (van Duyne 2000) for instance, offers some good insights into the usefulness of behavioural scientists not just in academic prevention development but also in real-time (organised crime) investigations.

Research on these matters should later facilitate proper legislative and economic responses by policy makers. History has shown that this is usually a utopian idea but which we must nevertheless strive for. Secondly, the empirically based insights should also facilitate the amendments of curriculums or actually enable new provisions for education, since the starting point of every (in)desirable social attitude and/or behavioural pattern is upbringing¹³ and (usually lack of) education. Education reveals itself as perhaps as an even far more complex issue than (organised white-collar) crime (see e.g. Powell and Barber 2006).

At one time, education was reserved for the privileged or the right gendered, but even now some of the most developed societies suffer from unequal or low-quality education in slums and ghettos (see also discussions in Powell and Barber 2006). Even on the “upper” sides there are, due to permissive education, problems concerning the quality of education or better said the moral quality of future generations. It is not just that the pupils are coming to classes with a different view on morals, ethics and (lack of respect for) authority. Permissive education is especially seen as the main culprit for the improper attitude schooling youth has towards its teachers (and poorer academic success). Anecdotal and public discussions (see e.g. Woods 2014) are often confirmative on this and are not without academic support (Masud et al. 2014; Seth and Asudani 2013), yet the link is not easily empirically confirmed (see e.g. Heaven and Ciarrochi 2008). The schools themselves are continuing to be “*laboratories for social change and control*” (Powell and Barber 2006 p. 46).¹⁴ The tertiary educators (receiving already “tainted

¹³ Here we mainly consider parenting and family structure; Posick and Rocque (2015) and Bertok et al. (2014), provide some insights and research suggestion on this. Also (van San 2011) research in Curaçao on family dynamics of families engages in crime shows well how norms and behaviours transfer from parents to children. Therefore she suggests the development of proper intervention programs that consider and influence economic, social, educational, and other facilitating factors, in order to counter such circles.

¹⁴ Both scientific research and primary and secondary education (as well as the majority of all other prevention initiatives) are heavily dependent on state funding and economic predisposition of the state or sub-region. Economic crises and blind austerity usually heavily affect this, as myopic

animals”) (ibid.) have also have taken on different roles. The roles vary on the location, the subject matter and the moral standpoint of the tutors and professors.

Lately, this has been most notably seen in economic science, which believes that objective mathematical models can be used to predict economic human behaviour, to minimise risk and so forth. The economic crisis has proved them wrong and (Ferguson 2010) the documentary *Inside Job* shows the connection between the involvement of the most distinguished economic schools and the collapse of various state economies well.¹⁵ Critical sociologists, criminologists and even a few (critical) economists are becoming very worried about the neoliberal path on which we are travelling. Nevertheless, even though these academic “internal disputes” are strong, education remains the main tool (or weapon) to fight against crime, even as complex as terrorism.¹⁶ Here, IT should not be forgotten as it can be used to show such stories, spread knowledge or just simply make teaching easier by making subject matters more fun and interactive. IT can also be in various ways used to improve awareness and help in prevention (see Fisher and Lab 2010).

However, educational curricula should be more critical (at least at the higher levels), conscious, and especially the economic sciences or political sciences should make greater use of the knowledge base of psychology, sociology, criminology, biology and history (Drew and Drew 2012; Kotios and Galanos 2012) as these sciences reveal more about human nature than economics alone can. They portray the picture of the human animal, showing the irrationality of the human species that seems to be forgotten in economics or politics.

It is for this and other reasons why governments should consider the advice given by Geis (Geis 2011), who suggests that policy-makers should include criminologists, fraud experts and other social scientists on their staff. However, we must not forget that such knowledge about the factors that trigger certain human behavioural patterns can also be exploited for economic or political gains. So the

policymakers do not realise that such an approach (of taking much needed funds from science, education and other social programs and giving it to bankrupted banks or ill-managed firms) prolongs the economic crises, worsens the social environment and even causes deviant behaviour (Alderslade et al. 2006; DeKeseredy 2011). Repression often used and regarded as the main tool in crime prevention, does not remove the white-collar factors that brought on the crisis. Furthermore, the political PR demand to bring justice for the guilty of the crises not just burdens the law-enforcement that has to tackle problems that could be tackled by financial and economic institutions far better it also demotivates investigators and the (demoralises) public because such investigations are not always successful in the view of restorative justice (e.g. see (Kirk 2012) or successful in amending the problematic legislation (Rajan and Zingales 2004; Freeman 2010; Tomasic 2011). However, this is a usual response to an outraged public who—not without cause—(see Calavita et al. 1997; Pontell 2005; Brown et al. 2010; Hetzer 2012) believes that there are crimes behind economic crises and this is contrary to the views of politicians or economists who see various crises as a “natural” economic event (Hetzer 2012).

¹⁵ See also the discussion in Drew and Drew (2012) about the roles of financial schools on these matters.

¹⁶ Education is strongly seen as a key factor in much publicized story of Malala Yousafzai. One must agree with Ban Ki-moon when he said that what terrorists fear most is a girl with a book (Walsh 2014).

question is how to convince policy makers that natural and social sciences should be more acknowledged in economics and politics, but not to be abused? We can only provide one answer and that is integrity (see Morrison 2001; Koehn 2005; Davis and Rothstein 2006; Thoms 2008). Only integrity in leaders and policy makers will make sure that those in power shall not abuse their knowledge and power too much.¹⁷ However, zero abuse of power is not to be expected at the current stage of human and social development.

In the development, adjustment and/or implementation of many prevention programs the role of Non-Government Organisations (NGOs) is very important. NGOs are becoming a vital part of human society; they are becoming the reflection of society itself and a critical watchdog. However, this can be precisely the reason why they are feared by the top echelon of societies,¹⁸ which in turn can affect NGO legislation and funding. NGO's are also those who are heavily involved with those who already show signs of offending or are already imprisoned.

2.2 *Secondary Prevention*

Secondary prevention targets people that already show signs of offending or victimisation or are at greater risk in eventually engaging in such behaviour or becoming victims themselves.

Women who come from countries where they are oppressed or unable to provide for their families are an easy prey for traffickers, especially if there is a history of abuse or other trauma. This can be seen in the frequent involvement of the recruitment of potential victims by women who were trafficked at one time (Mandisa and Lanier 2012). Proper economic and socio-psychological help must be provided in order to identify victims of trafficking. Women that are mainly victims of trafficking for future sexual exploitation can be to some degree easier protected if decriminalisation and legalisation of prostitution occurs. Though legalisation has some strong positive effects (taxation of services is a benefit for the state budget and the health and social protection of prostitutes etc.) such an

¹⁷ We suggest the application of integrity tests (Slak and Lesjak 2013) in public and private spheres in as broad a scope as possible. Entry level public administration workers, notaries, tax administrators, inspection service workers and all who give out licenses and perform administrative screening are the crucial starting point where people with a higher level of integrity must be employed if we want to suppress the problems in the bud. Not to be neglected is the fact that a lot of "administrative desk clerk" positions are filled by women, and these "clerks" are those that give permission for entry into states, work permits for foreign women that latter engage in prostitution under work permits for erotic dancers, "massage therapists" etc. There are also those who technically perform financial transactions, manage accounting books etc.

¹⁸ Sometimes the work of a critical NGO is indirectly affected by actions of more powerful/connected interest and/or activist groups. Weitzer and Ditmore (2010) note that activists in the U.S.A. have successfully influenced the creation of a policy where funding can only be given to NGO's whose views of which are against the legalisation of prostitution.

approach can only be applied where the proper social and cultural settings are present (mainly the absence of moral crusaders, acceptance of the sex industry, proper administrative screening and/or proper legislative framework) (see Weitzer and Ditmore 2010). The question though arises if a potential legitimisation would perhaps “(re)enforce” the development of such settings, if society would see that prostitution is not the root of evil? There are also other options to be considered, like the Swedish approach, where only clients and not prostitutes are penalised and—as some believe—thus eliminates or at least weakens the main motivational and facilitating factor behind human trafficking (Ekberg 2004).¹⁹ Yet such an approach also demands proper socio-cultural support and must include the development and implementation of additional intervention and support programs.

Similarly, in order to refocus youthful energy programs must be developed for juveniles that show signs of delinquency as they can be more easily motivated to join gangs or entry level organised crime groups.

2.3 *Tertiary Prevention*

Sentencing (and so removing) offenders is the last measure used for prevention. The investigation that accumulates evidence and is later used in court is the backbone of this process. However, when the offenders are women or children some obstacles hinder the investigation process. At first, usually it is the (mis)perception of adult male offenders. Such (mis)perception can even be a tool used deliberately by female perpetrators in order to misguide the investigators, for instance, the use of the spouse's name when registering questionable business in white-collar crimes (Gottschalk and Glasø 2013) or using pregnancy as a mitigating circumstance. Research undertaken by Meško et al. (2014) also shows that compliance with laws, especially by juveniles and younger population is also affected by how legitimate police behaviour is seen. This perception in turn is based on personal experience with police officers and police procedures. The more objectively and positively these procedures were carried out, the more police and certain legislation is seen as legitimate. Therefore, the basic aspect of police behaviour and activities must be considered and always strive to improve their quality.

The main problem of tertiary prevention is that while it does remove offenders from the streets, it sends them to the best criminal school, the prisons (or juvenile homes). Here, first, he/she receives (or must request in order to ensure his/hers physical integrity) the support of a certain group in prison or the juvenile home. Therefore, this also expands his/her social network, which in turn presents

¹⁹ Indeed, the paper argues well that the approach is successful in decreasing the number of domestic and foreign women involved in prostitution (Ekberg 2004), especially because it extends its reach on Swedish males to foreign territories, for instance in the case of Swedish soldiers on missions (ibid.).

additional tools for a crime commission (access to funding, fencing networks, accomplices) and also additional knowledge (discussing what was done wrong and caused their capture is the best of trial-and-error approach). Secondly, stereotyping and labelling a person as *being an ex-prisoner* heavily affects the possibilities of accessing legitimate means of earning a living for those that wish to leave the criminal lifestyle. Thirdly, there is the whole problem of private prisons that are becoming a good business and prisoners are seen as a source of income. In order to increase profits the volume of therapeutic, re-socialisation etc. programs is decreased. Fourthly, the proceeds of crimes, if well hidden and not taken away, will motivate offenders to sit out the penalties or even to engage in other crimes. Here female partners are (un)knowingly involved because the assets are written in their names.

This is a worldwide practice as can be seen in the case of Yakuza (Otomo 2007) or many other criminal groups (see other chapters in (Fiandaca 2007)). Therefore, in case of organised crime, especially of white-collar crime, imprisonment should also be accompanied by foreclosure of assets or heavy taxation and in cases of low ranking organised crime members, proper therapeutic support is essential. However, the latter still needs some extensive research in order to develop approaches that would be of equal interest to offenders as was the fast-lane, adrenalin filled and easy money life (or just its perception) of organised crime.

3 Conclusion

It seems that the existence of (mis)perceptions of organised crime fuelled by the media or exaggerated autobiographies and narrations (Logonder 2013) is one of the few facts in which almost all organised crime scholars agree on. In addition, it is the key notion to be addressed in organised crime prevention. This must be done in order to eliminate the allure of romanticism, fast-and-easy profit and the overall attraction of organised crime that serves as a recruitment tool. In this down-to-earth category of organised crime, white-collar crimes must be included as there is no setback in doing so (Levi 2008) and thus to show that white-collar crimes should be considered as (or far more) damaging as classic organised crimes.

However, all this demands time and the policy makers' support for research, which are usually dependent on funding and the latter on economic factors and the economic state of the country. This in turn is influenced by the extent and degree of white-collar crime, yet this time on a global scale. Socio-economic factors are also crucial since organised crime competes with the state in provision of services (jobs, loans) and goods to the public and as such receives public support. If organised crime will better promote the emancipation of women and take better "care" of children (of the street) then again they will gain support.

These actions of organised crime are not to be seen as acts of altruism but as well delivered self-serving, financial and empowering means to gain profit. On this, the general worldwide approach of causing panic and exaggerated fear of organised

crime may not be the correct approach. The repression approach does not tackle the reasons why people engage in organised crime and why the broader public uses its services. The manner of using the services of organised crime changes when the users of services and goods fear police repercussions. Organised criminals only change their *modus operandi*, if they do not seriously fear the state, because if they did they would not be engaged in (organised) crime. If we wish to properly tackle organised crime we must remove all factors and means that make organised crime the better provider than the state and thus to make sure that offers that cannot be refused, just cannot be given.

Five Questions

1. Why does a repression driven approach continue to be the approach primarily used?
2. What are the policy measures that may help to demystify organised crime?
3. What is to be the future of prostitution prevention: the legalisation of prostitution or the criminalisation of customers?
4. Why do the policy makers not apply or use empirically based findings in their work and how can we correct this?
5. How can we increase proper and unbiased funding for NGOs?

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Systemic Vulnerabilities on the Internet and the Exploitation of Women and Girls: Challenges and Prospects for Global Regulation

Simon Howell

Abstract The Internet, as a global phenomenon, has increasingly become host to pervasive forms of cybercrime, ranging from financial fraud to sexual abuse. Often as a result of underlying socio-economic and political disparities, women and girls may be more vulnerable to many of these forms of cybercrime. This is especially true in least-developed countries, some of which have seen a dramatic rise in Internet usage not matched by educational campaigns.. Using examples drawn from Africa, the chapter argues that global regulation is both urgent and needed, but that the development of such a framework will continue to be fraught with difficulties. In thinking beyond these difficulties, it is argued that the development of any regulatory framework will need to be contextually and strategically specific to the areas and places in which it is applied. As such these responses, whether domestic or international, will need to draw on the intellectual capital and resources of multiple state and non-state actors, ranging from local police forces to transnational regulatory agencies such as the United Nations Office on Drugs and Crime (UNODC).

1 Introduction

The Internet has fundamentally altered the means by which ideas and information are communicated and shared. Whether as an educational tool, a facilitator of business, a conduit for the transfer of data, or as a mechanism of surveillance and manipulation, its use has become increasingly entrenched in a diverse range of contexts. Moreover, while the Internet was first developed as a tool to facilitate the communication and sharing of research data (Glowniak 1998, pp. 135–144), its dynamic nature and reach has led to various parties adopting it as a *strategic* instrument by which information can be shared, whether legitimate or criminal.

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Consequently, while there are innumerable instances of the positive use of the Internet, it has also been used as a powerful weapon with which to extend criminal networks and facilitate a multiplicity of nefarious activities, from the sharing of operational plans to the trading of illegal forms of pornography (Gogolin 2010, pp. 3–8). Although its design includes protocols that enable the tracking and tracing of individual nodes and users—through standard IP (Internet Protocol) and MAC (Media Access Protocol) addresses for instance—the development of various forms of software and extremely covert peer-to-peer networks have led to the expansion of what has become colloquially known as the “dark web” (Bradbury 2014, pp. 14–17). Because these networks employ mechanisms that prevent the traditional tracing of electronic signatures, they have found extensive use in the sharing of secretive information, whether that be bomb-making instructions or explicit images of underage children. The Internet and its derivatives then, much like any tool, can be manipulated and used for a variety of ends. Importantly though, the system itself does not exist outside the ambit of the human potential for good and bad—however so defined—but is rather a product of them.

As a function of the Internet being global in its design and use, and because it can be easily used to facilitate criminal activity, its use (and what constitutes the illegal use of it) has predominantly been governed at the state level, the individual frameworks of which are further facilitated through inclusion in supranational regulatory frameworks. It has however become increasingly apparent that such frameworks lack the adaptability and speed needed to respond to online threats, and often struggle to account for the ethereal nature of digital communication technology. The Westphalian regulatory frameworks remain then largely reactive, while the prescriptive transnational regulatory frameworks that have been suggested have attracted significant criticism. As is document below, this has led to an ineffectual regulatory environment that is increasingly making vulnerable not just individuals, but entire groups of people. Indeed, at the time of writing there is no single or substantive global regulatory framework to control the multiple forms of cybercrime, despite its increasing cost and danger. However, this does not mean that local, specific, and important regulatory statutes and operational protocols cannot be developed, especially those that utilise existing data on vulnerabilities and problems found more broadly.

In the spirit of working towards such a framework, this chapter’s purpose is to specifically focus on women and children in the developing world in relation to those forms of cybercrime that impact them the most. It is argued that the vulnerabilities that are created by the Internet are not unique or isolated, but often serve to further magnify existing socio-economic, political, and cultural disparities. The result, inevitably, is that those that are already more vulnerable will become likely targets of cybercrime. Importantly, though, counter-measures and responses cannot be generic but must take into account the cultural specificities and concerns from which victims’ very vulnerability first arose. Their pre-existing vulnerability can be understood through numerous lenses, with disease prevalence and susceptibility, criminal exploitation (such as through sex work or child slavery), and economic exclusion (such as through forced marriage) perhaps being the most prominent. As is documented, the Internet has become a convenient and powerful weapon by

which these groups may be further exploited and coerced. Taking the embedded nature of these differences and vulnerabilities seriously, some of the specific issues that any regulatory body will need to be adept at engaging with are highlighted, so as that they can be drawn upon in making regulatory frameworks substantively effective. While there is a growing body of work documenting these vulnerabilities, attention is also directed towards the manner in which women and children can be empowered by the Internet, and how some have also begun to exploit the Internet for their own ends. By documenting these opposing dynamics, it is hoped that a more balanced overview of the particular issues at play are presented. Before doing so, an outline of why regulatory attempts will need to be global in nature and yet local in focus, and in illustrating the scale of the concerns with which this chapter deals, a brief overview of the Internet's dimension and operational nature is illustrative.

2 The Internet as a Global Phenomenon

The Internet has grown at such a rapid pace, and is so dynamic in nature, that its contemporary size and reach can be difficult to accurately conceptualise. Moreover, because the system is fundamentally open and largely unregulated, it has continually expanded in a myriad of ways, whether be it through the adding of a new server to the “cloud” or the development of kitchen appliances that are integrated into home networks (Gershenfeld and Vasseur 2014, pp. 60–62). As a consequence it is simply not possible to offer stable and consistently accurate measurements of its present size, reach, entrenchment, and total users. Minimally, it expands at the rate of gigabytes per second. What is presented is here at best a brief snapshot of a particular time and place.

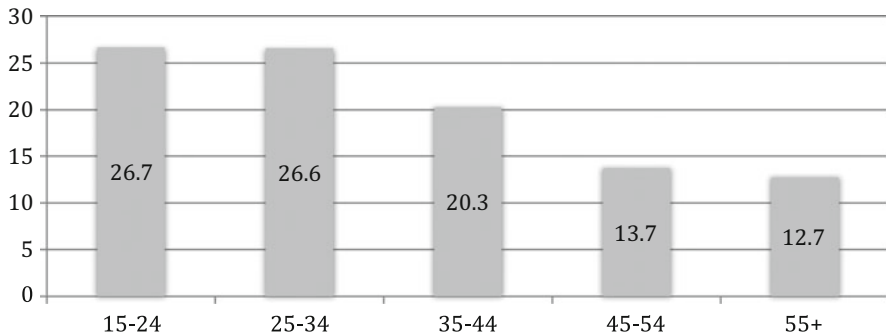
In spite of this, the Internet is both enabled and constrained by the broader parameters that constitute different societies and the international state system as a whole. While one may not be able to provide a definitive overview of the Internet, it can be broadly understood in terms of the pre-existing social, political, and economic arrangements that structure the social world. For instance, there are at present approximately 2.8 to 3 billion Internet users, which equates to just over a third of the current global population.¹ Moreover, its total size grew at the rate of 675–678 % in 2013.² In short, the Internet doubled in size every 2 months. More men use the Internet than women—in 2013, 41 % of users were male, while 39 % were female.³ This may seem a relatively small difference, but considering the total number of Internet users even one percentile is equal to many millions of people. The lack of accurate data can also easily be seen at this juncture; the percentages

¹ Internet World Database, a highly cited website, as accessed in November 2014.

² Ibid.

³ Ibid.

Table 1 Age distribution of Internet users—June 2014



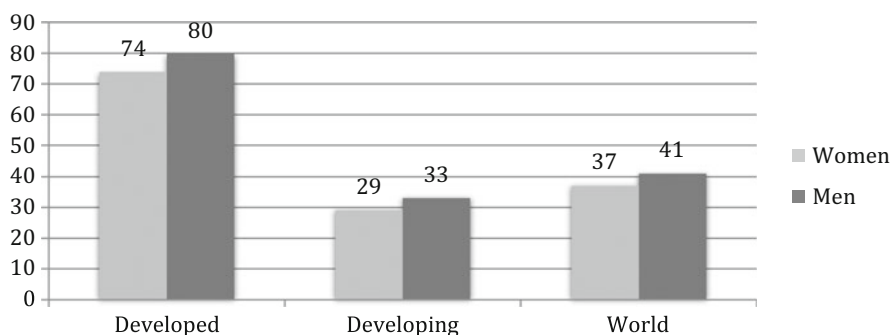
mentioned above only equate to 80 % of the total, with the remaining 20 % of Internet users remaining unidentifiable, as a result of research difficulties and the popularisation of tools that hide any trace of identity. This equates, directly, to a simple result: at least 20 % of Internet users—some 140 million users using the lowest estimate of total users—are either not being surveyed or are successfully hiding their identity to such an extent that previous research has been unable to determine the gender of the person behind the screen. Table 1 provides a breakdown of global Internet users by age. These divisions may however greatly differ in individual countries.

It has been widely recognised that the Internet, including the many anonymous networks and the “dark web”, are now a conduit for numerous forms of violence, manipulation, intimidation, and abuse. Indeed, the global cost of cybercrime is estimated to exceed US \$ 100 billion per year, with over 556 million people falling victim to various Internet-related crimes per year (Anderson et al. 2013, pp. 265–300). This equates to some eighteen per second. Specifically, for instance, over 600,000 Facebook accounts are compromised every single day.⁴ While it is very difficult to garner accurate data, it is estimated that over a lifetime of usage 71 % of male and 63 % of female Internet users will fall victim to some form of cybercrime.⁵ As shown in Table 2 below, while this difference may exist at the global level, there are significant variations at the regional level, which are especially applicable when focussing on vulnerable groups.

Moreover, there are also vast disparities in the depth and rates of use between different population groups. For instance, for those of whom the Internet has become an indispensable tool for business and finance, and who use Internet-based services every day, forms of cybercrime may have a profound impact on their daily lives. Deeply embedded users may also become more substantively vulnerable, with criminals exploiting the many connections that make services

⁴ See the Techcrunch report 2014.

⁵ Ipsos MORI (2011), p. 11.

Table 2 Internet user gender distribution by economic development

convenient as conduits for crimes, ranging from the theft of financial information to personal details and contacts. Indeed, for those who have been socialised with the Internet, it may be argued that forms of cybercrime can be as impactful as traditional forms of violence and intimidation.

Specific examples are more easily and accurately attainable at the level of individual countries, and by making reference to specific forms of abuse. For instance, in the United States, 25.8 % of adolescent female Internet users fall victim to some form of cyberbullying (with 16 % of adolescent males experiencing similar crimes).⁶ Importantly, in the same cohort, 21.1 % of females report these abuses, while a lesser percentage (18.3 %) of males take action.⁷ Again, while these statistical differences may not seem large, it must be remembered that each percentile is equal to many hundred of thousand of users. Various awareness campaigns have been launched in response, from community-led initiatives to those run by the global corporations such as Google and Facebook. Overall awareness levels of the vulnerabilities do however seem to track national economic development levels. For instance, in India, only 38 % of parents were sufficiently aware and informed of the various types of cyber crime and bullying, while in Sweden this number stands at 65 %. As is shown below, this is again statistically and operationally important in formulating an adaptive regulatory framework.

Furthermore, the statistical congruency between an awareness of the various forms of Internet crime and economic development are especially important to this chapter. While the Internet's overall level of penetration in North America may be 84.9 %, its growth between 2000 and 2014 was relatively low at 177.8 %. In Africa however, while the penetration level may only stand at 21.3 %, growth of the Internet on the continent over the same time period stands at a significant 5219.6 %.⁸ It may thus be argued that while the Internet is reaching levels of

⁶ Ibid.

⁷ Ibid.

⁸ Internet World Data 2014, as cited above.

saturation in developed nations, the developing world is becoming an increasingly important destination and market for users and Internet-based companies, corporations, and industries. Moreover, more African nationals are gaining access to rapidly increasing levels of bandwidth with the development of a number of high-speed fibre optic undersea cables directly linking the continent to Europe and India. As such, with increased bandwidth comes the *potential* for more substantive forms of exploitation. Concomitant to this, with increasing bandwidth more users may rely on more Internet-based tools, making them more vulnerable to various forms of cybercrime should they not be educated and regulatory efforts not be effective.

Indeed, and in spite of rapidly increasing penetration levels, few awareness campaigns and information drives have been conducted. As a result, new users in the developing world have become especially vulnerable to established forms of cybercrime and bullying, even though many of these strategies are no longer effective in more developed and security conscious nations (for further information, see Goodman and Harris 2010, pp. 24–27). In short, developing nations—as a result of the relative inexperience and lack of awareness of Internet-based forms of abuse and crime—have become new destinations for criminals, sexual offenders, and traffickers. These vulnerabilities, as is shown below, are magnified by pre-existing differences—many of which are symptomatic of differences in gender and age—and thus of particular concern.

Utilising the above data as a departure point, this chapter interrogates five interrelated cyber security issues. In the first, the objectives and key concerns of the contemporary international regulatory framework that is slowly emerging in response to these abuses are highlighted. Secondly, some of the new vulnerabilities and sites of resilience that have emerged in contemporary Internet usage patterns are explored. Here the concern is with understanding what drivers create or magnify vulnerabilities for individuals, institutions, and countries. In drawing specific attention to the development and deployment of various new technologies, their relevance for an effective international regulatory framework is documented. Following this, thirdly, the role of the “dark web”, and its implications for effective legislation, is highlighted. In the fourth, a discussion of how “old” crimes—such as the creation and sharing of illegal forms of pornography—is provided, showing how these have expanded and targeted many more individuals. Here the particular focus concerns how these technologies, and the Internet as a whole, have become complicit in preying on new markets, many of which are now found in developing nations. Again, these concerns are of systematic importance to the development of regulatory frameworks, which may ultimately act as a guide for local legislation and policing. Finally, an area of cyber crime often missed or left unattended is engaged with, perhaps as a result of its political sensitivity—that of women and young people as offenders themselves. As noted above, overall Internet penetration levels are higher among younger people, many of whom possess (through a lifetime of computer use) the knowledge and skill sets needed to commit these crimes.

3 The Emerging Regulatory Paradigm

Two prominent international bodies, the UN (United Nations) and the CoE (Council of Europe), have been the key facilitators in the formulation of a substantive international regulatory framework in which to both understand and control cybercrime. The UN has, at the time of writing, yet to adopt a significant or coherent framework, with previous efforts having attracted strong objections and criticism.⁹ The CoE has however both formulated and implemented the 2004 Convention on Cybercrime (which is at times referred to the Budapest Convention on Cybercrime).¹⁰ Each of these efforts will be individually outlined, as the challenges met by the former and the successes of the latter are both useful indicators of the requirements of, and reveal some of the potential problems to be encountered by, an international regulatory framework specifically targeted at the various forms of cybercrime.

The UN Department of Economic and Social Affairs (DESA), which has played a central role in driving the development of an UN-based regulatory framework, argued that “cybersecurity is a complex transactional issue that requires global cooperation for ensuring a safe Internet”.¹¹ The various issues and concerns relating to cybercrime were engaged with in detail, for instance, at a special UN event, “Cybercrime and Development”, held on the 9th of December 2011, in New York. The resulting discussions highlighted three overarching themes that required immediate attention. These are (1), the need to “build awareness at the international policy level”, that (2) this required the identification of “a range of best practice policies and initiatives in place around the world to build a culture of cybersecurity”, and (3) to “explore options for a global response to rising cybercrime”.¹² While integrative responses by a number of regulatory and policing bodies were acknowledged as important, so too was the continued salience of economic discrepancies and difference between countries, areas, and populations the world over. Indeed, it was noted that

... the role of economic disparities between nations and the fact that developing countries do not have sufficient capacity to combat cyber attacks and cybercrime, and its global threat to cyberpeace. The lack of partnership between developed and developing countries could generate ‘safe havens’, where cyber criminals can make use of the legal loopholes, and the lack of strong security measures present sometimes in developing countries to perpetrate cybercrimes.¹³

As is argued below, these economic differences have played a significant role in the growth and penetration of the Internet in less- and least-developed countries. This is a product of its growth being driven, in part, by private companies seeking

⁹ Council of Europe Cybercrime Convention 2001.

¹⁰ Ibid.

¹¹ ECOSOC 2014.

¹² Ibid.

¹³ Ibid.

both new markets and customers. Problematically however local legislative frameworks, strategies, and protocols have not kept pace with this growth (Jewkes 2013, pp. 4–5). The result is that large areas and many millions of people are gaining access to the Internet for the first time, with little knowledge of, or protection from, the various potential forms of threat, abuse, and criminal activity that are enabled by its spread, development, and entrenchment (Touray et al. 2014, pp. 1–17).

While the aforementioned efforts show sustained resolve, continued disagreements over how such a structure would be practically implemented have prevented the formulation of a concrete framework. Indeed, many of the concerns and issues that were raised at this and other UN-led meetings focussed on the proposed harnessing of the CoE's Convention of Cybercrime as a broader multilateral model. These worries have focussed particularly on the Convention's implicit prioritisation of at least some European considerations.¹⁴ In 2010, for instance, Russia opposed the Convention's recommendation of the expansion of police powers to access restricted data, especially that gathered information using state resources. In turn, Russia's proposals have been rejected by the US and EU, primarily because representatives feel that the proposed measures would infringe on their respective privacy protection laws.¹⁵ In the same year, a competing cyberspace treaty outlining regulatory conventions and protocols was presented to the Twelfth UN Congress on Crime Prevention and Criminal Justice, for further action by the Commission on Crime Prevention and Criminal Justice.¹⁶ While the treaty was debated at length, and while the Congress agreed on the importance of regulation in some form, continued disagreements and concerns prevented its implementation in any operative form. As a consequence, no firm resolutions have been passed as yet, and the framework remains tentative at the time of writing.

Such debate should be expected, as it must be remembered that the regulation of cybercrime ultimately entails the control, in a substantive form, of the Internet itself. As the Internet becomes more deeply entrenched in modern forms of governance, and indeed as a key tool, questions of sovereignty and security become pivotal and play a key role in preventing the realistic adoption of a global security framework.

The Council of Europe's Convention on Cybercrime—which came into effect on the 1st of July 2004 after having been adopted at the Council's 109th session on the 8th of November 2001—is however far more substantive in both its form and recommendations.¹⁷ The Convention covers a broad spectrum of potential risks, offences, and threats. These include, but are not limited to, confidentiality/copyright/privacy concerns, the facilitation of criminal offences and activity through the

¹⁴ Council of Europe Cybercrime Convention 2001.

¹⁵ Ibid.

¹⁶ United Nations DESA report 2013.

¹⁷ Council of Europe Cybercrime Convention 2001.

use of the Internet or its associated structures, accessing and storing data (including the collection and/or seizure of data by enforcement agencies), and the production and dissemination of dangerous, damaging, or abusive data/information.¹⁸ From a legislative and policing perspective, the Convention's primary purposes are (1) to harmonise the various domestic frameworks in use by member countries, ensuring legal consistency and effective transnational policing measures, (2) empower domestic enforcement agencies to effectively police the Convention's various concerns by providing support, pooling resources, and ensuring effective communication, and (3) the facilitation of an environment in which effective and dynamic transnational cooperation can be achieved and sustained. An additional protocol, ratified on the 1st of March 2006, further criminalised the online proliferation of racist and xenophobic materials.¹⁹ Finally the convention has also been adopted (controversially) by the US, with further signatories including Canada, South Africa, Japan, Australia, Panama, Mauritius and the Dominican Republic.²⁰ As is argued below, while the Convention is a useful starting point and resource, it has been designed with the policing capacities and knowledge economies of developed nations in mind. It may therefore not be effective if simply adopted wholesale by those who have significantly different or weaker policing structures, and yet are experiencing the highest growth rates in Internet usage and penetration. These countries are primarily found in the developing world.

The currently emerging policing paradigm is thus caught in a tension between the acknowledgment of the need to create an effective regulatory framework which specifically targets cybercrime, and continuing disagreements between individuals and governments concerning access to private content, data, and the possibility of utilising the framework as a tool by which to access restricted information. As a result, while the CoE Convention may serve as foundation for a more broadly-accepted framework, numerous diplomatic, political, and cooperative hurdles will need to be overcome. Moreover, critical attention will need to be paid to its utility and use if it is to be implemented in structural conditions for which it was not designed—the economic, political, and social structures of developing nations are typically far more heterogeneous and less well resourced (Wallsten 2005, pp. 502–503), both of which severely impact the levels and manner in which such frameworks can be deployed and policed (Wallsten 2005, p. 502).

With this in mind, the chapter now explores what new vulnerabilities, threats and risks such a framework would need to be able to both understand and regulate. In so doing, the vulnerabilities and threats that have emerged in the developing world are further examined, by documenting what impact they may have and what factors will need to be considered in formulating an effective and resilient regulatory framework.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

4 New Vulnerabilities, New Dynamics

In seeking to understand the context in which cybercrime has become a threat to people, one that invariably relies on entrenched political, economic, and social vulnerabilities (as a function, for instance, of a lack of experience, knowledge, and a regulatory framework itself), there are two useful examples that illustrate the often subtle dynamics at play. They are also useful in illustrating the manner in which individuals can become vulnerable to, and exploited by, Internet users many thousand of miles away.

A number of South African schools have now begun to seek permission from their pupils' guardians before posting any pictures of them on their websites or social media accounts.²¹ Indeed, some have also begun to password-protect this information, in an attempt to ensure that only authorised members of the community can access them. While this may have been done to protect private and copyrighted material in the past, these regulatory and restrictive protocols are increasingly finding use in efforts to protect the identities of the pupils, in an attempt to prevent the pictures from being utilised for any purpose other than the original one. A simple picture of a school netball or cricket team may seem innocent enough, yet for some these images are material for very different ends, and may be shared to a number of individuals utilising covert networks and conduits. The pictures can be further used in identifying vulnerable children, or those that can be easily abducted for a variety of purposes, such as child slavery or as hostages with which to elicit monetary ransoms—in South Africa for instance, the use of websites are normally the preserve of private schools attracting parents from higher income brackets. Consequently, the protection of what may seem like innocent sites and pictures becomes important in preventing far more serious crimes, and in preventing children from falling victim to organised criminal strategies and tactics. These preventative strategies are however not often conceptualised in a risk-limitation paradigm, especially considering the ease by which visual materials, such as pictures, can be so easily created, posted, and disseminated through social media networks.

Drawing on a more regional example, in 2012 Boko Haram—an Al-Qaida linked transnational terrorist organisation blacklisted by the UN—was purported to have infiltrated the database containing the personnel records of employees of the Nigerian State Security Services (see Oluwaremi et al. 2013, pp. 103–109). While the information acquired as a result of the cyber attack was not explicitly used for criminal purposes, it was publicly released. As a consequence, the names, addresses, bank account information and close family members of past and present employees became easily accessible, undermining the Service's ability to effectively fulfil its operational mandates (Oluwaremi et al. 2013, pp. 103–104). Beyond this, the cyberattack demonstrated how vulnerable many of weakly secured some of

²¹ See, for instance, Rustenburg Girls High School 2014.

African countries Internet-based structures and databases are—even those that are by their very nature supposed to be protected from such attacks.

Minimally, gaining access to much of this information could be strategically used as a potent bargaining tool by recognisable terrorist groups. The release of this information thus not only undermined the service, but also endangered a number of employees' lives. An increase in cyberattacks and hacking attempts have been reported across the continent, with the two strongest economies—Nigeria and South Africa—experiencing pervasive and systematic attempts to acquire information as varied as banking details, government contact details, and medical records (Grobler et al. 2013, pp. 32–41). Again, the release of this information may make vulnerable people and groups who are completely unaware that the data has been compromised, further susceptible to methods of exploitation, harassment, and manipulation. Not knowing that this information has been compromised, in short, prevents people from taking mitigating action. How might we understand these two examples in the context of the emerging regulatory framework explored above? While specific concerns would be contextually unique, there are a number of broader structural conditions that are of particular relevance to the effective implementation of a transnational regulatory framework.

As was noted by the UN, a key challenge to the development and effective implementation of a regulatory framework stems from pre-existing macro-economic disparities.²² This challenge has three facets. The first, as touched upon, is that the Convention was designed for, and implemented by, the European Union. The vast majority of EU member states are considered developed, well policed and are relatively well resourced. This stands in direct contrast to many less- or least-developed countries. Second, and as a function of their economic status, many developing countries lack the extensive policing networks (not to mention policing resources) possessed by signatories to the Convention (Touray et al. 2014, pp. 1–6). Third, with particular reference to women and children, it must be remembered that many developing nations are highly unequal, and it is often women and children who experience the brunt of this inequality (Dalton 2013, pp. 1107–1112). Indeed, and as has been extensively noted in contemporary academic and research literature, structural inequalities impact on the lives of women and children in a myriad of ways, including making them vulnerable to sexual exploitation, slavery, sexual violence and rape (for a paradigmatic overview of these many issues, see Lombard and McMillan 2013).

A key driver of these problems and the resulting forms of violence is economic—even in countries that have experienced sustained economic growth and development, women and children continue to be the most vulnerable and exploited members of many society (Madon 2000, pp. 85–101).

Economic disparities play a further role in preventing members of individual societies from accessing social services and policing agencies. Any regulatory framework would not only have to make these services easily available, but make

²² United Nations DESA 2013.

them accessible even for those that *do not* have access to the Internet. As Susan Kreston has noted, for instance (Kreston 2007, p. 40), women and girls are frequently trafficked from East Africa through a network that is facilitated by the use of the Internet and mobile technology. A regulatory framework would remain ineffective if it were to solely concentrate on responses to these crimes while not providing the means and mechanisms whereby potential victims can alert authorities to their vulnerability. Thus while Internet-based technologies facilitate these criminal networks, they may also offer the tools needed in their prevention, a theme that is explored in more detail below.

In congruence with these economic concerns, perhaps expectantly, many political challenges can be found. The EU Convention was formulated in an environment in which there are high levels of economic interdependence, an already-existing co-operative political community, and numerous interdependent policing and regulatory bodies. Even in using the example of Southern Africa, one of the more economically integrated regions in the developing world, the political climate in individual countries can be vastly different.

While the region has an economic union, SADC (Southern African Development Community), less substantive *social* integration exists—the frequent outbreaks of xenophobic violence being an example of this. Moreover, it has been widely noted that policing bodies have been manipulated to perform functions ultimately concerned with state sovereignty rather than effective governance (Saurombe 2009, pp. 100–104). These concerns are especially relevant in the regulation and policing of the Internet, which by its structural design and nature is transnational, pays no heed to traditional borders or policing jurisdictions. Again, specific attention should be drawn to the vulnerability of women and children in these contexts; the political disenfranchisement and exclusion of women remains a continuing concern in a number of developing countries (Wurtele et al. 2014, pp. 546–568).

Contemporarily, many of these concerns have themselves become political tools in the strategic development of competing concepts of nationhood (Carpenter 2006, pp. 25–53). One need only point to the conflicting understandings and views of female circumcision to understand this; the practice has increasingly become a strategic flag-bearer for the construction of competing ontological definitions of statehood, citizenship and femininity (Ibid). As a result, international legislation outlawing the practice has been interpreted as another form of “Western” political and moral intervention and dominance.

Whether correct or not, any international regulatory framework that is understood to be a tool for strategies of foreign imposition will not be seen as legitimate and thus unlikely to find cohesive traction and adoption. As noted above, Russia’s concern with the deployment of the CoE convention further afield was ultimately underpinned by a concern with sovereignty. These national disagreements can have global ramifications, as any area or state that excludes itself from the agreements will become a haven for the hosting of servers and tools used in conducting cybercrime. As a result, an international regulatory framework will need to be as inclusive and dynamic as possible, while also requiring that it be seen as legitimate

and actionable to the broadest range of stakeholders. This will, unfortunately, be especially difficult as a result of the unfettered and unregulated expansion/growth of the Internet and the continuing salience of sovereignty and state-led concerns with self-determination and privacy.

While the hardware and machines on which the Internet relies can easily be seen as artefacts external to social configurations and human relationships, it must be remembered that the Internet is increasingly becoming a social experience in and of itself (Chayko 2014, pp. 976–991). While the rise of social media platforms such as Facebook may be an obvious example, the myriad of channels of communication and methods of sharing personal experiences have served to embed online forms of technology into the very way in which the social has come to be constituted. While this effect may be felt far more in developed countries, as shown by the penetration figures above, the Internet is rapidly expanding in the developing world and is becoming ever more integrated into peoples' lives. The cumulative effect may often be positive—allowing individuals to share information more effectively and more widely—yet it also create opportunities for forms of crime that can harness peoples' very identity as a form of leverage (Chayko 2014, p. 978).

Regulation is thus also made more difficult—limiting the possibility of an Internet-based tool or conduit from being used for criminal purposes often involves limiting other (legitimate) users' experience of that tool. When those tools have become socially embedded and personally important to users, limitations may be seen as a personal imposition if enforced, while unlikely to be followed if merely made optional.

Facebook is (again) a useful example. Responding to sustained criticism, the company has made available a whole host of options and tools with which users can safeguard their privacy and limit access to their account.²³ Yet, and as noted above, 600,000 Facebook accounts continue to be compromised every day. If these very well publicised and easy-to-use tools remain unutilised, how might a regulatory framework find implementation in a broader environment?

Such a regulatory framework will not only have to account for criminal intention, but for potential victims to be unwilling to make themselves less vulnerable. Limiting experiences that have become fundamental to peoples' daily lives is, as Facebook has found out, a very hard sell. This will only become more difficult as more of the basic appliances and tools found in daily use are brought online. With the development of the “internet of things” as such, so too do the possibilities for abuse expand. It has been shown, for instance, that “smart” cars can be remotely hijacked and driven.²⁴ As a consequence, any regulatory framework will need to be highly adaptive and flexible in order to take into account these rapid changes and developments.

²³ See Facebook's current privacy document, cited here in late 2014.

²⁴ See, for instance, Forbes' ‘Hackers reveal nasty new car attacks with me behind the wheel’, 2013.

Concomitant to this structural quagmire is a further dynamic—societies in developing countries are often highly unequal, with gender disparities frequently exasperated by unquestioned patriarchal norms (Carpenter 2005, pp. 295–334). Resultantly, it is again women and children that may feel the effect of these disparities the most, at times being left powerless and vulnerable to exploitation and abuse (*ibid*). As a result, an effective regulatory framework with which to prevent the many forms of cybercrime cannot simply be limited to the criminal acts themselves, but will need to be integrated into broader frameworks that speak to concerns with inequality, gender, violence, trafficking, and abuse. This is not however a limitation—many of these frameworks have already been in existence for some time, with at least some proving themselves successful (Ali 2011, pp. 185–193). Cybercrime regulation can thus be seen as another weapon in a broader arsenal of defences against organised criminal activity.

Many of these structural concerns, and indeed much of the CoE's Convention, is reactive. While necessary, the limitation of vulnerabilities (especially with regard to women and children) needs to be prescriptive and proactive. As in many other areas, education and information are the most important preventative tools that can be made available to new and vulnerable Internet users. Indeed, it is precisely because campaigns and educational drives in countries that have higher levels of Internet penetration (and which have had to respond to the associated crimes and forms of abuse for much longer) have been effective in limiting cybercrime that new regions and more vulnerable users are now being targeted (Chin and Fairlie 2010, pp. 153–167).

The deployment of educational strategies and tools cannot however be the sole responsibility of governments. The expansion of the Internet is frequently driven by private investment concerns, and as a consequence a regulatory framework would do well to harness the private sector in ensuring that the tools, services, and channels they offer to users are secure, transparent, and that potential users are made aware of the associated risks (Chin and Fairlie 2010, pp. 155–157). Coupled with broader campaigns and the dissemination of simple “best practice” guidelines (with regards to password protection methods, privacy settings, and so forth), both governments and private institutions may be able to limit much of the “softer” forms of cybercrime, as it is often these easily accessible “trapdoors” that serve as the springboard for more complex and persuasive forms of abuse (Chin and Fairlie 2010, pp. 157–159).

Indeed, it is to these more persuasive and problematic forms of cybercrime that the chapter now turns. As law-enforcement authorities have begun to discover, criminal and illegal uses of the Internet are often well hidden behind a myriad of security “walls”, preventing ease of access while also allowing their specific interests to continue unabated. Many of these have now been classified as forming part of the “dark web”. However problematic the term, many of these P2P (peer-to-peer) networks are not only hidden in themselves, but users “hide” themselves behind tools that make them further “invisible”. In such an open system as the Internet, in truly Foucauldian fashion, the possibility for identification is frequently the only limit preventing further abuses. With this in place, the chapter now

highlights how “old” or traditional crimes and criminal strategies have found a new lease on life in utilising the Internet. Finally, it seeks to provide an overview of how the Internet has been used by women and children to commit criminal offenses. While not often discussed, this politically sensitive area of criminal activity cannot be ignored, especially as younger people grow up with Internet access and learn to exploit the system for their own ends.

4.1 Development and the Dark Web

In both the media and academic literature, the abuse of women and children by Internet users is invariably mentioned in relation to the “dark web”. Beyond the academic literature, however, the “dark web” is frequently undefined, or in a manner that is incorrect. As such, it is important to understand *what* the “dark web” is, and what specific aspects of it need regulation. Indeed, the “dark web” is somewhat of a misnomer and not particularly accurate. There are, analytically, three different forms or “dark” areas of the Internet, the “dark internet”, “deep web” and “darknet”. As they are frequently confused, especially by sensationalist media reports and exposés,²⁵ an overview of their differences serves as a useful means by which to focus attention on the specific implications that these networks have for a developmental agenda and regulatory framework, not to mention documenting how they may be used for criminal purposes.

The “dark internet” has existed since the creation of ARPANET (the Advanced Research Projects Agency Network), the Internet’s precursor. The “dark” Internet is simply those addresses and networks that cannot be reached by anyone online—they are, in other words, completely offline. As such, the actual machines cannot be used to share information or data directly, but can be used for purposes of storage or computation. Thus, for instance, an isolated computer could be used to store illegal pornography, but for that data to be shared it would first have to be manually transferred to a computer with access to the wider Internet. While this would physically limit the possibility of sharing information, it does also make the remote access of the information impossible without physical interventions; it is for this reason that the dark Internet has found military application. These machines, in short, are beyond the “light” of the Internet.

The “deep web” is any part of the Internet not indexed by standard search agents (with Google, Bing, and Yahoo having the largest market share). Using a frequently used metaphor, in acquiring data search engines drag a net across the surface of the Internet. While much may be caught in the net, there remains a massive amount of data below the surface that is not captured or indexed. Indeed, while it is not possible to accurately define the size of the “deep web”, as a function of it not being possible to capture all of the information, it is often thought of as being

²⁵ See, for instance, USA Today 2014.

several times larger than the surface—a well-known yet now dated paper estimated that the “deep web” consists of 7,5 petabytes of data (Cassim 2011, pp. 123–138). While a small portion of the “deep web” may be used for nefarious purposes, as explained below, most of it is constituted by content that is used daily, but is simply not accessible to search engines. The most common resources include dynamic content, such as forms and pages that require user-based input, content that is not linked to other pages (the links of which are utilised by search engines to identify individual pages), private content that requires login details, contextual content which has dynamic navigation sequences (the data used by mapping websites to allow users to browse areas, for instance), limited access content such as those used by websites that require user-interpreted data (such as sites protected by dynamic CAPTCHA (an acronym for “Completely Automated Public Turing test to tell Computers and Humans Apart” processes to prevent robotic exploitation)), and scripted content as used by Java and Flash, and content that is not handled by search engines (such as some forms of multimedia)(Salifu 2008, pp. 432–443). The vast majority of Internet users thus access the “deep web”, in some form or another, typically at points where their input is required. Simply logging into a company website or university intranet is to technically access the “deep web”. The major difference between the “deep web” and the “darknet” is that websites constituting the former do not explicitly attempt to hide their identity or IP addresses, but are typically not “seen” by search engines, as they do not have access to them. The latter, however, are usually *intentionally* hidden.

The “darknet”, which by definition forms a small part of the “deep web”, is constituted by networks that are severely and purposefully restricted—connections are only made between trusted addresses and peers (Schell et al. 2007, pp. 45–63). These “friends” use non-standard protocols and ports, further limiting access and the ability to monitor their activity. While similar to more widely used peer-to-peer networks, these F2F (friend-to-friend) networks require various levels of user-authorisation. Thus while torrent sites allow all users to connect to one another (known as “seeding”), a F2F network will require the individual authorisation of all the possible connections (Schell et al. 2007, p. 45). This prevents permanent links between individual nodes from being established (thus preventing indexing) with the networks requiring levels of authorisation that allow only trusted users access. Their utilisation of non-standard protocols and ports further discourages easy access or surveillance, and prevents standard means and mechanisms from being effective in the identification and tracking of users and machines. The networks are usually also decentralised, preventing their reliance on a single machine or node, and can often only be accessed using specialised software (Schell et al. 2007, pp. 47–49).

The “darknet” may not necessarily be used for nefarious or criminal purposes, with many governmental and corporate bodies relying on them for specific transactions. The networks’ purpose, ultimately, is to safeguard information and ensure the highest levels of privacy possible on the Internet. However, because they are designed to prevent the identification of users and facilitate the secret sharing of information, they have been utilised by those who wish to share data that may

attract sanctions or reprisal, in disseminating data protected by copyright laws for instance, and by those wishing to share content that is illegal, harmful, or viewed as problematic by the societies in which individual users live (Schell et al. 2007, p. 48). It must be remembered that cybercrime is not necessarily limited to the use of these networks, with the vast majority of crimes utilising the ordinary, “visible” web. Moreover, while much has been made of these networks in recent years, they represent a very small proportion of the “dark web” and are utilised by comparatively few people. While they have been used to share very different forms of data—ranging from pornography to state secrets—they are by their nature limited. Newer, and perhaps larger, criminal uses of the Internet exploit its common features, through which far more users and machines can be accessed (Grobler and Jansen van Vuuren 2010). As is highlighted below, this is especially true in developing nations that are rapidly increasing Internet access with comparatively few safeguards and precautionary measures finding congruent implementation.

As a whole, thus, the Internet can be a powerful tool with which to further enhance the economic, political, and social development of individual countries. The Internet is now a necessary tool for communication, and is needed in order to facilitate the expansion of trade and commerce, having been used in such diverse applications as policing, emergency response coordination, and the tracking of deliveries. Moreover, its use is pivotal in maintaining both local and national security regimens. As such,

A major component of information and infrastructure security is a nation’s ability to deter, detect, investigate, and prosecute cyber criminal activities. Weaknesses in any of these areas can compromise security not only in that country, but also around the globe (Salifu 2008, p. 432).

The overall development of a country cannot substantively occur without the utilisation of the various resources and tools offered by the Internet. In regions that are undergoing rapid urbanisation, or in those nations that seek to further integrate their markets into the world economy, the development and expansion of their online capabilities is extremely important. The laying of numerous high-capacity fibre cables, which now circumvent the African continent, is testament to how important the entrenchment of Internet capabilities are to many nations (Grobler and Jansen van Vuuren 2010, pp. 3–5).

The deployment and expansion of these networks is however a “double-edged sword” (Chawki and Wahab 2013, pp. 1–33). On the one hand, they are pivotal to the further development of trade and economic integration. On the other, the increasing of capabilities increases the possibility and potential of utilising the resulting networks for exploitative and criminal activities. Furthermore, the development of IT capabilities and services are not divorced from the development trajectory of individual countries themselves, the frequent result of which is unequal penetration levels that follow pre-existing socio-economic distribution patterns (Ibid). In South Africa, for instance, 31 % of citizens have access to the Internet, but the vast majority of this access is concentrated in well-resourced areas (Chawki and Wahab 2013, p. 1). When Internet access does penetrate less-

resourced areas, its use is often unregulated and users uneducated, further increasing the ease by which they can be exploited. Thus, in those countries in which women and children are already marginalised, the Internet can increase their chances of exploitation simply by being users, notwithstanding further political concerns with equality and individual rights. If the development of specifically tailored security and protection measures does not keep pace with the expansion of the Internet into new regions and areas, then the *likelihood* of these new nodes being targeted by experienced users elsewhere also increases. As is documented in the next section, this has repeatedly occurred in a number of African countries, many of which have become seen as the “new frontier” for the expansion and growth of the Internet and e-commerce. So too have these regions become the new frontier for exploitative practices and strategies, some of which prey on those who do not have direct access to the Internet (Chawki and Wahab 2013, p. 3).

As a result, the development of an effective regulatory paradigm must be cognisant of at least four fundamental areas of concern:

1. The Internet is a global phenomenon, with global reach. Any regulatory framework must then, in its very design, be global in nature and reach. It must not only be cognisant of what occurs online, but the *results* of this online activity. Regulation must therefore extend to the offline domain as well.²⁶ Should there be even one isolated or excluded area, whether geographic or electronic, it will be used to further facilitate a vast plethora of criminal and exploitative practices.
2. The Internet is an extremely fluid and highly dynamic decentralised network that is adaptable and resilient. Communication and cooperation between various regulatory bodies, security agencies, and government departments will be required to implement and respond to any occurrence. Again, should even one area be overlooked, it will severely weaken broader attempts at regulation.
3. The implementation of effective and practical security measures must occur in conjunction with the increasing expansion of the Internet. These measures may range from international regulatory frameworks to ensuring that new users install anti-virus software on their personal machines. The dissemination of information and practical guidelines that are easily understandable will be pivotal in limiting the risks that individual users may expose themselves to.
4. Those members of society who are already vulnerable—women and children perhaps being the most common—need to be protected by specific laws and regulations. These efforts should however not simply be protective, but should be empowering, allowing vulnerable people to utilise the Internet effectively and as a means of further developing themselves.

With the above concerns in mind, specific examples of how the Internet has been used to facilitate criminal activities in developing nations are now highlighted, showing how important the congruent expansion of safety measures are in the limitation of exploitative and manipulative strategies, often perpetuated by far more experienced users and syndicates in the developed world.

²⁶ For specificities, see the UNODC Comprehensive Study on Cybercrime, 2013, p. 256.

5 Old Crimes, New Targets: The African Example

Much has been made of the increasing prevalence of groups and syndicates that use the “dark web” to share problematic data, such as pornographic images of children. Highly publicised raids and arrests have revealed to the public that the nefarious use of the Internet is not limited to those people and places traditionally thought of as criminal, but have implicated a number of established journalists, lawyers, teachers, politicians, and celebrities.²⁷

There are numerous forms of cybercrime that have been found to have originated from or target African countries and/or nationals. Amongst these are all of the “traditional” cybercrimes, which include but are not limited to: the theft of information, the facilitation of criminal organisations, the manipulation of Internet users in general or specific targets (ranging from individuals to governments and multinational conglomerates), identity theft, defamation, the unauthorised acquisition of personal data, copyright infringement activities, and the use of the Internet to further or achieve exploitative crimes (such as the sharing of pornographic images of people, or the facilitation/organisation of activities supporting prostitution, abuse, child slavery/labour, and hostage-related/ransom related concerns)(see Cassim 2011, pp. 125–127). Indeed, many of these crimes specifically rely on Internet-based tools and information conduits, many of which are entirely open and well known, such as Facebook, although some use F2F networks found in the “deep web”.

There are also a number of “new” targets and forms of exploitation that have emerged as a direct consequence of dynamics related specifically to the African continent. In highlighting these, thus, it should be noted that any analysis or practical attempt at regulation *must* be cognisant of local dynamics and factors that may further facilitate direct forms of cybercrime. In following Grobler and Jansen van Vuuren’s analysis (2010, pp. 1–8) new forms of cybercrime on the continent are made possible by a serious lack of IT education and understanding, with very few users having received formal training or guidance. Many forms of cybercrime are opportunistic, and thus this lack of structured guidance has contributed to the creation of a highly vulnerable cohort of users, many of which fall prey to forms of cybercrime that would no longer be successful in countries with substantive education policies, or in which Internet safety protocols have become entrenched in the daily practices of users (see Cassim 2011, pp. 125–127). In tandem with this, few operating system manufacturers offer their products in African languages, and very few Internet sites and portals utilise these languages. As a result,

Many African computer users do not necessarily understand error messages or warnings about cyber fraud that are not presented in their mother tongue. As a result, the absence of

²⁷ See, for instance, the Daily Mail’s report on the police search of Sir Elton John’s personal computer, 2013.

African languages in cyber space poses a serious threat to cyber space fraud and vulnerability to cyber space fraud (Cassim 2011, p. 126).

There is, furthermore, a lack of standardisation and communication between local regulatory bodies, preventing interstate investigations and regulatory attempts from effectively protecting users or investigating instances of criminal behaviour (Ibid). This weakness is especially important to any international regulatory framework, as the meaningful cooperation of all signatories will be a prerequisite of effective control, as touched upon above. Finally, many African users utilise older technology and software, making them more vulnerable to contemporary forms of cybercrime. MS Windows is the most used operating system, and is by far the most frequently exploited system in the perpetuation of cybercrime (Ibid). The bandwidth available to individual users, while increasing, is also comparatively low by global standards, often preventing or standing in obstruction to the regular updating of system security software and preventative programmes. This is often the result of security updates not being seen as a priority by users, who prefer to dedicate the limited bandwidth to personal pursuits.

These structural concerns have created an environment in which users are especially vulnerable (as a result of a lack of training and information), policing is weak and unsystematic, and personal computers and machines are vulnerable to exploitation. The opportunities offered by forms of cybercrime are furthermore often made more desirable as a result of the socio-economic and political conditions found in many countries on the continent, increasing the likelihood of otherwise law-abiding citizens turning to easily committed forms of cybercrime to supplement their income, committed in climates in which the fear of reprisal is relatively low and/or stunted by high levels of corruption and lacklustre policing measures (Beech et al. 2008, pp. 216–228).

All of these factors can be seen in operation in Uganda, for instance. In a web-based survey it was found that some 92 % of respondents had been victim to at least one form of cybercrime (Tushabe and Baryamureeba 2005). Of these 53 % of respondents never told anyone, with only 34 % reporting the incidents. Contrastively, from the same sample, 25 % of respondents reported that they had “planned and successfully implemented” at least one form of cybercrime. “SPAM spreaders, intellectual property infringers and hackers are the most rampant”. The study also found that only 60 % of users new how to detect common cybercrime threats, with 30 % of users not utilising any protective software. From the perspective of policing itself, “[m]ost perpetrators said that they find it easy to commit these acts because they are protected by a feeling of invisibility while online, the acts are relatively simply to conduct and also for adventure” (Beech et al. 2008, pp. 216–228).

In another example, there have been a number of arrests following an investigation by the South African Police Service into the proliferation and dissemination of pornographic images of adolescents. It was found that perpetrators were befriending young people using phone-based chat services, often pretending to be from the same age and area. Ultimately, they would convince the users—who were

mostly young girls—to share pornographic images and “selfies” with them, which they would then further disseminate and/or use as bargaining tool with which to further extort additional images, money, or information from their victims. Such examples could have been easily prevented had sustained education campaigns been implemented and found traction with the users of these services. Fortunately, in South Africa, there are specific laws under which these actions can be charged, but this is not true for many other countries on the continent.

These are but two examples of an ever-broadening criminal arena, ranging from the targeting of large banks to individuals and children. Many of these crimes are opportunistic and rely on the pervasive lack of information, education, and guidance that can be found or that is offered in African countries. With the continent experiencing massive increases both in the number and quality of connections to the Internet, and with access to the Internet becoming ever more easy through the use of “smart” and “feature” phones, a overarching regulatory framework is needed. Such a framework cannot simply be responsive however, but must aim to empower individual users to protect themselves from many of these forms of cybercrime through education campaigns and strategies that are specifically tailored to the local contexts and conditions in which they are deployed. An effective regulatory framework will require the cooperation of numerous stakeholders, but it will also require that individual users are empowered to protect themselves from many of the most common forms of cybercrime. As a result such a framework cannot be deployed in isolation, but will form part of a larger structure of efforts specifically aimed at the development of those who are already vulnerable and easily exploited.

5.1 Women and Children as Offenders: An Uncomfortable Truth

While there is a rapidly expanding literature on women and children as victims of various forms of cybercrime, from cyberbullying and stalking to child slavery, there is comparatively little on women and children as offenders themselves (Seto 2002, pp. 67–75). While it remains true, both statistically and historically, that the vast majority of cybercrimes have been committed by men, there are also a number of documented instances of women and children committing cybercrimes. Often, however, the crimes committed are “softer” in nature, more pernicious, less shocking, and therefore less newsworthy (Cassim 2011, pp. 128–131). Reports of the police searching prominent male musicians’ houses for child pornography, for instance, generate far greater media coverage than systematic yet subtle forms of cyberbullying, such as “fat shaming” by adolescents of their peers. While perhaps not as immediately “brutal” these passive-aggressive campaigns can continue for many years, preventing targets from accessing many of the resources—the educational aspects of which are increasingly important in contemporary schooling systems—and social networks offered by the medium (Salifu 2008, pp. 432–443).

They may also stunt development, enforce forms of self-hatred, and be pivotal in the development of lifelong psychological states that may severely limit the quality of life of victims (Seto 2002, pp. 67–72).

Research done on forms of cybercrime perpetuated by women and children is based on two important measurements. The first is that, at a global level, the largest percentage of Internet users are between the ages of 15 and 24 and 25 and 34 (both approximately 27 %) (Beech et al. 2008, pp. 222–227). Over half of the Internet's users are then below the age of 34, with an increasing majority having grown up with access to, and knowledge of the Internet and associated tools and technology. Minimally, this means that younger users will often be more proficient at the use of the technology, and will be far more adept at integrating the use of the technology into their daily lives. Secondly, the data that has been acquired has pointed to women and children being far more likely to commit “softer” forms of cybercrime, such as cyberbullying, and that these forms of cybercrime are linked to Internet penetration levels (themselves, as explained above, linked to socio-economic development levels). The data that has thus been acquired points to cybercrimes perpetuated by women and children as far more likely to occur in more developed nations, although there may be an implicit bias in the data in that far fewer studies focussing on this topic have been undertaken elsewhere (Chen et al. 2004, pp. 50–56). Minimally, the data points to cybercrime by women and children as only becoming prominent in those nations in which the Internet and related technology has become deeply entrenched in the lives of users, and in which these forms of technology have become pivotal to the development and sustaining of relationships. In those places where penetration levels are not as high or as fundamental, cybercrimes such as online bullying are not as developed or as pertinent (Seto 2002, pp. 67–76). However, considering the very high expansion rate of the Internet in many developing nations, the lessons learnt by those studies already conducted need to be taken seriously, in an attempt to proactively limit these forms of cybercrime, which will be felt even more keenly should they be perpetuated against people who are already far more marginal or more easily abused.

Of those studies that have been conducted, the on-going “Halt Abuse” campaign has generated very detailed data, over a period of some 14 years.²⁸ As a case study, the data points to a number of interesting trends that have implications for policy and should be carefully considered in the formulation of a coherent and applicable regulatory framework. Perhaps the most prominent concern is the sheer scale of cybercrime, even in nations with high levels of Internet penetration, education, and safety. In the US, for instance, 71 % of male Internet users, and 63 % of female Internet users, have fallen victim to at least one form of cybercrime over the course of their online lives. Specifically focussing on cyberbullying, which includes forms of harassment, shaming, identity theft, manipulation, extortion, and the threatening

²⁸ For the original data, see the Halt Abuse website, 2014. All data quoted below drawn directly from the website.

of specific users, 25.8 % of adolescent females have reported being subject to at least one of these activities. Interestingly, some 16 % of adolescent males also reported having experienced at least one of these forms of cyberbullying, which implicitly brings into question the gender bias found in both the academic and grey literature. Adolescent females were also more likely to report these occurrences (21.1 % for adolescent females versus 18.3 % for adolescent males). Importantly, the on-going studies have also found that in a number of instances, more adolescent females have reported other forms of cyberbullying, including the unsolicited posting of media online without permission, and were slightly more likely to continue to harass the victim beyond online media and interactions.

Such data presents a complicated picture, but one that ultimately points to the importance of understanding online phenomena as embedded within pre-existing social, political, and economic structures. Much like other more “traditional” forms of crime, serious forms of cybercrime are committed by a very small percentage of the population in developed nations, with the perpetrators predominantly being male. However, less serious forms of cybercrime, such as cyberbullying, are committed by a far greater percentage of the population, with the ratio of female-to-male perpetrators within 10 % of each other. Of course, these ratios may not translate into conviction or incarceration ratios, but for a variety of reasons they still point to a serious problem. From a legislative perspective, moreover, they are important; legislation and regulation cannot simply target serious forms of cybercrime, but should seek to establish an enabling online environment in which users can safely interact with others, and in which reporting structures are easily accessible and anonymous. Much like the reporting of sexual crimes, the lower likelihood of adolescent men reporting forms of cyberbullying may be the result of the fear of stigma and shame, as these actions may be seen as an acknowledgement of weakness (Brenner 2007, pp. 12–28). This is especially pertinent in societies in which patriarchal norms and prescriptions have implicitly informed understandings of gender and identity, and will remain pertinent and powerful in an environment in which many online identities are also very public forms of identity.

As has been noted, the formulation of an adaptable regulatory framework must aim to create an infrastructure that is not only concerned with the limitation of certain activities, but the enabling of a safe environment. There is a broad ambit of cybercrimes, and to attempt to simply restrict the possibility of their occurrence may ultimately serve to limit the potential of the Internet. Moreover, while a globally applicable framework is needed, minimally to prevent isolated areas from becoming sites of reprieve for criminal activities, such a framework must also be cognisant of the many nuances and local differences that define individual nations and societies. Cyberbullying, for instance, may be an increasingly prominent phenomenon in developed countries, but may not be applicable to parts of the world in which Internet penetration levels are much lower, and in which pre-existing inequalities create ideal conditions for the substantive abuse of vulnerable people.

6 Conclusion

There have thus far been a number of commendable efforts to initiate and construct an international regulatory framework with which define the legitimate—and illegitimate—uses of the Internet and associated technology. However, concerns with privacy, security, and the use of the Internet as a means of surveillance continue to worry a number of governments and individuals. Moreover, such a regulatory framework would need to be highly adaptable and yet also resilient, in order to continue to remain effective as the Internet expands and changes. Indeed, adaptability is especially pertinent considering that the Internet is increasingly being used in places and for purposes not envisioned just 5 years ago—biometric data is now collected by phones, cars are “smart”, and household appliances can be remotely controlled. All of these developments may be seen as advances. Yet they may also offer new opportunities and conduits for malicious and criminal activity.

The Internet’s “new frontier” is the developing world, where its growth has been extraordinary. Again, this development has greatly aided a myriad of sectors and services, from banking to healthcare and policing. Increasingly however the Internet is becoming a conduit for a variety of crimes, many of which are driven by opportunism, itself often driven by and yet also reliant on deeper socio-economic and political inequalities. Consequently, the Internet tends to magnify those problems and differences that are already manifest within individual societies. The result is that those who are already vulnerable or weak become an easy prey for more experienced users and syndicates.

From a regulatory perspective, there are thus two important considerations that will need to be taken into account. In the first instance, policing measures will only be effective in a climate of cooperation and integration. The Internet is a global phenomenon and effective responses will also have to be global in nature. Secondly, while reactive measures will be needed to control criminal activities, preventive measures and policies are elemental in producing an environment in which cybercrimes becomes more difficult to perpetuate. Thus, for instance, educational strategies and programmes are desperately needed in those countries and regions experiencing very high increases in Internet growth and penetration. These campaigns would do well to be integrated into pre-existing structures and strategies, the development of which can take much longer in isolated communities.

In the instances of women and children, they are often the victims of various forms of cybercrime, ranging from child prostitution to cyberbullying. As noted above, in regions where, by virtue of law or culture, there are gender discrepancies and inadequate education these two cohorts may become easy targets for international forms of organised crime. These criminal networks often rely heavily on the Internet in order to facilitate and coordinate their activities. In developed nations, or in those areas of the world where the use of the Internet has become ubiquitous, young users make up the largest number of users. These young people have grown up with the Internet, and have integrated the technology into their daily lives in very deep ways, through which they often define themselves to varying degrees. Indeed,

the use of the Internet is often fundamental to the very way in which they articulate and project their identity to the rest of the world. As such, subtle and nefarious forms of cyberbullying, often by their peers, create a detrimental environment that cannot simply be “switched off”. A regulatory framework will need to account for these two poles, and everything in between. It is for this reason that a future regulatory framework will need to be integrative, responsive, and pragmatic.

While a global regulatory framework will remain unlikely, considered and specific responses by both state and non-state actors can still be effective. These responses will however have to be conscious of the contexts in which they are deployed, and cannot operate in isolation from the deeper socio-economic and political environments in which they are formulated.

Five Questions

1. What role can transnational regulatory bodies—such as the UN and CoE—play in the development of an effective regulatory paradigm aimed at mitigating forms of cybercrime?
2. What obstacles stand in the path of the formulation of a mutually agreeable and beneficial transnational regulatory paradigm?
3. What pre-existing bodies and structures, whether regional or global, can be utilised in the development and deployment of a realisable regulatory framework?
4. How can regulatory policies and programmes aimed at cybercrime complement pre-existing strategies aimed at ensuring the safety and development of marginalised countries, peoples, and individuals?
5. What underlying socio-economic and political phenomena drive cybercrime, and how can these be undermined or eliminated?

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Protecting Children and Women Against Online Dangers

Gerald Quirchmayr, Barbara Buchegger, and Sandra Gerö

Abstract This chapter argues for increasing the efforts to protect children from online dangers in a rapidly changing technology-driven world. After briefly describing the current situation and identifying the resulting challenges for educational efforts, the contribution introduces one of the leading European-based computer networks dedicated to this task and looks at efforts aimed at online protection of female users. It finishes with arguments for a truly international solution.

1 Introduction

The problem of children and women being exposed to a multitude of dangers on the Internet has long been recognized by experts in the field (see e.g. Oswell 1999; Stanley 2001) as one of the darkest sides of this technology. Statistics recently published by UNODC (UNODC 2013, pp. 26–27) do again document the extent of the current threat against children and women and show very worrying trends. Starting from these highly critical facts, this contribution provides a more detailed look at current forms of cybercrime that are mainly targeted against children and women and then gives some examples of efforts to develop educational counter-measures. It closes with providing arguments why only a truly international approach can lead to an ultimately satisfactory solution of the current problem.

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2 Changing Technology and the Networked Youth

The rapid development of technology, especially in the field of Internet-based communication and online social networks has dramatically changed the way in which especially young people live and communicate. Always being online has become part of their daily life, with all positive and negative side effects. Being able to use this technology has significantly changed communication patterns and has also lead to new problems, such as Internet addiction. While mobile equipment, from tablets to smart-phones is already ubiquitous in industrialized countries, this is still to come for other parts of the world. For some youths however, the technology has already become a status symbol and life without a smart-phone unthinkable. Young people and increasingly also children belong to this fully networked generation with the expression “digital natives” being a commonly used term for them. Online storage and cloud-based applications especially, are changing the control over personal data. While in the time of desktops and notebooks the user was in control of the stored data, it now often sits on the servers of “cloud” storage providers.

With cloud computing technology starting to profoundly affect professional and personal life and data often being referred to as “oil of the digital age,” the pressure on privacy is growing enormously. The consumer being the main target of data collections for marketing purposes, young people and even children are primarily viewed as consumers and as potential customers. This development leads to data hungry systems that try to best profile a consumer to offer targeted products and services. That is where providers such as Google, Apple and Facebook are in a very strong position, because they know their users very well through the analysis of their data. Personal interests and activities documented in Facebook entries are only one of the many examples of data that is extremely valuable for marketing purposes. In this context it is an almost irresistible temptation to use this data for offering targeted products and services. The data of young people and children may all too easily be used in this context. As a society we still need to develop the right models for a responsible use of the new smart technology. The best example is that industry efforts to limit the use of technology below a certain age are often undermined by well-meaning parents who for the sake of their child’s future make the latest technological toys available to children, and even set up Facebook accounts for their babies, sometimes containing highly personal information. The next problem is the inability of many users to envisage the legal and practical consequences of publishing highly personal information. The current privacy debate is amongst others highlighted by the website of Europe vs. Facebook (Europe vs. Facebook [2014](#)).

3 Online Dangers

While opportunities provided by the technology are huge, it is not without problems, as described in the introduction. The negative aspects are however not limited to purely commercial misuse and the loss of privacy. It is well known that the dangers especially for young people and children are constantly growing through the abuse of the technology by criminals who can because of the global nature of the network operate from a far distance and are often outside the jurisdiction of their victims. Other problems range from social isolation to full Internet addiction. In isolated cases this has already led to children severely damaging themselves. The major dangers we see today can be grouped around several areas of criminal activity, the most atrocious form certainly being the exploitation of children through online channels. Different forms of identity theft, phishing attacks and online scams are targeted at audiences who can be manipulated by appealing to instincts such as fear or greed. Offering the possibility of winning nice technology toys, e.g. the latest smart-phone or computer games can easily lead to children revealing substantial personal data. Criminals can then use this data for all sorts of dark activities.

A relatively new problem is cyber-mobbing. While traditional forms of mobbing only have a limited reach, cyber-mobbing has a potentially unlimited space and time. In some schools this problem has already escalated to a degree where police support was necessary to bring the situation back under control. In very isolated and rare cases, cyber-mobbing has led to suicide, and Internet addiction has resulted in violent crime. The ubiquitous character of smart-phones and tablets and the general availability of wireless networks, many of them still unprotected, especially the ones offered as services in public spaces, led to a partial and even full loss of parental control over a child's activities on the Internet. Legal perspectives on the issue were given as early as the dangers developed into materialized threats (Gillespie 2002). While legislation in most industrialized countries is adequate, enforcement still is a major challenge.

When the access to technology could still be controlled through technical means via firewalls, parental control software and other protective mechanisms on a personal computer, a sort of safety perimeter could fairly easily be established around children. With smart-phones and tablets this possibility is now eroding quickly. Adding to the problem is the fact that children as "digital natives" are often more technology savvy than their parents and can easily outsmart the controls their parents install on their devices.

As this at least partial loss of control is a fact that cannot be changed, the best way of protecting children against harming themselves on the Internet is education, or as Safer Internet calls it, an educational "vaccination".

According to a list of dangers children are exposed to when active in social media networks and on the Internet in general, these threats are today manifold (Safer Internet 2014). Starting with more commercially oriented threats, such as spam, phishing, the collection of personal data and illegal activities, hacking and

the violation of intellectual property rights, the list moves on to aggressive forms of behavior, namely the promotion of violence, the admiration of racist attitudes, mobbing and stalking. The next section of this list is extremely worrying, pointing to the different dangers of sexual exploitation children can be threatened by. The last section on values and attitudes contains forms of self-harming that criminals might lure children into. This includes attempts to convince them to commit suicide. Another chart published by the same organization is aimed at informing schools what they need to teach children in order to keep them safe on the Internet. This includes the dangers of spreading of dangerous, e.g. racist material, the violation of intellectual property rights, grooming, sexting and blackmailing, cyber-mobbing, and Internet scams. It closes with the necessity of teaching measures for keeping the devices used by children secure (Shariff 2009).

Given this situation, especially the long list of issues identified by the Safer Internet initiative, the need for immediate and comprehensive action becomes obvious. The challenges this situation causes for an already hard-pressed educational sector are discussed in the following section.

4 Challenges for Education and Awareness Programs

The major challenge for education is that only a holistic approach will produce the desired results. Families, schools and crime prevention specialists have to work hand in hand to equip children not only with the necessary knowledge, but also with the right attitude towards dangers on the Internet. Sometimes the biggest problem is the parents who are completely unaware of the dangers. They need to be educated as well as their children. Crime prevention experts and teachers also need to link up to deliver the right information to children and parents. Where such an integrated approach is implemented, it is usually also very successful. The main objective is to empower children, parents and teachers to recognize the dangers and to react adequately. Today parents confronted with nasty issues such as cyber-stalking, cyber-mobbing or cyber-grooming often do not know where to get help. This can quickly be improved through schools distributing contact points to parents. The strategy can be extremely efficient when crime prevention officers are included in these awareness efforts.

The other challenge is to ensure the availability of suitable educational material. While industrialized nations and supranational organizations, often in partnership with leading industry players, are making available an abundance of general computer security information and tutorials, it is only a few years ago that programs targeted at the protection of children were established. Especially European and North American networks are now beginning to have a significant impact on improving the online safety of children. What is needed at this stage are networks that reach out beyond national and regional borders and supply materials in local languages and adapted to local contexts. Synchronizing such efforts however is a laborious task, which nonetheless needs to be undertaken if the successful move of

criminal operations from one country to another is to be prevented. This needs a concerted joint effort of educational institutions and crime prevention experts. Especially in Europe, there is plenty of ongoing activity to make children safer on the Internet.¹

The leading example, also primarily based in Europe, but developing partnerships outside Europe too, is the Insafe network, which is described in the following section of this chapter.

4.1 The Insafe Network as Example for a Successful International European-Driven Approach

In 1999 the European Commission launched the new Safer Internet Programme and follow-up Programme: European Strategy for a Better Internet for Children,² in order to find appropriate answers to these challenges. A few countries started their efforts, and over the years a strong network of safer internet centres could be created. In 2014, 31 countries are members of the Insafe network,³ which is coordinated by the European Schoolnet in Brussels.⁴ This network is highly important for the work on an operational national level, since it enables the quick exchange of information among the network and makes it possible to learn from each other.

The goal of the network is summarized in the mission statement: “The mission of the Insafe cooperation network is to empower children and young people to use the internet, as well as other online and mobile technologies, positively, safely and effectively. The network calls for shared responsibility for the protection of the rights and needs of citizens, in particular children and youths, by government, educators, parents, media, industry and all other relevant actors. Insafe partners work closely together to share best practice, information and resources. The network interacts with industry, schools and families in the aim of empowering people to bridge the digital divide between home and school and between generations.”⁵

¹ See e.g. saferinternet.org, safesocialmedia.org.

² <http://ec.europa.eu/digital-agenda/en/european-strategy-deliver-better-internet-our-children>.

³ www.saferinternet.org.

⁴ www.eun.org. The following text is written by a member of the network, who is active in a national awareness centre. It does not represent the official view of Insafe, but is an individual point of view.

⁵ www.saferinternet.org/about.

4.2 *Safer Internet Centres*

In each participating country a Safer Internet Centre consists of three parts⁶:

- a) **Awareness centre:** The goal is to conduct awareness campaigns, implement trainings, develop and implement new awareness raising tools. The Safer Internet Awareness Centre also evaluates new emerging trends among children and young people and their caretakers in order to develop new tools. In different countries the organization of these centres are quite different, depending on their hosting organization. Some centres have a strong focus within the schools, e.g. because they are situated within the ministry of education (e.g. Finland, Estonia, Portugal, Luxembourg). Other centres are hosted by non-governmental organizations and are focusing more on awareness campaigns and media campaigns. This focus also derives from the local situation, such as possibilities to reach as many children and young people as possible. A collaboration either with ministries or industry is essential in order to reach this goal.⁷
- b) **Helpline:** Goal of the helpline is to offer children and young people a place to get help for their individual problems or find an answer for their questions. Some helplines are “general helplines”, which means they are helplines for all topics concerning the life of children and young people. Internet is only one part (e.g. Sweden, Austria, etc.). In other countries, the safer Internet helpline is specifically focusing only on Internet-related topics (e.g. Romania, Luxembourg, Spain, etc.). Questions and problems raised by young people within the work of the helpline is a vital part for the work of the awareness centres, if the collaboration is working well. It provides the possibility to get insights of new trends and emerging new topics. For example the trend of “Sextorsion” (blackmailing young male adults for their sex videos, which they produced online due to an internet-fraud) was first seen by helplines through Europe. This meant that Awareness Centres could include this new trend in their material and in their training.
- c) **Hotlines:** This is a possibility to report illegal content via Internet.⁸ In each country the main goal of all hotlines are to fight illegal child sexual abuse imagery. Due to the fact that hotlines collaborate with law enforcement on an international level, means that such content can be taken down within short time. Some countries also include in their work other content, such as general youth protection (e.g. Germany), xenophobia or racist content (e.g. Czech Republic, Germany, Austria), terrorism (e.g. Luxembourg), child sex tourism (e.g. the Netherlands), suicide (e.g. Russia) or self-harm and eating disorders (e.g. Spain).

⁶ An overview over all centres can be found on www.saferinternet.org/countries.

⁷ An overview of awareness materials for schools can be found here: <http://lreforschools.eun.org/web/guest/insafe>.

⁸ Network of European-Hotlines: www.inhope.org.

4.3 Safer Internet Day: Highlight of the Year

Every second Tuesday of February a special day is celebrated: Safer Internet Day. In 2014, already 107 countries throughout the world participated. Every year has its own motto and is always celebrated on the national level as an event. Safer Internet Day is a good vehicle in order to establish successful media campaigns and raise the topic of Internet safety and positive online experiences for children and young people. Although the topic itself is always being considered as “highly important”, a special day, such as Safer Internet Day makes it more likely that media covers it broadly. It is a possibility of being covered in mass media on a prominent place.

5 Local Trainings and Awareness Raising

One of the tasks of local Safer Internet Centres is to provide training or material for trainings, which then is conducted by different stakeholders (training organizations, individual trainers, training networks or school teachers). Providing training for such fast changing topics makes it necessary to have a very effective way for training the trainers themselves. How can you relate to changes? How can you make sure that all trainers have similar knowledge? Several ways are taken in order to achieve this goal:

- a) *Centralized approach*: The Safer Internet Awareness Centre prepares the training (course outline, content of training and presentation for training). All trainers are obliged to use these materials and conduct the training in exactly the same way. By this one can ensure similar input throughout the country, but does not enable trainers to focus on their personal strengths or react fast on new emerging trends. A powerful awareness centre with enough resources and functioning quality control is necessary to follow this approach;
- b) *Trainer Network*: The Safer Internet Centre provides a framework for training sessions (e.g., presentations, content), but all trainers set their own focus based on the target group, their knowledge or strengths and new emerging trends. This makes it possible to react much more quickly to new topics or local necessities, but does not ensure the same quality throughout the country. A good relationship and willingness to share experiences is necessary in order to follow this approach.

6 Changes of Topics Over the Years

Awareness raising in this field has changed over the years quite dramatically: In the early years of the century the focus was set on technical solutions. It was assumed that technology provides solutions in order to protect children from harmful content

online. Children and young people were seen as consumers that had to be protected from evil online. Over the years the focus has changed more into the direction of empowering children and young people to use the Internet safely. It is furthermore assumed that it is not possible to protect children effectively, since they have so many possibilities to get in contact with harmful situations. They need—so it is assumed—to know, what to do in difficult situations or how to behave in order not to damage other children and young people on purpose (“risk competence”). Since children and young people are heavy users of digital technologies in Europe, this change of focus is necessary.

6.1 A Good Online Experience Needs Good and Safe Online Tools

Awareness raising and education itself will not be able to offer the only solution in order to make it possible that children and young people have a truly positive online experience. Technology and industry has to do their part in order to achieve this. This can mean usability, but also to offer tools that value legal standards, such as European Data protection. The “CEO Coalition”—a coalition of CEOs of important technology companies in the field⁹ is a start in order to obtain this goal. Further efforts have to be taken in order to not let industry forget their shared responsibility for keeping children and young people online safe.

Having so far focused on the protection of children, this contribution now moves on to dangers a second group of potential victims is exposed to. Like children, women are also suffering from increasing abuse and threats.

7 Dangers Women Are Exposed to on the Internet and What Can be Done to Protect Them

Women are affected by dangers through digital media in a new way, though the background doesn’t change: domestic and sexual violence against women is a worldwide problem, violence by an intimate partner and family member being the most common form (WHO 2010).

Digital media comes into play when the perpetrator, who can be an intimate partner or a stranger, starts stalking his victim using the Internet or mobile phone. This form of stalking is called cyber-stalking and signifies the misuse of digital media to harass, intimidate and threaten a person. Cyber-stalking includes unwanted contact by e-mail, phone, instant messenger or a social media platform, which can also be established under false pretense of a fake personality. Apart from

⁹ <http://ec.europa.eu/digital-agenda/en/self-regulation-better-internet-kids>.

sending harassing or threatening messages, the perpetrator wants to control and intimidate his victim by collecting data and using it against her, for instance by tracing her steps, posting private pictures or videos to public sex-sites (“revenge-porn”), causing damage to her accounts and software and involving her family, friends and workmates online. One form of abuse is to impersonate the victim (“identity theft”) and cause damage in her name.

Unlike in the early days of the Internet, cyber-stalkers don’t need to have special computers skills anymore; with social media and content sharing platforms everyone can publish worldwide, so it is no wonder the number of reported cases of cyber-stalking is steadily increasing. Perpetrators are often former or current partners, and domestic violence victims are especially vulnerable to cyber-stalking (Moore 2014).

Example cases (names changed):

Case 1 Vera gave her consent when her boyfriend wanted to record their sexual acts for personal use. A year later, after he became more and more jealous and controlling, Vera wanted to end the relationship, but he started blackmailing her by threatening to publish the videos and pictures. Vera, who is a public official, is afraid to lose her reputation and her job, and remains in the abusive relationship.

Case 2 When Martina met and fell in love with her husband-to-be, he convinced her that it was a matter of love and trust to tell him her password, which she used for several of her logins. During their marriage he took control over her money and beat her repeatedly. After many years of struggling, finally Martina got a divorce. After their separation he hacked one of her e-mail accounts and sent a message to his own address impersonating her. The e-mail said she would kill him if he ever came near the house or wished to see his daughter again. He reported her to the police and she is facing a criminal charge.

Case 3 Gaby was shocked when a man she knew from a business meeting started to send her naked pictures. She confronted him, and he told her he has been answering to messages with a similar content that he had received from her. It turned out that an unknown person had put up a fake profile on Facebook and contacted men she had in her contact list by sending them obscene messages and pictures of naked body parts the receivers assumed were hers.

As presented in the examples above, the risk to be cyber-stalked and manipulated online increases when the victim gives away important personal data. The mixture of unawareness concerning possible threats and a lack of knowledge about self-protective measures constitute the main risk factors. A significant part of the vulnerability of women in this context is grounded in the socialization of women in society. Gender stereotypes include the common attitude that the use and knowledge about technical equipment is only suited for boys and men. Thus, women are often lacking the necessary skills to protect themselves efficiently online.

The use of digital media by women is still lower than that of men, and while this “digital divide” is becoming smaller every year, it still exists. In almost all European countries, men use the Internet more frequently than women, the

differences going up to 10 % (Italy, Austria). In non-European countries, where Internet usage is altogether lower, the differences between women and man reach up to 20 % in Turkey and 25 % in Morocco (ITU 2010–2012).

The differences between the sexes concerning Internet use show even more clearly in the context of factors such as income, ethnicity, age, and educational level. In Germany, between men and women over 50 the differences are rising with age and reach up to 20 % ((N)ONLINER Atlas 2007).

Differences between men and women concerning Internet use are also reported in developing countries (UNCTAD 2014). Women and girls encounter barriers such as literacy, education, language, time, cost, geographical location and social and cultural norms and skills. Also the already mentioned general attitude that computers and technology are a male domain stands in their way (Hafkin and Taggart 2001).

But women not only use the Internet less frequently, they also lack appropriate competencies. In Europe surveys show that women in comparison to men tend to have lower level digital skills. Although the difference has been decreasing over the past years, the percentage of men appearing to have high computer skills is by 14 points higher than the percentage of women (Digital Agenda Scoreboard 2012).

A big German study describes different user types, and while the skeptics and non-regular Internet-users are described as “mostly female”, the more competent and frequent Internet users with good media skills are mostly male, well-educated and pursue their careers (D21-Digital-Index 2013).

Another vulnerability factor can be found in typically romantic behavior. Even in a violent relationship there was a beginning phase in which the partners engaged in trust-building activities, and girls and women are often too confiding and ready to share very private information and recordings like passwords, intimate pictures and videos. These can later easily be used against them, to hack their accounts, fake their identities, and expose them publicly or to blackmail them. When this happens, the victim is additionally blamed for her behavior by society, which sees it as “her own fault” for having exposed herself to harassment.

Not always has a woman to use the Internet herself to become a victim of misuse of digital media. Also, good Internet and software skills are no warrant for a 100 % online safety. We see that illustrated in the case of Victoria Schwartz, who became a victim of the digital media despite of being a very skilled user herself.

Victoria Schwartz, who had published her story online,¹⁰ started in 2011 a Twitter-conversation with an interesting stranger, who would eventually turned out to be a “Catfish”, a fake. Soon their online communication grew more and more intense and interesting, they fell in love online and planned to meet, but since he lived on another continent, it took months before a meeting could be arranged. Meanwhile, he sent her more than a thousand pictures of himself, also presents, and she got to know many of his friends and family members—of course just online. It wasn’t until almost a year later that she found out that he was a fake and everything

¹⁰ <http://victoriahamburg.wordpress.com/2013/06/29/fake-englishversion/>.

including his family and friends was made up. The case was no “Love Scam”, meaning she never was asked for money, so the police couldn’t help, though the emotional exploit was huge. Victoria published her story in her blog that went viral. Surprisingly, she got hundreds of e-mails from women who had fallen for a fake too. Meanwhile she has turned her experience into a resource for prevention.¹¹

Any victim of cyber-stalking should seek advice from a professional women-counseling center such as are provided by many countries worldwide. These should be able to empower the victims in the safe use of technology and give information on how to proceed best concerning the respective legal possibilities.

The network WAVE (Women Against Violence Europe) gathers and systematically evaluates information on women’s support services in Europe.¹² In the US, the NNEDV (National Network To End Domestic Violence) provides nation-wide information about women’s hotlines and shelters and also offers information on technology safety, online content consideration and general privacy tips.¹³

Most safety plans include:

- a) Technology measures: using a safe computer and phone, setting up anti-virus software and firewall, checking passwords, security and privacy settings of phone and computer, etc.;
- b) Practice tips: carefulness with sharing information online, limiting contact to strangers, gender- and age neutral screen names, closing of accounts, etc.
- c) Social measures: telling friends, family and workmates to help preserve one’s privacy etc.;
- d) Legal measures: collecting evidence, contacting Internet service providers and platform owners, seeking legal advice, etc.

When it comes to counseling, legal knowledge is essential. Countries deal differently with stalkers and cyber criminals, and often the misuse of technical possibilities is way ahead of necessary legal regulations.

The challenges for protection of women from dangers online are to ensure well-equipped and competent counseling services for victims seeking help. Above their general counseling competencies they need solid technology skills and up-to-date knowledge of Internet trends and dangers as well as the ability to provide victims with information on safety measures and the legal background.

8 The Need for a Truly International Solution

While the introductory chapters were focused on the perspective of industrialized regions of the world and a more detailed description was given of a very successful and primarily European-based network, a truly global solution developed from such

¹¹ <http://realfakes.wordpress.com/>.

¹² <http://www.wave-network.org/country-info>.

¹³ <http://nnedv.org/resources/safetynetdocs.html>.

pioneering activities is ultimately needed if criminal activity is to be stopped effectively and not only in limited regions. Possible experienced organizations able to lead the coordination of worldwide efforts are in place and some of them, such as the United Nations Office on Drug and Crime (UNODC), have shown their effectiveness in a worldwide approach to combating different types of crime. Their educational efforts, when backed by the necessary financial means can once more pave the way towards successful international cooperation. With Asian countries strongly joining such UN efforts, and African nations usually getting involved too, a worldwide outreach is possible. Translating currently leading North American, European and Asian educational approaches for less developed countries becomes more urgent as the new technologies are being used in these countries too. The probably only way to deliver educational material in a cost-efficient way is via Internet-based platforms. As today cloud storage is already very cheap and even applications can be offered at a low cost, this becomes doable also for less wealthy countries.

Another possibility is to team up with leading industry players in whose best interest it is to provide a safe environment for the use of their products. Online learning platforms and learning management systems are today available for free, content is supplied by educational institutions and industry. The major challenge for a truly international program will however be the adaptation of the learning materials to different regions, languages and ultimately different cultural environments.

9 Outlook

Given the rising awareness about the problem, a significant increase in activities to keep children safe on the Internet can be expected. Leading industry players and governments of industrialized countries have understood the urgency of the situation and have started to act. Supranational organizations such as the European Union and the United Nations have long been arguing for measures to increase the online safety of children with especially the European Union helping to develop networks, programs and tools. Thus a worldwide movement in the right direction has started and is showing significant improvements. In this situation it is important to use free or industry-supported technology to assure that there is no second digital divide in the sense of safe and unsafe areas. Less developed countries not being able to afford the necessary solutions will certainly backfire on industrialized countries, because the old wisdom that as long as there are safe havens for crime nobody can be safe, definitely holds true for the tightly networked world we live in today.

10 Core Issues from an International Perspective

In all societies the awareness for the problem is growing, but so is its size. The most pressing question to be answered however is how a truly international solution can be developed that leaves no one behind. While, as shown in this contribution, industrialized regions have the necessary resources and the knowledge to implement measures, other parts of the world are again facing the threat of being left behind with their children and women remaining unprotected against a criminal danger that is even causing stress for highly developed law enforcement agencies and legal systems. The worst case scenario would, like in several areas of crime, be a situation where whole countries are undermined by criminals, unable to defend themselves against criminal networks and becoming safe havens for criminal activities launched on a worldwide scale. While criminals usually have to make considerable efforts in the real world, the Internet, as we have seen with so many cases already, is a prime platform for such types of activity at a comparatively low cost. That is why it is so important to transfer knowledge and solutions developed in industrialized countries to poorer regions of the world now. Once the cybercrime wave against children and women fully hits them, it will be too late. The nature of cybercrime as transnational crime is again underlined by a UNODC cybercrime report (see UNODC 2013, p. 183 ff.). So it is not only a matter of helping poorer regions, it is also in the best interest of industrialized regions of the world to prevent criminals from getting a foothold in poorer countries and launching worldwide attacks from there.

Five Questions

1. How can the problem of cyber crime against women and children be addressed more effectively on a global scale?
2. How can we best learn from exiting national and international efforts and implement the lessons learned in a global context?
3. Which new educational and awareness programs can we put in place based on already existing efforts?
4. How can educational efforts best benefit from the use of expert and organizational knowledge in truly international organizations, such as UNODC?
5. What needs to be done to put the necessary technical infrastructure and organizational frameworks in place for developing a truly international response?

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Part VI

Final Discussion

The United Nations, Equal and Inclusive Society and Crime Prevention: Chinese Philosophical Contributions to the Idea of Sustainable Development for Women and Children, and the Current Practice in China

Zhang Ying Jun

Abstract The difference between Chinese and Western legal thought in terms of concepts and methods into the question of crime prevention for women and children is very substantial. In Western criminology very little is known in this regard. The intersection of legal thoughts between one and the other world of science takes place more readily in environmental justice, among other social science fields. But in China's 42-century long and reclusive history among many feudalization and patriarchal policies, the treatment of women, regarded as inferior to men, has been one of the recurrent governance leitmotifs. More than twenty centuries ago, the idea of equal education and women's rights had emerged in Chinese traditional philosophy, especially through the "Hundred Schools of Thought" during the period of Spring and Autumn and the Warrior States pre-Qin dynasty. But, to some extent, the ruling class distorted the philosophical claims of that time, including Confucianism, which has been set up as the only one national philosophy since the other schools of thought had been abolished in the West Han dynasty, thirty centuries ago. The United Nations post-2015 sustainable development agenda strongly emphasizes that education for all and promoting an equal and inclusive society would contribute to reducing crime. Against the historical and United Nations background, this chapter highlights the relevant connotations of sustainable development in traditional Chinese philosophy and reinvigorates them in the interest of attaining some elements of the envisioned peaceful and inclusive societies in a culture-sensitive manner, with particular reference to crime prevention for women and children, and the respective legal domestic regulation.

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1 Introduction

Crime prevention is not only an art, but also science (Sherman et al. 1998, pp. 2–3). Its aim is to promote social stability and the security of people's lives and property. However, in the history of human civilizations, even the most rigorous “law and order” policy that pursued the above aim could not fully and truly eliminate crime and prevent it in the future (Waller 2011, p. 14). Future generations should learn from the mistakes of the previous ones, so as to not worsen their lot. Indeed, the moral obligation of our generation is to contribute to the prosperity of the succeeding generation as much as we care now about ourselves, if not more.

Sustainable development originally refers to “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (A/RES/42/187, para. 28).

Currently, this concept extends to a self-generating, creative, albeit also conflicting, mechanism for renewing socio-economic and other resources. It is geared toward their multiplication and, generally, the broadening of human intergenerational capital in any creative areas of mankind, including science and education—the necessary doorway to a change in mindset and behavior. A change in behavior by every instance concerned (citizens, companies, local and regional authorities, governments and international institutions) counter the threats looming over our planet (climate change, loss of biodiversity; industrial, health and security risks; excessive but preventable economic and social inequality, likewise crime and victimization levels) (Redo 2012, p. 237).

The UN Open Working Group (OWG) on Sustainable Development Goals proposed for the years 2016–2030 new sustainable development goals, all pointing to one overriding objective: the amelioration of poverty (A/68/970). Achieving this necessitates actions in state governance and government management.

In the ongoing international discussion on how to build an equal and inclusive society through poverty reduction and sustainable development, it may be important to note that several of the current aspects of it (including crime prevention) were already tackled a long time ago. In the *Gabčíkovo-Nagymaros* case at the International Court of Justice, Justice Weeramanery in his opinion noted that sustainable development is one of the oldest ideas in human heritage (ICJ Reports 1997, p.110). Traditional Chinese culture is known for its profundity and long history, as represented by the prosperity of “Hundred Schools of Thought” in the pre-Qin Dynasty (c. 551–233 B.C.E). Nowadays, many scholars can only be specialized in one school of thought because of the richness of philosophy in this period.

This chapter highlights the relevant connotations of sustainable development in traditional Chinese philosophy and reinvigorates them in the interest of a culture-sensitive attaining of some elements of the envisioned peaceful and inclusive societies, with particular reference to women and children. Their richness interplays with many ideas on inclusive and equitable education and gender equality,

conveyed by the OWG on Sustainable Development Goals ([A/68/970](#), paras. 4–5; [A/69/700](#)).

This chapter first looks into these old ideas of the Chinese imperial society, known for its feudal hierarchy that lasted more than 2000 years.

2 Historical Background

Although the origin of Chinese civilization is still a topic of much debate, it is generally agreed that 42000 years ago the Xia Dynasty (c. 2205–1766 B.C.E.) had been the first one in China's history (Mote 1971, p. 9). Before, it was a period of a primitive commune in the history of China, which dates back to remote antiquity and is said to have been governed by the ancestors of the Chinese people and their descendants, the most important of them being the *yellow emperor* (黄帝) (Fan 2010, pp. 7–20).¹ Next came the Shang Dynasty (with the capital founded in Yin, c. 1766–1122 B.C.E.) (Bo 2012, pp. 10–16). Its territory was confined to the alluvial plain in the middle reach of the Yellow River, which was considered as the hinterland of ancient China. The last emperor of the Shang Dynasty, King Zhou, was a cruel and incompetent ruler. The Shang Dynasty was overthrown by Zhou, one of its vassal states. Later, Zhou became the third dynasty in Chinese history. It wanted to be acknowledged as the legitimate successor of the respectable Shang Dynasty rather than of those who took it over by military force. This shows that the royal class strove to develop Chinese culture and establish its legitimacy. Zhou finally achieved this goal by adopting the feudal system of enfeoffment that had a European counterpart many centuries later (Mote 1971, pp.9–13).

The king of the Zhou Dynasty rearranged more than 70 vassal states along the lines of patriarchal clans and relatives bonded by marriage as well as the allies during battles and the descendants of the Shang Dynasty. Besides, the Zhou Dynasty had over two hundred local lords within their own territories. By the eighth century B.C.E., those territories comprised about 150 vassal states, but of their history is very little known, except for some 25 of them. By the fourth century B.C.E., most of the vassal states were merged into seven larger vassal states and a number of less powerful small states, all of which coexisted with the faltering royal class of the Zhou Dynasty. The royal class barely maintained military deterrence in only 1/4 of the period of its reign (Mote 1971, p.12).

¹ To be exact, they were not real emperors but the heads of primitive tribes at that time. According to folk tales, the Yellow Emperor was the head of the Hua ethnic group (华族), which is said to be the earliest ancestor of the Chinese people. He and his descendants gradually took control of most of the land which was mainly located in the north-west of Henan province and the north-east of Shanxi province, near Yin, which was always the capital city of the Shang Dynasty and is at present called Anyang city, located in the north of Henan Province, about 500 km south-west off present-day Beijing (Fan 2010, pp. 7–15).

After 770 B.C.E., the military power possessed by the king of the Zhou Dynasty was so weak that the capital was dislocated to Luoyang city.² However, the royal class of the Zhou Dynasty was still the nominal overlord and continued the reign for more than 500 years. In 256 B.C.E., the Qin State, one of the most powerful vassal states, abolished the position of the king of the Zhou Dynasty as overlord. From 230 B.C.E. to 220 B.C.E., the Qin State launched numerous battles and finally united China. This was the beginning of the age of the empire of China (Mote 1971, p. 12).

Before the Chinese empire was born, the last years of the Zhou Dynasty witnessed the golden days of thoughts in China's history. Within the period of three or four centuries, from the days of Confucius to the unification of China by the Qin Dynasty, the basis of Chinese thought was laid (Mote 1971, p.13). This period is also called the Spring and Autumn Period (c.770–476 B.C.E.) and the Warring States Period (c.476–221 B.C.E.) (Xu et al. 2004, p. 574)

As the royal class of the Zhou Dynasty lost its power, the officials working at the governmental department also lost their positions and moved to different regions. Those officials began to teach specialized knowledge as private tutors (Fung 2013, p. 34). This may be considered as the origin of the “Hundred Schools of Thought”(诸子百家)(Cai Ed. 2006, p. 1). There were ten major schools, namely the School of Yin-Yang (阴阳家), Confucianism (儒家), Mohism (墨家), The School of Names³ (名家), Legalism (法家), Taoism (道家), the School of Diplomacy (纵横家), the Miscellaneous School (杂家), the School of Agronomists⁴ (农家), and the School of “Minor-talks”(小说家).⁵ These schools “focused on different

² Because the rebels weakened the governance, the Zhou Dynasty was forced to abandon the original capital and move eastward, to Luoyang city, south-west of Henan Province, some 800 km south-west off current Beijing. See: Xu et al. 2004, p. 249.

³ Also known as Logicians, in Chinese Pinyin *Míngjiā*; *Ming-chia*. The Logicians or School of Names grew out of Mohism during the Warring States period. It is also sometimes called the School of Forms and Names (Chinese: 形名家; pinyin: *Xíngmíngjiā*; Wade-Giles: *Hsing-ming-chia*). The term “Logicians” is used only to emphasize their intellectual character. Actually, they neither created syllogism nor discovered any law of thought (Chan 1963, p. 232).

⁴ Also known as Agriculturalism, the School of Agrarianism, the School of Tillers, known in Chinese as the *Nongjia* (農家/农家), was an early agrarian Chinese philosophy that advocated peasant utopian communalism and egalitarianism. For the interpretation in English, please see Deutsch, Eliot; Ronald Bontekoei (1999). *A Companion to World Philosophies*. Wiley Blackwell. p. 183, reprinted from http://en.wikipedia.org/wiki/School_of_Agrarianism#cite_note-wp-1, accessed 10 December 2014.

⁵ The first known classification comes from the historian Sima Tan (?—110 B.C.E.). He divided the philosophers who lived several centuries ago into six main genres, i.e., Yin-Yang School, Confucianism, Mohism, Logicians, Legalism, Taoism. Later another historian Liu Xin (46B.C.-A.D. 23) divided the Hundred Schools of Thought into ten genres: School of Diplomacy, Miscellaneous, Agriculturalism and School of “Minor-talks” in addition to Sima Tan. So did the Eastern Han Dynasty historian Ban Gu. But this classification did not include the Military Strategist, who was famous for the book of *The Art of War*, which has been influential up to now, and unailing (the end of this sentence is not clear, could you please go over it). See: Fung 2013, pp. 33–35; Ruan 1998, p. 3.

aspects of the world, advocated different principles and tried their best to propagate their thoughts” (Ruan 1998, p. 3).

The present work mainly focuses on the philosophy of Taoism, Mohism and Confucianism, especially on their ideas on crime prevention and the treatment of women and children. Other schools may be mentioned but not discussed.

3 Crime Prevention and Sustainable Development Goals in Chinese Legal Thought

More than 2000 years ago, Guanzhong (管仲),⁶ one of China’s well-known thinkers from the “Hundred Schools of Thought”, clearly emphasized that:

Whether a state is in order or in chaos rests upon three factors,⁷ and death and other penalties are not enough to safeguard the order of a nation. Whether a state is safe or in danger is based on four factors, and firm protective walls and dangerous geographical conditions are not enough to defend it. Whether a state is wealthy or poor rests upon five factors, and measures such as levying light taxes and collecting a few things from the people cannot be resorted to exclusively. Putting a state in order should resort to San Ben (三本, which means three essentials in governing a state), safeguarding a state should resort to Si Gu (四固,⁸ which means the four most important measures for safeguarding a state), and enriching a state should resort to Wu Shi (五事).⁹ (Guanzi 2005, Vol. 1, p. 53).

⁶ Also known as Guanzi (管子, ?- 645 B.C.E.). See further: Chi 2004, p. 16; Liu and Li 2003, p. 1.

⁷ San Ben in Chinese *pinyin*, means the three essentials in governing a state. As explained in the Work of Guanzi, “A sovereign should be prudent with three things: The first is that the virtues of court officials do not match their powers; the second is that the achievements of court officials do not match their salaries; the third is that the abilities of court officials do not match their positions. These three most important factors are the innermost causes leading to order or chaos of a state.” See: The Work of Guanzi 2005, Vol. 1, p. 53.

⁸ Si Gu, in Chinese *pinyin*, means the four most important measures for safeguarding a state. As explained in the Work of Guanzi, “A sovereign must be aware of four factors: The first is that people with distinguished virtues but who do not really behave benevolently should not be conferred with the authority of governing the state; the second is that people unwilling to retire and give room to better ones should not be conferred with honorable ranks; the third is that people not punishing their relatives and absolving the powerful one should not be appointed to leading the army; the fourth is that people not attaching importance to farming, not making good use of favorable geographical conditions or levying taxes and collecting things willingly should not be conferred with fiefs. These four most important measures for safeguarding the nation are the roots for safety of a state.” See: The Work of Guanzi 2005, Vol. 1, p. 57.

⁹ Means the five most important things required of a sovereign. As explained in the Work of Guanzi: “A sovereign must pay attention to five things: The first, if measures for fire prevention are not taken in mountainous and swampy areas and therefore plants cannot grow there, it will lead to poverty of the state; the second, if conduits are not well dredged and therefore waters break the watercourses, it will lead to poverty of the state; the third, if silkworm thorns and hemp plants are not planted in the fields, and all kinds of crops are not inseminated in the suitable fields, it will lead to poverty of the state; the fourth, if all kinds of livestock are not raised at home, and things such as melons, gourds, vegetables and various fruit are not well prepared, it will lead to poverty of the

Chinese philosophers were probably the first ones who claimed that to successfully prevent crime we have to “look into” the offender’s heart to understand the reason why it came to crime. This is perhaps the most effective way to counter crime. Just like L.W. Sherman said, “The major strength of scientific evaluations is that rules of science provide a consistent and reasonably objective way to draw conclusions about cause and effect” (Sherman et al. 1998, p. 2).

A scientific way in crime prevention is to build a society of sustainable development. In contrast to rigorous laws and punitivity, found to be an ineffective penal policy, as most recently internationally reviewed by Helmut Kury and Evelyn Shea (2011), this alternative approach stresses the reorganization of society by the rule of law, democracy, and the human rights doctrine. This approach promotes good governance, in which human dignity and freedom are respected, and poverty and inequality is ameliorated. Compared with punitivity, this way mainly concerns the human being itself (Kury and Shea 2011)—this has been likewise very much emphasized by the United Nations Secretary-General in his recent report “The Road to dignity by 2030: Ending poverty, transforming all lives” (A/69/700).

Traditional Chinese philosophy dealt with these issues thousands of years ago. Various schools of thought carried out in-depth discussions and came up with diversified propositions. In the *Work of Guanzi*, published more than 2000 years ago, is written that “Regarding governing a state, the most important is to enrich the common people. If the people are wealthy, they can be easily administered. If they are destitute, it will be very difficult to administer them. . . Hence, states in order are usually rich and those in disorder are normally destitute. So, a sovereign good at governing the state should enrich his people first, and then he can manage to administer them and put them in order.” (Guanzi 2005, Vol. 3, p. 974).

Mencius (c. 372–289 B.C.E), a well-known Confucian philosopher, gave the following brilliant answer when asked how to govern a state: “Institute a government whose action shall be benevolent (仁政). That is to say, the interests of the people should be the top priority, and the people’s living standard shall be elevated by institutional design” (Mencius 2011, p. 21). Mencius said further, that “when people no longer worry about their livelihood, and their income is sufficient to support their own life, their parents and their brothers and sisters, the government can then educate them and improve their spiritual state. If the government presses too hard, the people will do anything to earn a living at the risk of violating rigorous law and penalty” (ibid, p. 22).

Mencius also used the phrase “entrapping the people” when he discussed the topic of state governance. He said, “It is only men of educations, who, without a certain livelihood, are able to maintain a fixed heart. As to the people, if they don’t have a certain livelihood, it follows that they will not have a fixed heart. And if they

state; the fifth, if craftsmen are competing with each other on working with great care on their products, and female workers are focused on complicated patterns of the needlework, it will lead to poverty of the state.” See: *The Work of Guanzi* 2005, Vol. 1, pp. 60–61.

do not have a fixed heart, there is nothing, which they will not do, in the way of self-abandonment, of moral deflection, of depravity, and of wild license. When they thus have been involved in crime, to catch them and to punish them, this to entrap the people. How can such a thing as entrapping the people be done under the rule of a benevolent man?"¹⁰ That means the state not executing benevolent administration does injustice to the people and goes contrary to the goal of building a good social order. This well may be the first-ever definition of sustainable development that coincides strongly with the concept of sustainable development pursued by the UN.

4 Inclusive and Equitable Education: Equality in Receiving Education Regardless of Gender and Qualification in the Claims of Mohism and Taoism

The UN report referred to previously proposed in aim 4 to “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” ([A/68/970](#), para 13). Almost the same ideas can be found in Chinese traditional philosophy, especially represented by Mohism and Taoism.

Laozi, (ca. 571 BC–ca. 531 BC) the founder of Taoism, believed that there is no person that cannot be educated. What is important is whether the educator is good at educating. He said, “That is why the sage is always good at saving people and abandoning no one; that is why the sage is always good at saving things and abandoning nothing. That is called the intrinsic wisdom. Thus the good man is the bad man’s teacher; the bad man is the material from which the good draws lessons” (Lao Tzu [2007](#), pp. 75–77).

This reflects Laozi’s views on education, that is, the educator should teach by personal example as well as verbal instruction without making exceptions. As long as the educator has both virtue and capacity, he can set an example for others. That is what he means by saying that “there is no man that cannot be educated”.

Mozi (ca. 470 BC–ca. 391 BC) the founder of Mohism, a pragmatic and utilitarian school of thought, also attached great importance to education. Mozi fully acknowledged the limitation of personal power, so he considered education as an important means to realize his social ideals. He emphasized that “enlightened persons should teach others diligently.” He did not require any material stipulation and never refused anyone who wanted to learn, thus truly embodying the thought of equal opportunity education. For those who did not want to improve, Mozi still took

¹⁰ Mencius advised King Hui of Liang that “an intelligent ruler will regulate the livelihood of the people, so as to make sure that, for those above them, they shall have sufficient wherewith to serve their parents, and for those below them, sufficient wherewith to support their wives and children; that in good years they shall always be abundantly satisfied, and that in bad years they shall escape the danger of perishing. After that, educate them, he may urge them, and they will proceed to what is good, for in this case the people will follow after it with ease.” See: Mencius [2011](#), p. 22.

the initiative in enlightening and encouraging them to study (Zheng and Zhang 2010, pp. 127–129). As for the moral education of students, Mozi felt that a truly worthy man, in addition to being “discerning in speech, and erudite in the techniques of the way,” also had to be “good at moral conduct” (Tan and Sun 2012, p. 36). This coincides with the modern practice of sustainable crime prevention that enhances education for the whole society, particularly children and youth, as well as pursuing reintegration for those in conflict with criminal law.

5 Gender Equality and Children’s Right in Traditional Chinese Philosophy

For most Western readers the ancient Chinese culture is about the hierarchies, the patriarchal system that stressed male superiority and the paternal intervention in children’s life. These understandings are partial due to the lack of insufficient cross-fertilization of ideas between China and the Western world.

A closer scrutiny of traditional Chinese philosophy, however, makes it easier to see that most schools of thought did not make a distinction between different social classes, compared to what we see in China today with a growing middle class. The ideas in traditional Chinese philosophy rather reflect the goal envisioned in the UN OWG report on sustainable development goals to “achieve gender equality and empower all women and girls” (A/68/970, para. 14).

During the time of the “Hundred Schools of Thought”, some schools even held very open views that were ahead of their times. For example, Taoism highly valued maternity. Other schools did not put a particular value on female or male, and they did not stress gender difference and the difference between father and son in social status when talking about the issue of rights. However, these claims of equality and coequality were not upheld by the despotic rule of ancient China. As the Qin Dynasty adopted the strategy of “abolishing Hundreds of Schools and respecting only Confucianism”, these schools were massively attacked as heterodoxies (Jin and Hu 2009, p. 3). For this reason, the ancient wisdom of Hundreds of Schools was unknown to the world or even to the common Chinese people over the long course of that despotic rule.

5.1 *The Claims of Taoism*

Taoism highly valued maternity. The core of Taoism’s theory is “the Way of Heaven”¹¹ a cosmic concept. Tao Te Ching, as the representative work of this school, is divided into two parts, Scripture of the Way of Heaven and the Scripture

¹¹ This is the world view that refers to the Cosmos.

of Virtue. So what is “the Way of Heaven”? In Chapter 25 of *Tao Te Ching*, he claimed, “There is a thing integratively formed and born earlier than Heaven and Earth. Silent and empty, /it relies on nothing, /Moving around forever. We may regard it as the mother of all things. I don’t know its name, /so I name it as Tao, / And further name it as Great.” (Lao Tzu 2007, pp. 68–71). According to this interpretation, “the Way of Heaven (Tao)” is the source of all things. It comes into being at the same time as nature is created and develops along with nature. “The Way of Heaven” is the highest law and the natural rule governing nature and human society.¹² This understanding is confirmed by Laozi’s definition. He said at first in the *Book of Tao and Teh*, that, “The word Nothingness may be used to designate the beginning of Heaven and Earth; The word of Existence (Being) may be used to designate the mother of all things. Hence one should gain an insight into the subtlety of Tao by observing Nothingness, and should gain an insight into the beginning of Tao by observing Existence (Being)” (Lao Tzu 2007, pp. 2–3).

Moreover, Laozi believed that the virtue of “Tao” corresponds to the low profile and softness of maternity, which is underpinned by firmness. That is why Laozi highly valued maternity and softness in his life philosophy. Laozi is known for the claim of “the great Tao is like water” and “the highest good is like that of the water” because he thinks “Nothing in the world is more supple than water, yet nothing is more powerful than water in attacking the hard and stone” (Lao Tzu 2007, p. 220). Water is as soft as maternity but can contain everything and change even the hardest rock with its soft but enduring power. When it comes to the issue of dealing with family relationship, interpersonal relationship, international relationship and interethnic relationship, Laozi also favored the soft way mentioned above, that is: “The female always conquers the male by motionlessness, because the motionless female always takes the lower position” (Lao Tzu 2007, p.177). Laozi’s viewpoint is not to push the maternal society to its extreme, but to arrive at the most fundamental law by observing the real world.

Although we cannot arrive at the conclusion that Laozi advocated a society dominated by females, it is certain that Taoism does not disparage females. If fact, we can hardly find a single sentence in support of gender discrimination and a hierarchical society in Taoism. Instead, it advocates to accept nature rather than to conquer it (Mote 1971, p. 62).

¹² This opinion is based on my understanding of the conception and nature of “Tao” explained in the *Book of Tao and Teh* (Jin and Hu 2009, p. 3). Because that short Book (5000 words) is written in very simple ancient Chinese, it is difficult to identify the exact meaning of “Tao”. Hence, there are many translations and annotations on it, some of them contentious.

5.2 *The Eminent Example: The Mother of Mencius*

As an eminent woman, the mother of Mencius devoted herself to contribute to the greatness of Mencius. As a well-known Confucian philosopher, Mencius was left fatherless at a young age, and his mother played a great role in raising him. The popular Confucian teachings primer for children, in existence for over 700 years—*The Three Characters Scriptures* (三字经)—tells stories about her (Qian 2009, p. 17) and provides standard examples of maternal ideals (Stearns 2008, p. 53), as she knew well how to be a good mother.

In order to find the right place for bring up her son, she moved three times from the house near a cemetery to the marketplace and then finally near the school. She knew about the right influences from outside for her sons (Qian 2009, p. 17).

As a mother, she understood the way of motherhood. When she found that Mencius was away from school one day at a young age, she took a knife and cut the finished cloth on her loom. She said to Mencius, “Your neglecting your studies is very much like my cutting the cloth. The superior person studies to establish a reputation and gain wide knowledge. He is calm and poised and tries to do no wrong. If you do not study now, you will surely end up as a menial servant and will never be free from troubles. It would be just like a woman who supports herself by weaving to give it up. How long could such a person depend on her husband and son to stave off hunger? If a woman neglects her work or a man gives up the cultivation of his character, they may end up as common thieves if not slaves!” (Stearns 2008, p. 54). Shaken, from then on Mencius studied hard from morning to night. He studied the philosophy of the master and eventually became a famous Confucian scholar (Qian 2009, p. 17).

The mother of Mencius understood also the way to be a mother-in-law. One day as Mencius was going into his private quarters, he encountered his wife not fully dressed. Displeased, Mencius stopped going into his wife’s room and treated her like a stranger, because he thought she broke the etiquette between a man and a woman. She then went to his mother, begged to be sent back to her parents.

Mencius’s mother called him to her and said, “It is polite to inquire before you enter a room. You should make some loud noise to warn anyone inside, and as you enter, you should keep your eyes low so that you will not embarrass anyone. Now, you have not behaved properly, yet you are quick to blame others for their impropriety. Isn’t that going a little too far?” Mencius apologized and took back his wife (Stearns 2008, pp. 54–55).

When Mencius felt very depressed because his ideas were not being used in one state and planned to go somewhere else, but was worried that his mother was getting too old to travel, his mother answered: “A woman’s duties are to cook the five grains, heat the wine, look after her parents-in-law, make clothes, and that is all! Therefore, she cultivates the skills required in the women’s quarters and has no ambition to manage affairs outside of the house.” (Stearns 2008, p. 55). As a mother and elder, she knew how to release and encourage her children.

The story of the mother of Mencius is well known in Chinese society. She has been appreciated highly as an admirable Chinese woman. In Chinese traditional philosophy, the mother has always been regarded as playing the most important role for the cultivation of their children although they didn't obtain enough education generally at that time (Qian 2009, p. 18).

5.3 System of Rites in Confucianism and the Building of China's Feudal Hierarchies: Against the Rights of People, Women and Children

Confucius, as the founder of Confucianism, mentioned the hierarchical system composed of king, courtiers, fathers and sons that are supposed to play their assigned roles. Rites and filial piety should be respected without exception, and an exquisite set of rites was designed to ensure obedience. The original intention of Confucius in setting up such a hierarchical system was to instruct people how to conduct themselves properly and to show filial piety and courtesy according to their social status. In short, this hierarchical system was initially a set of standards for a person to elevate himself in moral attainment (Gu 2008, p. 35). The hierarchical structure of Confucius, Mohists, Legalists and the like was still the same: Teachers on the top—businessmen (a part of contemporary “middle class” in China) at the bottom (*The Work of Mozi*, vol. II, p. 441).

When the centralized feudal monarchy was founded by Qin, generations of emperors made good use of the theories in traditional Chinese philosophy that could help them sustain their autocracy. At that time, the scholars and philosophers had to depend on the ruling class to make a living. In order to cater to the different taste of different emperors, they had proposed different ways to find the right claims from their theories to serve them as the doctrinal basis of their governance (Fan 2010, p. 98). They exaggerated the aspects, to some extent, in favor of their rule and intensively popularized these theories. In the late years of the Warring States Period, especially after the Qin Dynasty united China, the emperors wished to consolidate their feudal rule after long years of disintegration. For this reason, in order to establish an autocratic monarchy and the legitimacy of sovereignty, they generally adopted obscurantism, “abolishing Hundreds of Schools and respecting only Confucianism” since the West Han Dynasty¹³ (Bo 2012, p. 241).

The evolution of the tradition of sacrifice seems to be a good example as evidence for the argument above. In the Chapter of Book I of *Analects*, Zeng Zi said: “Conduct the funeral of your parents with meticulous care and let not

¹³ Some scholars argue that the exact time when Confucianism was adopted as the national philosophy was around the period of the King of Wu in the west Han dynasty, who had been in place from 140 to 88 B.C.E. See: Lv 2012, pp. 72–73.

sacrifices to your remote ancestors be forgotten, and the virtue of the common people will incline towards fullness.” (The Analects of Confucius 2008, p. 7).

Although there are many different interpretations for different interests, originally, it is the way to teach people to show filial piety to their parents and then to train the moral attainment of people because conduct like this would make the people become pure and honest (Chen 2014). However, from the interest of the state, the pure and honest people only could contribute to the stability of society especially in that agrarian era, which was not enough to unify the mind of people to maintain its monarchy. In order to conquer the people spiritually, the feudal emperors need philosophical support. As a result, many scholars who served the emperors or the state took this responsibility. One of them was Dr. Kong An-guo.¹⁴ Belonging to the 21th generation after Confucius and being the most famous Confucian scholar in the West Han dynasty, he knew well the importance of a national memorial service (or sacrifice offering) in maintaining the authority of emperors (Chen 2014).

In order to find the precedent where the state was entitled to take charge of a national memorial service, except for launching a war, both of which were regarded as the two most important matters for the state, he researched past history and found that the emperor of Zhuan Xu 颛顼, (c.2514–2437 B.C.E.)¹⁵ had appointed an officer responsible for the national memorial service for the first time, taking charge of the national memorial service officially to stop the civil society from taking it in their hands (Zuo 2005, p. 275).¹⁶ Although the truth of this event still needs to be confirmed, it had exerted a very strong influence so that it was recorded repeatedly in the books concerning pre-Qin history. Hence, Dr. Kong An-guo advised the emperor he served that the state could take charge of the national memorial service strictly in line with the orthodox doctrine of Confucianism and precedents, and then provided the philosophical evidence for the ruling class to make use of the memorial service (Stearns 2008, pp. 54–55) in order to make people loyal to the emperors (Chen 2014).

Furthermore, from the Confucian doctrines and precedents, a set of complicate rites of sacrifice was developed, calling every country to “sacrifice to their ancestors” (事其先主). After, it evolved for three dynasties into the System of Patriarchal Clan (宗法制) which prevented the young generation from going beyond the rules

¹⁴ His name in Chinese is 孔安国. The exact period of his life has not been confirmed yet. He was famous for the in-depth study of Shang Shu, one of the most important works of Confucianism, and worked as a high-ranking officer responsible for the national academy, especially the research on Shang Shu. He also was a very famous bibliophile in Chinese history. See: Li and Huang (2005), pp. 8–9.

¹⁵ It is said that he is one of the grandsons of the Yellow Emperor. See: Fan 2010, p. 13.

¹⁶ The book of Discourse of State, also named Kuo Yu, the Conversation of State, in Chinese *pinyin*: 国语, records this event for the first time (Chen 2014). The Discourse of State is the first history book of its kind in China, which records the stories and discourses of the historical figures of the eight states of the Zhou Dynasty and covers a span of 515 years, from 967 to 453 BC. It provides much important material about the pre-Qin dynasty (The Discourse of State 2012, p. 27).

set by their ancestors and then served as the main content of feudal hierarchy for a long time (Chen 2014).

On the other hand, Confucianism, as the only school respected since the West Han Dynasty (mentioned above), in its core thought originally emphasized harmony among humankind and social order (Chan 1967). Confucius advocated five basic relationships: ruler/subject, father/son, husband/wife, older brother/younger brother, and friends (Reagan 2012). Filial piety (*xiao*, 孝), then, emerges from this relational structure. Mencius defined further how to teach these relations of humanity: “how, between father and son, there should be affection; between sovereign and minister, righteousness; between husband and wife, attention to their separate functions; between old and young, a proper order; and between friends, fidelity”¹⁷ (The Work of Mencius 2011, p. 99). From this interpretation, it can be seen that he did not intend to design the hierarchy by this five relations but to emphasize the harmony. This could be the code of good conduct. In conclusion, *xiao* denotes reciprocity that secures mutual care in a dependent arrangement (Westbrook 2012, p. 143).

However, this relational structure was interpreted and popularized in later days in a distorted way that helped sustain sovereignty, and feudal hierarchies were then established with the domination of imperial power and patriarchy. Under this system of ignorance, backwardness and despotism, people had no rights; the “officials had no choice but to die if it was the wish of the emperor.” Under the “Three Obediences¹⁸ and Four Virtues” (三从四德) (Zhang 2014, p. 224) evolved from this structure, women were inferior to men (Stearns 2008, p. 52).

Completely subjected to them as men’s property, their right to dignity was inexistent. The contemporary concept of “domestic violence”, including rape, other sexual or physical abuses or victimization had no place in the realm of ancient households. As the property of their husbands, women had no control over their marriage, let alone participating in the social and political life as husbands did. For example, a husband could marry more than one woman legally at that time while a woman could only marry one man. Moreover, it was the exclusive right of the husband to ask for a divorce. It was the highest punishment for a wife to be divorced by her husband and returned to her parent’s home (Shan 1987, p. 3). It was hard for her to live after a divorce because of being dishonored.

Under the system of strict filial piety, the son had no right to determine his own life and career, but had to follow the arrangement of his father, including marriage. As the core value of Confucianism, filial piety is regarded as the very foundation of all virtues and the main duty which the child should have. *DiziGui* (弟子规 or *Dos and Don’ts for Children*, one of the most popular textbooks in feudal China, written

¹⁷ This is claimed in original Chinese that, “父子有亲,君臣有义,夫妻有别,长幼有序,朋友有信”. See: The Work of Mencius 2011, p. 99.

¹⁸ Also known as Three Submissions which refers to that when a woman is young, she must submit to her parents. After her marriage, she must submit to her husband. When she is widowed, she must submit to her son. These are the rules of propriety which the woman must follow. From this, we can judge that a woman’s duty was not to control or to take charge in the old time in China. See: Stearns 2008, p. 55.

especially for private primary school pupils or children, contained the sayings of Confucius and conveyed the instruction for children throughout the ages. According to it, first, children should be dutiful to parents (filial piety) and fraternal to brothers, and then be strict with themselves and honest to others. Furthermore, they should befriend all the people around them, but stay close to those with virtue. If children have done these and have spare time, it is good for them to search for knowledge (Gu 2010, p. 125). The instruction aimed to teach children how to be a well-educated person instead of depriving them of their freedom and basic rights, although the filial piety of Confucianism has many profound explanations.

In sum, the fact that China's feudal hierarchical system could continue so long in this philosophical framework can be explained as follows:

First, Confucianism was used by the ruling class for its domination.

Second, the ruling class one-sidedly emphasized the feudal etiquette and divided the social hierarchy. This resulted in an unequal status that man is superior to woman, and that the monarch-servant and father-son status cannot be questioned.

Third, such a rigid hierarchy and feudal etiquette deprived women, children and people in destitute situations of their basic rights to participate in social and political life. This strengthened the dominance of the patriarchal society and consolidated the emperor's domination.

As a result, the feudal ethics were the bondage on people's mind. It deprived them of their basic human rights and freedom and restricted social development and ideological progress in ancient China. It was the major reason that ancient China lagged behind the trend of the world after the long reign of feudalism.

6 The Practice for Gender Equality and the Rights of the Child in Modern China

China, the Host of the Fourth World Conference on Women (1995), has been actively pursuing gender equality and children's rights. In the year of the fiftieth anniversary of the founding of the United Nations that Conference adopted the following Declaration:

- (a) It "recognized that the status of women has advanced in some important respects in the past decade but that progress has been uneven, inequalities between women and men have persisted and major obstacles remain, with serious consequences for the well-being of all people";
- (b) It also "recognized that this situation is exacerbated by the increasing poverty that is affecting the lives of the majority of the world's people, in particular women and children, with origins in both the national and international domains"; and it

- (c) reaffirmed “the equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Right to Development” (A/CONF.177/20/Rev.1, PP1).

In line with China’s commitment to the Beijing Declaration and the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1249UNTS13), China’s Law on the Protection of the Rights and Interests of Women stipulates that “domestic violence against women is prohibited. The State takes measures to prevent and stop domestic violence” ([CEDAW/C/CHN/7-8](#), para 88).

The same national report from which the above was quoted, informs in Annex 37 (p. 74) of the numbers of cases solved in the years 2006–2009 involving rape, trafficking in women and children, organizing, forcing, seducing, sheltering or introducing women to engage in prostitution, and last, but not least of women and children victims of trafficking that were rescued. This data suggests that countering domestic violence is quite a challenge (Zhang 2014).

Similarly, concerning the Convention on the Rights of the Child (1577UNTS3), in 2010 China reported to the UN Committee on the Rights of the Child, that “from 2002 to 2008, courts nationwide convicted a total of 72,527 people for crimes involving violent interference in marital freedom, illegal detention, extortion of confessions through torture, violent extraction of evidence, maltreatment of detainees, organizing disabled and child beggars, and employing child laborers to engage in dangerous or heavy labor. The above data include circumstances in which adults are the victims of such crimes” ([CRC/C/CHN/3-4](#), para 81).

Both national reports document the seriousness and openness with which since the time of China’s new Constitution of 1947 the authorities confront the problems involved in the advancement of women and the protection of children. Criminological research in this area confirms that.

The Constitution specifies, that “all citizens. . . are equal before the law. The state respects and guarantees human rights.” The Constitution clearly provides the basis to abolish feudal patriarchy and hierarchy and the negative aspects in Chinese traditional culture, such as the male superiority and a son’s obedience to his father’s wish. Article 48 of the Constitution says, that “the women of the People’s Republic of China enjoy equal rights in politics, economics, culture, social life and family life as men.” The state protects the rights and interests of women, implements the policy of equal pay for equal work and trains and selects female cadre ([The Constitution of P. R. China](#), Article 33, 48).

As to the protection of women and children’s rights, Article 49 of the Constitution says, that “the state protects marriage, family, mothers and children. Parents have the obligations of rearing their children not having reached adulthood;

children having already reached adulthood have the obligations of supporting and providing for their parents. The violations of freedom of marriage and the abuse of the aged, women and children are forbidden.” On the first day of May 1950, the Marriage Law of the People’s Republic of China was adopted, which stipulated gender equality in marriage and applied monogyny. It was replaced by a new Marriage Law on 10th September 1980.

It shifted the focus from reforming the unequal feudal marriage system where women were inferior to men to maintaining stable family relations and constructing the current legal system for marriage. It was like a breath of fresh air especially during a time when mainland China had just survived the Cultural Revolution, which had caused much damage to political, legislative and private affairs. However, it was insufficient to protect both sides in marriage, especially women, because it was too simple a legislation to deal with the complicate problems emerging from family life. For example, it did not elaborate clear rules on how to divide the family property in case of divorce and said nothing about domestic violence. As a consequence, it was amended by the National Congress of China on 28th April 2001 to respond to the challenges in the field of family matters emerging in this new era. This is the so-called Marriage Law of China 2001, which now applies in Mainland China. It includes domestic violence and provides that, “Divorce shall be granted if mediation fails under any of the following circumstances: . . . (2) Domestic violence or maltreatment and desertion of one family member by another” (Marriage Law of China 2001, Article 32). This law is hopefully more effective in protecting women’s rights in marriage than before.

In order to clarify some of the issues, the Supreme People’s Court of China adopted the *Interpretation of a Number of Issues on the Application of the Marriage Law* which defines domestic violence as battery, the tying up of a person, mutilation, or restriction of personal freedom or other means leading to injury of family members, both in body and spirit (Zhang 2014, p. 227).

In 1992, the Law of P. R. China on the Protection of the Rights and Interests of Women and Children was adopted. It was amended in 2005 and aimed specifically at protecting the rights and interests of women and children (Law of the P. R. China on the Protection of Rights and Interests of Women 2005).

Now the Chinese Government empowers women to fully participate on the basis of equality in all spheres of society, and to develop the fullest potential of girls and women of all ages. A case in point is a basic state policy of China, according to which women enjoy equal rights with men when it comes to the signing of contracts, property management, litigations, the freedom of movement, and the freedom to choose residence (CEDAW/C/CHN/7-8, para 218).

Despite the adoption of legislation concerning the protection of women and children’s rights, the discrimination against girls still exist in Chinese society, especially in the rural areas due to the traditional sense of “men being superior to women”, rooted in traditional stereotyping. In order to eliminate this kind of gender discrimination, the 25th Meeting of the Standing Committee of the Ninth National People’s Congress adopted The Population and Family Planning Law of P. R. China on 29 December 2001. It provides that “Use of ultrasonography or other techniques

to identify the sex of a fetus for non-medical purposes is strictly prohibited. Sex-selective pregnancy termination for non-medical purposes is strictly prohibited.” Furthermore, it stipulates the corresponding penalties in the next clause (The Population and Family Planning Law 2002, Article 35 and 36). Finally, in response to the recommendations No. 31 and No. 32 of the Committee on the Elimination of Discrimination against Women, the Chinese Government has further strengthened publicity, education and training, in order to enhance the awareness of citizens about gender and gender equality. In reforming the curriculum at the stage of compulsory education, the Chinese Government has increased the gender equality content in the curriculum and teaching materials, so as to guide students towards a better understanding of the fact that gender inequality still exists in Chinese society and of the harm it does, with an emphasis on the elimination of social stereotypes and prejudices regarding the roles of men and women, highlighting the important role and contribution of women in human progress. It has also added women’s studies courses to the curriculum in universities and colleges, in an effort to strengthen women’s studies.

The current Chinese government attaches great importance to the essence of traditional Chinese culture, proposing the “core values of socialism” and the principle of rule of law. The “concluding observations” and other recommendations of the United Nations expert treaty bodies are given serious consideration as well as appropriate follow-up action in the context of national sovereignty and the legal culture of China, the beginnings of which started forty-two centuries ago.

On November 8, 2012, the Chinese Communist Party released a report at the 18th Party Congress, which defined the core values of socialism: prosperity, democracy, civility, harmony, freedom, equality, justice, rule of law, patriotism, devotion to work, integrity and amicability. It was stressed that the core values of socialism should be cultivated and practiced (Hu 2012, p. 37). These core values correspond to a large degree to traditional values of Chinese culture, such as equality, harmony, amicability, justice, freedom and rule of law. They are also the key aspects of sustainable development in modern times. They represent the progress of the concept of good governance in China.

In order to facilitate the construction of a socialist country ruled by law, the new leaders of the central government have carried out a discussion on the key issues concerning the governance of state by law at the fourth plenary session of the 18th Communist Party of China. The Decisions over the Key Issues on Comprehensive Promotion of Rule of Law by the Central Committee of the Communist Party of China was published in 2014 (The Decision of CPC 2014, p. 1). In order to realize the protection of the interests and benefits of women and children, the emphasis should be placed on “reinforcing and standardizing public services according to the law, perfecting education, employment, income distribution, social security, medical care and sanitation, food security, poverty relief, charity, social relief, and the protection on the interests and benefits of the aged, women, children and the disabled” (The Decision of CPC 2014, p. 14).

All the strategies above reflect the emphasis placed by the central government on the promotion of the essence of traditional Chinese culture. President Xi Jinping

reiterated that the excellent traditional Chinese culture is the most profound spiritual pursuit of the Chinese nation and the most fundamental gene. It is the soft power by which the Chinese nation can establish itself in the tide of the world's culture. The Ministry of Education of the People's Republic of China released the "Guidelines for Perfecting the Education on Excellent Traditional Chinese Culture" in April 2014 (Guangming Daily 2014, April 28). It aimed to promote the integration of traditional Chinese cultural education in primary schools, secondary schools and colleges and universities. The teaching materials of primary schools, secondary schools and colleges and universities are revised with the purpose of promoting traditional Chinese culture based on the core values of socialism (Guangming Daily 2014, April 28).

7 Conclusion

Ideas of inclusiveness and equality in education and women's rights in China are by no means recent, having emerged already thousands of years ago in traditional Chinese philosophy. They are as important today as they were then, as is manifest in the actual Chinese legal doctrine and recent reports by the UN Secretary-General.

The recently published Secretary-General's "Synthesis Report on the Post-2015 Agenda—The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet", highlights that the future we want should be peaceful, inclusive, equitable and prosperous (A/69/700). This is not only in line with Chinese philosophy but also with the overall idea of sustainable development, which—in the opinion of the International Court of Justice—is one of the oldest in human heritage.

However, one more common way manifests itself throughout the UN and the current dominant legal philosophies and practice in China: that of equitable treatment of women and children.

The UN Secretary-General reminds us in the report referred to above that:

Seventy years ago, in adopting the Organization's founding Charter, the nations of the world made a solemn commitment: "to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for international law can be maintained, and to promote social progress and better standards of life in larger freedom (A/69/700, para 6).

In the above context it may be opportune to remember likewise what Lao Tzu said was in his view the archetypal sense of international equality:

A large state should play the role of the female,
Just like the lowest reaches of a river,
Where all the other streams meet.
The female always conquers the male by motionlessness,
Because the motionless female always takes the lower position.
Hence the large state can annex the small one;

The small state can gain the trust of the large one by taking the lower position,
 The case being either the former or vice versa.
 The large state wants to put the small one under its protection,
 The small state wants to be shielded by the large one.
 Thus both can satisfy their own wishes.
 After all, the large state should be more willing to take the lower position
 (Lao Tzu 2007, pp. 176–177).

This is a kind of international equality of complementarity or correlation, which sounds fine in theory but not in practice, whether international or domestic (d’Auvergne n.d.). These two worlds (UN and Taoism) are far apart. In fact, the feudal hierarchy considered for more than 1000 years women inferior to men, and only a few rulers pursued benevolence (or good governance in contemporary sense) in practice, and even fewer managed to address that kind of equality well, also in economic terms. And the same applies to children—passive members of the family. This is not the full meaning of traditional Chinese culture, and certainly not what China nowadays is looking for, both in terms of empowering women and giving children viable chances in life, and in terms of its international role.

After the founding of the People’s Republic of China, it strongly advocated rejecting the negative and assimilating the fine essence of Chinese traditional culture, and this has become the driving force of promoting sustainable development and practicing the socialist core value system of contemporary government. Chinese traditional culture will not only be conducive to the better exploration and research of advanced ideas in ancient Chinese philosophy and the construction of sustainable development of Chinese characteristics but also to crime prevention. In this way, people can live with more dignity (A/69/700). Crime prevention will once more be seen not only as a science, but also as an art of living together in peaceful and more inclusive societies.

Five Questions

1. What is the core of Mencius’ statement on sustainable development?
2. How does the Work of Guanzi explain the idea of good governance to prevent crime?
3. By what means does Mohism claim to achieve inclusiveness in education?
4. What is the feature of the claims of Taoism for gender equality?
5. What does Confucian filial piety mean for children?

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The Right to a Safe City for Women and Girls

Michael Platzer

Abstract Currently two billion women live in cities. Youth under 25 amount to three billion people. By 2050, 70 % of human beings will be city dwellers. Logically, therefore, city managers should focus on the young female. But the world often looks different from the viewpoint of a male urban planner or police chief than that of an adolescent girl. UNESCO and UN-Habitat propagate “a right to city” which includes participatory, integrated, and sustainable human settlement planning to ensure inclusive and sustainable urbanization. This means the provision of adequate, safe, and affordable housing and infrastructure, but more than that, access to good education, health, transport, human development, social and recreational services. But most importantly it provides urban safety—for the individual to go about her/his business without fear and risk of being assaulted. This is the major United Nations message of the Sustainable Development Goals (2016–2030). This chapter shows, how urban governance puts adolescent girls at the centre of transforming cities to become places of inclusion, tolerance, and opportunity for everyone. By bringing city officials and adolescent girls together, there is a real opportunity to create sustainable economic and social change within these societies that will benefit all.

1 Introduction

The vulnerability of women and girls in cities around the world, from gang rapes in India to the murder of “streetwalkers” in the Americas and the kidnapping, trafficking, and enslavement of girls in Africa and the Middle East, has received prominent coverage in the media. The phenomenon of violence against women in cities is brutal and increasing. In the last decade and a half, although various governmental and nongovernmental organizations have emphasized the right of women to walk safely in their towns without the fear of death or injury, more needs

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to be done. The United Nations is dealing with the issue in the Sustainable Development Goal 11.7 “by 2030, [to] provide universal access to safe, inclusive and accessible, green and public spaces, particularly for women and children, older persons and persons with disabilities” (A/68/970, pp. 18/24). Nevertheless, the rights of women and girls to cities have been painfully slow to be recognized, and unless approaches are unified and intensified, crisis proportions will be soon reached.

2 The Right to the City

Today over 4 billion people live in cities, half of them women. By 2030 there will be 5 billion or 60 % of the world’s population living in cities. By 2050 that figure will be 70 % (UNDESA 2008). Many cities will become megalopolises, incorporating the semi-rural areas around and between them. The challenges of achieving peaceful, sustainable societies with good governance will be greater than ever before because of population pressures, social conflicts, migration, growing inequalities, and lack of economic opportunities.

As Shelley Buckingham and David Harvey argue “the right to the city is a collective right for all people who inhabit, access, and use the city. It entails not only the right to use what already exists in urban spaces, but also to define and create what should exist in order to meet the human needs to live a decent life in urban environments.” (<http://www.hic-net.org/articles.php?pid=3390>). In short, it includes the right to use the city and to participate in its creation or re-creation. Moreover, no single “identity” exists in any given society; thus, cultural, gender, and other differences must be included in the city’s development. Not taking account of these differences in the past has led to the inequalities we see today in our cities: inequalities that are set to worsen without major policy interventions to make cities safer and more sustainable.

The history of the “right to the city” goes back to the early twentieth century. It was as a result of fieldwork conducted in the 1920s and 1930s by the Chicago School of urban sociologists that the concept of the city emerged as more than a conglomeration of large numbers of individuals and abundance of facilities such as hospitals, schools, parks, police stations, court houses, shops, theatres, highways, and other social infrastructure that form and shape the actions and attitudes of a city’s inhabitants (e.g. Park et al. 1921). According to these findings, each city has a distinct urban culture, a state of mind, a body of customs, and traditions. Indeed, cities have attracted “world changers” in science, medicine, music, literature, engineering, and enlightened policies.

Throughout history, towns and cities have been the main sites of human diversity, where people of different geographical background and culture came together and lived side by side. They are places where goods and ideas are exchanged, and this has always been the main motor of human economic and cultural progress (Council of Europe 2011, in part two, B.7).

However, the city also has more crime than rural communities and often more pockets of persistent poverty and delinquency. Park and Burgess (1925) contributed to the Chicago School's social disorganization theory, linking crime to place-based characteristics, namely, that the different ecological environments in a city could have effects on human behaviours. Shaw and McKay (1942) further linked social disorganization in the form of immigrant delinquency rates to the urban environment where the arriving poor were most likely to settle in the hope of gaining a livelihood. Newcomers can quickly assume both positive and negative attributes.

The notion of the "right to the city," was expanded by Lefebvre (1996 [1968], p. 179) who argued for the right to "urban life, to renewed centrality, to places of encounter and exchange, to life rhythms and time uses, enabling the full and complete usage of . . . moments and places. . ." Harvey (2003, p. 939) argued that Lefebvre's concept was "not merely a right to access what already exists [in the city], but a right to change it after our heart's desire." A World Charter for the Right to the City movement started in 1992, originating from grassroots initiatives rather than a regional or governmental organization (Brown and Kristiansen 2009). In 2004, UNESCO and UN-HABITAT were among those elaborating the "World Charter for the Right to the City" in Quito, Ecuador. This has been ratified by over 350 cities in 21 countries.

The **European Charter for the Safeguarding of Human Rights in the City** (2000) is the result of the Conference "Cities for Human Rights" in Barcelona in 1998 held to commemorate the 50th Anniversary of the Universal Declaration of Human Rights. Every 2 years a conference has been organized to exchange information about progress made in the signatory cities, they are now more than 400.

Since 2005 UNESCO and UN-HABITAT have undertaken a series of actions on the question of urban citizenship and the right to the city. In 2005 the organizations initiated a project on "Urban Policies and the Right to the City: Rights, Responsibilities and Citizenship" (Brown and Kristiansen 2009). The UN-HABITAT (2010) report on the state of the world's cities stresses the importance of taking forward the right to the city as a vehicle for social inclusion.

The Commonwealth Principles on Good Practice for Local Democracy and Good Governance, (elaborated in 2005) set standards for the 53 Commonwealth nations (<http://www.clgf.org.uk/userfiles/1/file/AberdeenAgendaleaflet8pp.pdf>).

3 The Right to the City from a Gender Perspective

The recognition of the rights of women to have (safe) use of the city has been long in coming, with a patchy literature mainly emerging this century. According to Harvey (2003), human rights, although derived from basic human needs, for example, food, water and shelter, also comprise notions of equality based upon different identities including gender, race, and religion. Including a gender dimension in the right to the city debate is essential. In 2006 the Council of European

Municipalities and Regions launched the “European Charter for Equality of Women and Men in Local Life”. More than 1400 local and regional governments have signed the Charter. An Observatory was launched in 2012 to support the signatories.

Buckingham (2010, p. 61) eloquently argues that the right to the city has to be expressed in terms of the plurality of identities living in a particular urban environment. All stakeholders need to be included, as different groups will contribute to a comprehensive understanding and practice of the right to the city.

It is absolutely essential to understand that there exists no one identity in any given society and as such, difference must be included in the development of the right to the city so as to avoid the same hegemonic power dynamics which have contributed to the massive inequalities that exist in contemporary cities. Gender roles must be challenged so as to break down these power dynamics, which relate directly to the social construction of space and have negative impacts on realizing women’s rights to the city. Further, women must be included in the participatory planning processes, which shape debates around the right to the city, as they represent an overarching group of intersecting identities, which experience the city in different ways.

Among the major criteria affecting women’s equal use of the city are: their safety in urban environments; public infrastructure and transportation; security of land tenure; access to employment; access to community facilities and services; and ensuring a connection to reproductive responsibilities (hospitals or clinics). For those reasons, it is “absolutely vital that women are involved in urban planning, local governance and decision-making processes related to their urban environments” (Buckingham 2010, pp. 60–61).

According to Urban Gateway for the International Urban Development Community,¹ women amount to more than half of the world’s urban population of 4 billion. The dramatically evolving urban landscape poses tremendous qualitative and quantitative challenges for women and society.² Since the first observance of International Women’s Day by the United Nations, the world has seen many positive changes for women. For instance, programs have been developed to improve maternal and child health; there has been expanded provision of educational, occupational, and leadership opportunities. However, for millions of women worldwide much more remains to be done to bring them out of poverty and to provide them and their families with clean water, sustainable forms of energy, better nutrition, and other essential aspects of an equitable and sustainable life. Women face ever-more complex challenges as urbanization takes hold; new opportunities frequently involve the acquisition of new skills against the background of a rapidly changing global economy; family support, especially to help with child care while mothers earn a living, can be lacking in the urban context, especially where new migrants are concerned.

¹ www.urbangateway.org.

² <http://www.urbangateway.org/document/creating-safe-spaces-cities-women>.

The United Nations formulated 17 Sustainable Development Goals (SDGs) for the “post-2015 agenda” which should remain valid until the year 2030. Goal number 11 is to “make cities and human settlements inclusive, safe, resilient, and sustainable”, with 11.7 specifically related to the needs of women and children. By 2030 all persons should have access to “adequate, safe, and affordable housing and basic services” and all slums are to be upgraded (11.1); in addition they should have “access to safe, affordable, accessible and sustainable transport systems” (11.2). Perhaps most importantly, there should be “participatory, integrated and sustainable human settlement planning” to ensure “inclusive and sustainable urbanization” (11.3). By 2030, there should be “universal access to safe, inclusive and accessible green and public spaces, particularly for women and children, older persons and persons with disabilities” (11.7). There should also be regional planning linking “urban, peri-urban and rural areas” (11.a) and holistic disaster risk management as well as integrated mitigation and adaptation policies in relation to climate change (11.b).

4 Migrant Women and Cities

The number of women migrating is increasing. Today women account for half the international migrant population, reaching 70–80 % in some countries, and they suffer a higher exposure to exploitation and abuse in the form of human trafficking (UNDP 2014, p. 76). For young women and girls, the reasons to migrate to cities vary from escaping the boredom of village life, the narrow-mindedness of the village elders, the tedium of agricultural work, the prospects of forced marriage, family obligations, and continued grinding poverty to obtaining better employment prospects, higher education, personal development, and independence.

In fact, more girls migrate to urban areas than boys, to work as domestic servants and in textile factories. While most young women find their new lives in the city satisfactory and return to their jobs year after year, many suffer long hours and low pay in often unsafe and unsanitary conditions. Others are physically abused and sexually harassed in households. All are vulnerable to assault and violence in unfamiliar environments. Some are forced into prostitution because they cannot find regular jobs—often girls must sell their bodies to pay for their transportation to the receiving country or their first month’s rent. Others enter into a contractual arrangement with an intermediary to obtain transport and a “good job” in the city but only find out on arrival that it is sex work that is required of them. Some accept their lot because it is better-paying than household or factory work; others are “enslaved” literally or by debt bondage and having their documents taken from them.

Nonetheless, for the majority it is a better life they have in the city: independence, being able to continue their education (villages only have primary schools), having the opportunity to find a greater range of possible marriage partners, and controlling their fertility. They can also send money back to their families, which

helps to offset parental embarrassment at having their daughter living alone in the urban environment.

A growing phenomenon is the international migration of girls and young women. Most go to places where members of their community already reside. This has the advantage that they find a support system to help them get jobs, apartments, even husbands. However, it may also delay their integration into mainstream society.

One of the biggest challenges is the inclusion of the internal and external migrants in the prosperous mainstream of urban society (UNESCO/UN-Habitat 2010). While migrants provide a low-cost flexible workforce for the urban informal economy and contribute directly to the construction of the modern city, they often work in poor conditions, without social security and health benefits, and without legal protection. UNESCO and UN-Habitat stress a right to the city that “encompasses access to food, housing, education, health, work and local democracy” and that these rights should also be enjoyed by migrants. Urban planners and policymakers in all these fields, including the police, should devise creative ways of including new migrants in the city, recognize their contribution, and help reverse the negative portrayal of immigrants that currently exists.

To foster tolerance, mitigate ethnic, cultural and religious tensions and conflicts of interest, fight against discrimination, celebrate cultural diversity and foster social cohesion, UNESCO and UN-HABITAT recommend careful analyses and the evaluation of detailed information about the various communities’ problems, conflicts, and needs in each neighbourhood as well as establishing cooperation with the stakeholders through partnerships (UNDESA 2007).

The Council of Europe has issued a “European Manifesto for Multiple Cultural Affiliation” to facilitate peaceful coexistence and mutual understanding between cultural groups with a view to resolution and prevention of conflicts. The most important concern is to provide access to services (housing, education, health care, welfare, and recreation) and equal employment opportunities for all; this may necessitate the recruitment of bilingual and bi-cultural staff and the production of information materials in many languages. Underlying all these provisions of services is the protection of the “rights of migrants”, that their voices be heard and their participation in decision-making assured through representation and direct citizen involvement in democratic institutions (Creating Better Cities for Migrants).

UN-Habitat is promoting the theme of inclusive cities through its Global Campaign on Urban Governance and the Urban Governance Index. It has found that few cities promote the inclusion of migrants. The right to the city encompasses rights to basic services. In cities throughout the world it is mainly the women who live in abject poverty with their children. The empowerment of women in political, social, and economic life is central to eradicating poverty and creating sustainable human settlements. The increasing multiculturalism of cities has heightened tensions between newcomers and those who had previously settled in urban areas and this is expressed in racism and ethnic or religious

discrimination.³ “All migrants must be able to exercise their fundamental rights. Local governments should not only protect and promote migrants’ rights but also inform migrant communities properly on their rights and responsibilities. Migrants have to be enabled and encouraged to exercise their rights and become active citizens.”⁴

Migrants are often viewed with suspicion by other members of society and can be subject to populist and xenophobic campaigns in politics or media. Intolerance, racism, and discrimination continue to threaten the development of individuals and the coexistence of different communities (UNESCO/UN-HABITAT 2010).

From the existing identified case studies and research, “eight key principles for success” have been identified by UNESCO and UN-HABITAT with respect to migrants⁵:

1. Protect and promote the rights of migrants;
2. Provide access to services and ensure equal opportunities for all;
3. Promote representative democracy through the participation of all communities;
4. Celebrate cultural diversity as a source of exchange and dialogue;
5. Foster tolerance and fight against discrimination and racism;
6. Mitigate ethnic, cultural and religious tensions and conflicts of interest within urban communities;
7. Foster social cohesion and shared belonging;
8. Urban planning towards cities as common goods;

5 Migration of Women and Girls to the Cities

“Migration is transforming our world: by the end of this decade, most developing countries will have more people living in cities than in rural areas. Adolescent girls in developing countries are an overlooked population, but they are a group that is migrating to urban areas in ever greater numbers. Girls are on the move because they lack opportunity in their rural hometowns and want to work, learn, and gain skills and resources. They also move to escape hardship: poverty, war, or early marriage. While migration can carry risks, for many girls moving can unlock opportunity, autonomy, and the chance for prosperity” (Temin et al. 2013, p. XV).

³ UN 2006, <http://unesdoc.unesco.org/images/0017/001780/178090e.pdf>.

⁴ http://www.logiqo.com/easycontact/ec/british/opencities/jul10/creating_better_cities_for_migrants.pdf, p. 8.

⁵ http://www.logiqo.com/easycontact/ec/british/opencities/jul10/creating_better_cities_for_migrants.pdf, p. 7.

5.1 *Marriage*

Often girls are brought to foreign countries to marry their countrymen and are in effect confined in their homes and ghettos and abused and exploited by their older husbands. Many migrant married women are dependent on their husband's immigration status and are afraid of reporting violence to the police because of deportation or losing their children (Temin et al. 2013).

"One in three girls in low and middle-income countries (excluding China) will marry before the age of 18. One in nine girls will marry before their fifteenth birthday. In the least developed countries the prevalence of child marriage is even higher – nearly one in two" (Loaiza 2014, p. 10).

5.2 *Sexual Exploitation*

Research on adolescent girls' migration and commercial sexual exploitation is limited, but existing evidence indicates that the two intersect in critical ways. A large study of the sex trade in Ethiopian cities found that just under 90 % of sexually exploited 15–19 year olds were migrants from rural areas or small towns (Girma and Erulkar 2009). Migrants comprised a third of sexually exploited young people studied in Ghana and half in the Philippines and Ecuador (ILO 2004). In towns and cities, factors such as low wages, the difficulty of gaining decent paid employment, and the failure of some employers to pay for work push migrant girls into commercial sexual exploitation." (Temin et al. 2013, p. 58)

5.3 *Sexual Harassment*

One of the major concerns for women and girls in cities is physical safety in public spaces. Fear of violence in urban areas restricts women's and girls' freedom of movement as well as their access to essential services and therefore impacts their health and wellbeing.

"Sexual harassment [touching, cat calls, ogling, rude comments, stalking or following] and other forms of sexual violence occur every day for women and girls globally. It happens on streets, in and around schools and workplaces, in parks, in public sanitation facilities, and in neighborhoods. Violence and sexual harassment in public spaces restrict women's freedom of movement, reduces their access to essential services, and negatively impacts their health and wellbeing."⁶

⁶ <http://www.urbangateway.org/document/creating-safe-spaces-cities-wo>.

6 Slum Communities and Challenges for Women and Girls

The Center on Housing Rights and Evictions COHRE, has issued a report,⁷ which has examined the situation of women and girls in Bangladesh and Kenya as well as in 20 other countries and found a predominance of violence against women in slum communities.

As pointed out in an article by Urban Gateway for the International Urban Development Community, 76 per cent of the 4500 women respondents in the slums of Dhaka, Bangladesh “had endured physical or sexual abuse during the past 12 months with 43 per cent having suffered both physical and sexual abuse.”⁸ Kibera in Kenya, the second largest slum in Africa, was one of the hotspots for violence against women and mass rapes during the country’s civil riots in 2008.

“What is most disturbing about these figures is that many women migrate to cities in order to escape from domestic violence and health-damaging cultural practices, yet these threats persist in cities or women may experience a complex set of new challenges including a lack of access to services, housing insecurity, and employment discrimination” (ibid.)

7 UN Women’s Safe Cities Global Initiative

“Several important steps need to be taken to combat violence against women in urban areas worldwide. A fundamental step is to accurately identify the prevalence and nature of the problem. The UN Women’s Safe Cities Global Initiative is developing and implementing models to reduce and prevent sexual violence against women and girls in public spaces. The initiative first administered surveys to assess the specific concerns of women in the communities of participating cities. In New Delhi, India, a 2012 study found that 92 per cent of women had experienced sexual violence in public spaces, and that 88 per cent of women had experienced sexual harassment in their lifetime. In Quito, Ecuador, a 2011 study reported that 68 per cent of women had experienced sexual harassment or sexual violence in the previous year. In Port Moresby, Papua New Guinea, a 2011 survey revealed that 55 per cent of women experienced sexual violence while visiting marketplaces in the previous year.”⁹

Men and women often experience the same urban space in different ways, as women usually do the shopping and escort their children to and from school (in India, middle-class men take the car to the office while their women must use public transport). In many countries, women walking on the street suffer cat calls,

⁷ http://globalinitiative-escr.org/wp-content/uploads/2013/05/women_slums_and_urbanisation_may_2008.pdf.

⁸ <http://www.urbangateway.org/document/creating-safe-spaces-cities-women>.

⁹ <http://www.urbangateway.org/document/creating-safe-spaces-cities-women>.

sexual harassment, and groping in crowded buses—even assault. In one study covering four cities in 4 continents, 60 % of women felt unsafe in urban areas (“Learning from Women to Create Gender Inclusive Cities”, Women in Cities International). The time of day is also experienced differently, after dark with poor street lighting, empty streets, but also crowded, jammed streets. Broken pavements, graffiti, idle young men on street corners, dirty or non-existent toilet facilities, or the absence of shops or policemen (or noisy pubs and corrupt police) can make women nervous.

Particular groups of women are also more vulnerable than others—street vendors, the homeless, sex workers, domestic workers (often young themselves) running errands, shopping or returning after dropping children off at their school, factory workers or office workers returning home in the evening. The worst is that their complaints of sexual harassment are not taken seriously by the police and no one is ever arrested—arrests for such offences are almost non-existent.

UN Women has declared that a safe city for women and girls is “a city where women and girls can enjoy public spaces and public life without fear of being assaulted; where violence is not exercised against women and girls in either the home or the street; a city where the state and local government take actions to provide attention, prevention, and punishment for violence against women and girls; where the state and local government guarantee women’s and girls’ access to justice; where women and girls participate in making decisions that affect the community in which they live; where women are not discriminated against and where their economic, political and cultural rights are guaranteed; where the state guarantees the human rights of all people without excluding women and girls.”¹⁰

8 New Technologies Available

Local authorities are partnering with women and girls in their communities to map with mobile phones safety risks such as defective infrastructure, obscured walking routes, and deficient lighting. By improving infrastructure including transportation services, the city can better protect the safety and wellbeing of its vulnerable population. The city of Vienna, Austria has been a pioneer in its efforts to make urban planning more gender-inclusive. Improvements range from additional installed lighting and safer underground car parking to more sport-specific public parks and an innovative apartment complex—“Women-Work-City”—built to target to the unique needs of working women by providing services and shops all in one place.¹¹

¹⁰ <http://www.endvawnow.org/en/articles/237-what-are-safe-cities-and-communities-for-women-and-girls-.html>.

¹¹ <http://www.urbangateway.org/document/creating-safe-spaces-cities-women>.

9 Addressing Women's Urban Safety Through the Right to the City

“Threats of crime and violence are highest in cities, particularly among groups of women, and increasing incidents in urban public spaces are becoming of greater concern, especially when considering the rapid expanse of urbanization which has been occurring around the world for decades. This phenomenon has progressed to the point where over half of the world's population currently lives in cities, thus shedding light on the pertinent importance of addressing women's safety in the city.”¹²

“If violence occurs in large part in the city, then action needs to be taken not only in the city, but through the creation of the city itself. While urban designs and planning do not directly create violence, they facilitate environments that can present greater or lesser opportunities for assault. Therefore, urban designs and plans must be examined in order to fully understand why women experience threats and actual incidences of violence. By understanding these threats, steps may then be taken to change the way women experience and live in the city without the threat of violence. All women have this right to the city, which must be understood as their collective right to safety and security in the spaces they inhabit.”¹³

10 Adolescent Girls' Views on Safety in Cities

UN-Habitat has pioneered the use of rapid situational assessments (RSAs) to provide snapshots of the situation of the most vulnerable group in a city, adolescent girls, in order to inform future programming. RSAs identify the key opportunities and challenges in each city, and how girls perceive their city in terms of its safety and inclusivity. Girls are asked to show the spaces they use, the routes they take, and how they feel along the way (e.g. a girl may say that she “never” feels safe when using public transport). The girls identify the priority issues they would like to see addressed and offer recommendations for making their communities safer and more inclusive. It was interesting that the results of surveys were remarkably similar in terms of experiences of insecurity, sexual harassment, and feelings of exclusion. The issue of street lighting was an important factor in how safe girls feel (they usually avoided unlit streets at night and areas where gangs congregated). Sometimes, the social use of public parks changes in a 24-hour day. Public transportation in all cities was a large concern for all the girls in the survey. Sexual harassment, groping and theft were common complaints, as was the general inaction of other passengers who witnessed such acts. Moreover, the girls felt that the

¹² <http://hic-gs.org/articles.php?pid=3496>.

¹³ <http://hic-gs.org/articles.php?pid=3496>.

police were also unresponsive to their problems, untrustworthy or located too far away to respond in a timely manner. Girls stressed that toilets were scarce or poorly maintained, forcing them to use open spaces, putting them at risk of sexual harassment and assault. Lack of signage, poor drainage systems, and piles of garbage in the street also hindered their walking direct routes.

These young women had very clear ideas of what “their right to a city” or an ideal city should look like: access to emergency services, hospitals, health centres/clinics, including reproductive health services, good security in the area, many police stations, and female police officers. Next, public toilets, clean water, waste baskets at every street corner and access to basic services like electricity. Spaces for play and leisure, playground areas with flower gardens and trees, grass and benches were also considered important. Sidewalks for pedestrians (free of vendors and loiterers), zebra crossings, traffic lights, wide roads, and well maintained road infrastructure (so accidents could be avoided) were mentioned as well as clean markets and shopping areas (with reasonable prices for the poor) and transit routes and bus stations in their community. Housing with planned roads and proper lighting, schools nearby for all levels, as well as religious institutions (temples, mosques, churches) were considered important. Most people would agree to such a vision, but more important is the participation of all stakeholders in budgeting and deciding where particular facilities should be located.

In the end, it is the government that has the responsibility to make commuting on public transport safe for women (monitoring and policing systems, authorized stops, certifying drivers and buses). Campaigns should be launched to raise awareness about the prevalence of sexual harassment and encourage bystander interventions if any form of harassment is witnessed. In cities where it is not deemed appropriate for girls to be alone in public spaces, information campaigns should be developed to promote girls’ freedom to move through the city unaccompanied. In other words, putting the perspective of girls/women at the centre of transforming cities to become places of inclusion, tolerance and opportunity for everyone. “By bringing city officials and adolescent girls together there is a real opportunity to create sustainable economic and social change within these societies that will benefit all citizens.”¹⁴

This aligns well with Sustainable Development Goal No. 5 to achieve gender equality and empower all women and girls. Goal 5.2 is to “eliminate all forms of violence against women and girls in public and private spheres”. . . . Goal 5.3 is to “eliminate all harmful practices, such as child-, early and forced marriage and female genital mutilations”. Goal 5.5 wants “to ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life” and 5.c to “adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”.

¹⁴ www.plan-international.org/girls/reports-and-publications.

Goal 16 of the post-2015 Agenda is “to promote peaceful and inclusive societies for sustainable development, provide access for all and build effective, accountable and inclusive institutions at all levels.” The first target is “significantly to reduce all forms of violence and related death rates everywhere.” This target is measurable, as death statistics are available in each country. However, the killing of a woman or girl, because she is a woman is more difficult to determine. Violence is defined differently in each society; nonetheless measures to prevent violence against women can be put into place and their effectiveness measured. The second target is to end all forms of violence, torture and abuse of children, including exploitation and trafficking. Unfortunately, underage children are still exploited in the mining, agricultural and manufacturing businesses in many parts of the world. Others are trafficked and forced into prostitution, begging and stealing. Again, these horrendous practices can be estimated, measured and combated.

Other targets of Goal 16 “to promote the rule of law. . .significantly reduce illicit financial and arms flows. . . combat all forms of organized crime. . .substantially reduce corruption and bribery. . .develop effective, accountable and transparent institutions at all levels. . .ensure responsive inclusive, participatory and representative decision-making at all levels. . .and to ensure public access to information and protect fundamental freedoms” are more difficult to measure. In fact, no target dates are mentioned for the post-2015 Agenda.

On the other hand, indicators for the first two targets—reducing violence against women and abuse of children—have been well developed by numerous reputable institutions. Recent media accounts have described the horrible sexual attacks on women on public transport in India (India present reports), the murder of women by narco-gangs just to show that they controlled a specific area of the city (UNODC), the use of women as drug couriers, and the violence against injecting drug users, lesbians (South Africa—Corrective Rape), and “transgender” persons or just demonstrating that men have power of superiority over women (Vasant 2015, p. 126ff).

11 What Does an Ideal City Look Like?

The most commonly recurring elements taken from a women’s survey carried out in Cairo, Delhi, Hanoi, Kampala, and Lima are:

1. Emergency Services: hospitals, health centres and clinics, security in the area; many police stations, female police officers;
2. Basic Services; public toilets, clean water made available through public taps, water tanks;
3. Spaces for Play and Leisure; clean parks with trees, flower gardens, playgrounds;
4. Grass, Benches, Cultural Spaces; libraries, movie theatres, bookstores, swimming pools;

5. Road Infrastructure—traffic lights, uncluttered sidewalks, zebra crossings, flyovers;
6. Markets and Shopping areas; reasonable prices for poor people; big malls;
7. Schools; a school system for all levels in their area;
8. Transit Routes—bus stations in their communities;
9. Cleanliness—clean public areas, parks, streets; waste baskets at every corner;
10. Housing; organized with planned roads, proper lighting; green areas;
11. Religious Institutions; temples, mosques, and churches (UN-Habitat 2014).

In addition to the necessary infrastructure and services to be provided, significant attitudinal and behavioural changes are needed on the part of men and boys. Boys must be sensitized in schools, police and first responders given special sensitization training, and the general public in media campaigns and strong messages by political, religious, and cultural leaders must be told clearly that certain types of behaviour is not to be tolerated and that men should always be respectful of women and girls.

In November 2014, an open-ended Intergovernmental Expert Group on Gender Related Killing of Women and Girls took place in Bangkok organized by the UN Office of Drugs and Crime. The group underlined, as part of a broader effort to create a culture of lawfulness, the importance of preventive policies and pro-active measures, which are regularly monitored. It was recommended to review, evaluate and update relevant criminal and civil laws in order to ensure that all forms of violence against women are penalized. It was recognized that investigations and prosecutions are hampered by factors such as negative gender stereotypes, secondary victimization, corruption, impunity and a lack of confidence in the criminal justice system. The meeting recognized the right of victims to be treated with dignity, especially elderly women, indigenous women, foreign women, immigrant women in irregular situations, women with disabilities, and women victims of human trafficking. Girls are to be treated in line with the Convention on the Rights of the Child in a child-sensitive manner. The welfare of “street children” or youth in conflict with the law must be considered foremost in any juvenile justice proceeding. Runaways, girls without parental supervision, underage females living on their own in precarious situations are particularly vulnerable to sexual exploitation, drugs, and gangs. Special programmes need to be established for girls living on the streets (Report of the Secretary-General during the 24th Session of the Commission on Crime Prevention and Criminal Justice on the Outcome of the Open-Ended Intergovernmental Expert Group on Gender Related Killing of Women and Girls, Platzer and Fillip 2015).

12 UN Secretary-General's Report

In 2006, the UN Secretary-General issued a study “Ending violence against women: From words to action” (United Nations 2006)¹⁵ in which the various manifestations of femicide, the murder of women because they are women, are described: intimate partner violence, stalking and stranger violence, targeting women in war, but also crimes committed in the name of honour, acid attacks, and dowry disputes. The latter illustrate the interrelationship between cultural norms and the use of violence in the subordination of women. Some of these acts of violence have a collective dimension with family or the community wishing to control women's choices not only in the area of sexuality but also other aspects of behaviour, such as freedom of movement. In other cultural contexts, female sexuality is promoted in the media, advertising, and social pressure.

Femicide occurs everywhere, but the scale of the murder of women within a community context—for example in Ciudad Juarez, Mexico, and India—has drawn attention to this growing phenomenon. Although the media has highlighted these killings, the data on the domestic disputes and deaths (crimes of passion or jealousy, dowry murders, honour killings, foeticide, neglect of infant girls) are underreported. Other crimes committed in times of war, gang wars, violence against certain ethnic minorities, migrant and undocumented women are “invisible”, as these murders are either unreported or considered part of the general violence and not disaggregated. If one considers traditional harmful practices (genital mutilation), forced marriages, child marriages, and rape within marriages as extreme forms of violence which are illegal but accepted in many communities the number of unreported acts of violence increases substantially. Of course, “safe inclusive cities” should have programmes to prevent both the individual acts but also the structural violence, including sexual and economic exploitation. In addition to shelters and protection schemes, the municipal judicial and police authorities must actively investigate and prosecute domestic cases as well as combat patterns of violence.

The Human Rights Council has appointed a Special Rapporteur Rashida Manjoo on violence against women, its causes and consequences. The Rapporteur submits both country reports as well as thematic reports. In 2012 Ms Manjoo addressed the topic of gender-related killings of women whether they occur in the family or community or are perpetrated or condoned by the State (A/HRC/20/16). In addition to focusing on the above-mentioned forms of femicide, she described the killings of women due to accusations of sorcery/witchcraft, the killings of aboriginal/indigenous people and killings as a result of sexual orientation and gender identity. The Rapporteur listed the human rights treaties that place a duty on States to prevent, punish and provide compensation for all acts of violence.

The Commission on the Status of Women (2013) urged countries to strengthen national legislation to punish violent gender related killings of women and girls and

¹⁵ <http://www.un.org/womenwatch/daw/public/VAWStudy/VAWstudyE.pdf>.

integrate specific mechanisms or policies to prevent, investigate, and eradicate such deplorable forms of gender based violence (E/CN.6/2013/L.5). It also recommended the establishment of comprehensive, co-ordinated, inter-disciplinary, accessible and sustained multisectoral services for all victims and survivors of violence (health care services, 24 hour hotlines, social aid services, one stop crisis centres, child services, public housing). The Commission emphasized that ending violence against women must be a priority in the post-2015 development agenda.

In December 2013, the General Assembly adopted a resolution “Taking Action Against Gender related killing of women and girls” initiated by the UN Commission on Crime Prevention and Criminal Justice, stressing that States have the obligation to prevent and investigate acts of violence against women and girls, punish perpetrators, eliminate impunity and provide protection to the victims. It urged Member States to adopt preventive measures including enactment of legislation, strengthen the criminal justice response, end impunity by ensuring accountability, and address the problem of underreporting. It recommended reparation and compensation to the victims and their families in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and to give due consideration to the Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice. The General Assembly viewed with appreciation the considerable input of the many civil society organizations, as well as academia, in addressing the different forms of violence against women, through research and direct Action (A/RES/68/191).

In November 2012, the Academic Council on the United Nations System (ACUNS Vienna) organized a symposium on Femicide which called for the creation of a platform where advocates, judges, prosecutors, law enforcement officials, academics, feminists, non-governmental organizations, UN organizations, intergovernmental and national institutions, and other relevant actors could share their expertise and good practices, in order to transfer knowledge across regions. Since that symposium organized on the International Day for the Elimination of Violence Against Women, ACUNS has published three volumes of “Femicide: A global issue that demands action” (ACUNS 2013, 2014, 2015) and held numerous symposia, side events at UN meetings, and lectures to raise awareness to the issue. ACUNS has promoted both the Istanbul Convention on Preventing and Combating Violence Against Women and the Panama Protocol for the Investigation of Femicide. Special topics of concern have been female infanticide and gender based sex selective foeticide, killing of women in the name of honour, dowry related femicide, witchcraft, female genital mutilation, child marriages, violence against migrant women, organized-crime-related femicide and the targeted killing of women in war. ACUNS representatives have attended the General Assembly, sessions of the Human Rights Council, the Commission on the Status of Women, UN Congress on Crime Prevention and Treatment of Offenders and published relevant documents from these bodies as a resource handbook for diplomats and practitioners. ACUNS has republished the Secretary-General’s report on conflict related sexual violence, Security Council resolutions and President’s statements,

and statements of UN Special Representative Margot Wallstrom, the High Commissioner for Human Rights, and the Special Representative on Sexual Violence in Conflict. Ms Zainab Hawa Bangura has thanked “the research institutions, individual scholars and practitioners who are members of the Academic Council on the United Nations System for their dedication. The insights of scholars are invaluable to our continued efforts”.

Mrs. Ban Soon-Taek has stated in an ACUNS sponsored High Level event “Every woman and girl has the fundamental right to live free from violence. Yet violence against women is one of the world’s most pervasive human rights violations. Wherever this violence happens, it is unacceptable and should shock us all.”

13 Conclusion

It is a good time to advance the cause of women to live safely in large cities. City planners have long promoted the “Right to the City”; more and more cities are declaring themselves “Safe Cities” and “Human Rights Cities”. Cities are implementing better services and providing safe spaces for women and children. Feminist movements in developing countries are demanding such services, safe transport, more women in the police force—which are now supported by large numbers of the populace. Finally, huge demonstrations now take place when women are gang-raped in buses or public spaces. Impunity is no longer accepted and it is expected that perpetrators are brought to justice.

The United Nations is no longer timid about femicide, acid attacks, honour killings, traditional harmful practices, sexual harassment and other forms of violence previously considered acceptable among families. Starting with the Beijing Declaration, the Secretary-General has issued strong statements against violence against women. Within UN agencies such as UNICEF, HABITAT, UNFPA, UN Women, UNDP and UNODC active programs to change laws, train police and judiciary and assist women and girls directly have been established.

Governments and civil society are now ready to honestly deal with the problems women and girls are facing in the city and to make the “Right to the City” a real thing. It is wonderful to see that girls are participating in the transformation of urban spaces to suit their own needs.

Five Questions

1. Why do young women come to the city?
2. How can they help to design better cities?
3. What are the special dangers they face in cities?
4. What are the international initiatives (or in your community) to empower women and girls?
5. How can discriminatory cultural practices and male attitudes against women be changed?

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Women as Actors in Community Safety: Taking Action Worldwide

Margaret Shaw

Abstract It has been customary to refer to women's involvement in the criminal justice system and in the field of crime prevention as either victims or offenders, or sometimes as professionals. It is much less common to think of the role which women—and girls—themselves play in actively promoting safer cities or preventing the violence and crime which affects them because of their gender. This chapter looks at the growth of women's participatory approaches in crime prevention, and how they are helping to increase the role of women and girls in decision-making, especially at the local level. It tracks the expansion of participatory approaches globally, and the importance of this movement in helping to change policies, attitudes and behaviours towards women and girls in both public and private spaces. Some examples of current or recent comparative projects illustrate the expansion of what is now a global movement. The final section of the chapter reflects on the ways in which the Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Doha, Qatar, 12–19 April 2015) aims to strengthen and support this work.

1 Introduction

In 2015 UN Women published a report setting out a new policy agenda for the post 2015 development era, aiming to “transform economies and make women's rights a reality”. The report, *Progress of the World's Women 2015–2016: Transforming Economies, Realizing Rights* (UN Women 2015), focuses on increasing women's social and economic rights, and establishes ten priorities for action. These include creating more and better jobs for women, reducing occupational separation and pay gaps, and strengthening their income security throughout their lives. Yet for women in many countries around the world, their ability to travel to and from work on a daily basis and to participate fully in city life without fear for their safety and

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security is severely limited. It often places them at personal risk of harassment and violence, because of their gender. As an earlier report has stressed (UN Women 2013), for women to achieve gender equality, realize their full human rights and be empowered to take part in decisions and policy making, they need to have freedom from violence.

Over the past 30 years, as this book underlines, violence against women (VAW) has become widely recognized as a public policy issue, and considerable strides have been made, especially in relation to intimate partner violence (ICPC 2014a). The violence which women experience in their homes at the hands of intimate partners or family members is now widely seen as a breach of criminal law. It is no longer considered a minor or private social issue, and women in many countries are now more willing to report such violence. While homicide rates for men are much higher than for women, the majority of female homicides are at the hands of intimate male partners, or less often, close relatives (Racovita 2015; UNODC 2014a; Shaw 2013).

At the international level, the United Nations Office on Drugs and Crime (UNODC) among other UN bodies has been instrumental in promoting norms and standards, helping countries to eliminate violence against women, to develop legislative frameworks, improve justice system responses, and to provide services such as shelters for victims (UNODC 2014b). There is now far more data and information about the incidence and patterns of violence against women globally, and on the attitudes of men to the use of such violence (PAHO 2012; FRA 2014; Barker et al. 2011; Manjoo 2012; Fulu et al. 2013). In over 90 countries victimization surveys on VAW have been undertaken at the national level, or in regions or cities, although the majority have focused on intimate personal violence (IPV) rather than non-intimate sexual violence (Johnson 2013). There is guidance on how countries can develop appropriate and disaggregated statistical data on VAW (UNSD 2013). In terms of knowledge, as Barberet (2014, p. 91) has put it “since the 1980’s there has been an explosion of research on violence against women.”

Yet as suggested above, much of the focus has been on intimate personal violence which occurs in private settings, especially the home (see Box 1 for definitions). Less well understood is the issue of women’s safety in public spaces, a phenomenon for which women themselves have often been blamed as having “brought it on themselves”. In the 1980s and 1990s governments tended to put the burden of responsibility to avoid the risk of violence on women themselves, in terms of how they dressed, where they went, and at what hours (Stanko 1996). The disappearance of women and girls from public places has also been ignored or downplayed, especially those who are poor and disadvantaged as in the case of indigenous women in Canada, or migrant women in Ciudad Juarez, Mexico or in Guatemala (NWAC 2010; RCMP 2014; Shaw et al. 2013; Beltran and Freeman 2007; Racovita 2015).¹

¹ Between 1980 and 2012 a total of 1017 Aboriginal women were murdered, and 164 reported missing in Canada—figures well over representative of the population of Aboriginal women in the country.

Again it is women who disproportionately experience sexual violence in public spaces because of their gender, ranging from sexual harassment and stalking to rape, as well as during war and conflict (UNGA 2012). Some specific and horrific instances of rape and sexual assault in public spaces do receive attention and lead to some action. This has been the case of the young woman raped on a bus in Delhi in December 2012 (Natarajan 2013), or some cases of sexual assault on university campuses. But the prevention of violence against women in public spaces is less often seen as a public responsibility or necessity than in the case of IPV. The importance of taking account of the differences between men and women's experiences of living in the city tends to be unexamined or ignored.

This chapter focuses on the growth of action around on women's safety in urban settings, and the role which women and girls, and local governments, have been playing in public awareness and policy development at the local level, especially through the use of participatory approaches. It highlights the role of women as actors in promoting their own safety, rather than as victims.

2 Women Experiencing the City

However we dress, wherever we go, Yes means Yes and No means No!²

How are the experiences of men and women in public urban settings different? It has long been known that women express more insecurity and fear of crime than men, but they also experience different behaviours. Far from being "irrational" as many early explanations of the high fear levels of women suggested, they are based on their day-to-day experiences as women. Numerous studies have shown that women experience sexual harassment of various kinds from men in public settings. In India, sexual harassment, known as "eve teasing", is a very common experience for women and girls. In a recent four country study 80 % of women interviewed in Delhi reported sexual harassment in the daytime, 50 % in Petrozavodsk, Russia, 40 % in Dar el Salaam, Tanzania, and 35 % in Rosario, Argentina (Viswanath 2013). The same study also found that women voluntarily restrict their daily routines and travel outside the home.

Public infrastructure is often not adapted to the needs of women. In Mumbai, for example, it was found that the main train station had 24 men's urinals but only two toilets for women (Padke 2010). Access to water and sanitation is a major issue in low income communities in some countries, where households do not have private toilets, and where it is women and girls who have to fetch water, wash clothing, or dispose of rubbish. In so doing they put themselves at risk of harassment and violence on a daily, and nightly, basis (WICI and Jagori 2011). In many counties, women tend to use public transport more than men, yet experience more insecurity

² One of the chants used by women during "Take Back the Night" marches in the 1970s.

and sexual harassment (Whitzman 2013). In New York, for example, a survey of 2000 subway users found that two-thirds of women reported past experience of sexual harassment (Loukaitou-Sideris et al. 2008).

The daily lives of women are, therefore, often constrained by lack of access to safe transport, or by cultural norms which restrict their ability to travel freely. They may limit their travel outside the house after dark for safety reasons. Their routines often differ from those of men. They have greater responsibility for child care and household tasks, and less access to private transport. In the case of poor women and migrant women, they often have to work at unsocial hours and travel long distances to access poorly paid work (Ortiz Escalante and Sweet 2013). In observing women in public spaces in Mumbai, one writer described women's behaviour as exhibiting a "tyranny of purpose" with women on their own:

Carrying something, shopping, heading towards bus-stops or railway stations, but rarely, if ever, loitering around, sitting in a park or *maidan* [public square] or standing at a street corner smoking or simply watching the world go by as one is wont to see men doing. (Padke 2010, p. 5 quoted in Whitzman 2013, p. 41).

It is these gendered differences which have motivated many women to consider the possibilities of safer cities for women that do not rely on them alone to restrict their movements or change their habits.

3 Women Working with the City

Over the past 30 years or more, the movement to increase the safety of women in cities has spread across many regions of the world. Combining notions of the importance of participatory action and personal experience—women as experts on their own safety—with empowerment of citizens to take an active part in local decision-making—this movement has expanded to encompass a wide range of issues around safety and personal autonomy, and the rights of citizens, especially for women and girls in urban spaces. From the early 1970s when "Take back the night" marches began to be organized in European and North American cities, women's groups and academics and researchers began critiquing the inequalities women experienced in terms of their ability to take part in city life in the same ways as men, and their lack of voice in urban decisions.

In a number of Canadian cities in the 1980s, for example, inspired in part by calls to "take back the night", there was a growth of activity among local community organizations, academics and local governments to increase women's safety (Shaw and Andrews 2005). In Toronto in 1982, following a series of sexual assaults and murders of women, groups of women lobbied the city and local police, which led for the first time to the establishment of a task force on public violence against women. The report of the task force resulted in the creation of the multi-partner *Metropolitan Action Committee on Public Violence against Women and Children* (METRAC) in 1984, to implement the recommendations of the task

force.³ Among the innovative tools developed by METRAC, in collaboration with the Toronto Transit Commission, was what became known as women's "safety walks" or safety audits (METRAC 1992; Whitzman 2013).

Essentially drawing on theories of situational crime prevention, the safety audit tool involves groups of women walking systematically around their local communities, and in parks and public spaces, at different times of the day or night, using a checklist. They identify areas where they feel unsafe. This might be because they cannot see well in the absence of good lighting at night, because of the presence of blind corners, of trees and other vegetation obscuring good visibility, or the absence of signs etc. The second step involves developing a series of recommendations which are then discussed with local governments, asking for action. In a number of cases local city administrators or personnel will be invited to take part in the walk. Thus the safety audit is both an analytical tool for gathering information and data, and a tool for empowering women.

The use of safety audits led to a number of changes in the administration and design of urban infrastructure in Toronto, such as the establishment of designated waiting areas and requests stops for women on the transport system at night, better lighting in parking garages, and improvements to safety in public housing areas, and assault prevention campaigns on university campuses. In 1991 the city published *Take Back Toronto: A Guide to Preventing Violence Against Women in Your Community* (Gilmore 1991), and in 1997 a handbook *Toronto Safer City Guidelines* (Whitzman and Wekerle 1997).

In part inspired by Toronto and METRAC's work, women in a number of other Canadian cities began to demand similar action from city administrators, and municipal departments concerned with women's safety were established. The city of Montreal, for example, established the *Women in the City* programme in 1990, following requests from local women's groups. From 1992 they worked in partnership with community groups and others in a cross-sector committee set up to ensure full community participation and consultation, the *Comité action femmes et sécurité urbaine* (CAFSU). A number of initiatives promoting women's safety in the city were set up, tailored to local needs and concerns. These ranged from forums for public discussion; community-city-transport consultations on changes to the urban landscape around Metro stations; a *Between Two Stops* initiative enabling women to get off city buses between stops at night, in order to be closer to their homes; and training programmes and tools such as a toolkit on *Women's Safety: From Independence to Autonomy* published in 2001 (FCM and City of Montreal 2004).

Other Canadian cities such as Ottawa, Edmonton and Cowichan Valley in British Columbia, established comparable initiatives, while the Federation of Canadian Municipalities, and the National Crime Prevention Centre provided support at the federal level. In all cases the focus was on participatory approaches which listened to women's concerns, and collaborative partnerships between municipal administrators, services, women's groups and local communities.

³ This section draws from METRAC's website www.metrac.org.

Interest in women's safety was growing in a number of countries, and since that time many organizations and cities have developed initiatives promoting the safety of women in cities, often at the instigation of women's groups, and using participatory tools such as the women's safety audit. Thus in addition to advocating for change, or establishing community-based services to respond to unmet needs, as is often the case when NGOs are concerned about social issues, the movement to improve women's safety recognized the necessity of working *with* cities to effect change, and empowering women to take an active part in shaping solutions.

The movement has become a global one in which international conferences, networking and research have all played an important part. It has also been interdisciplinary, combining theories and concepts in which gender is a key construct, and drawing from the disciplines of criminology and crime prevention, political science and governance, urban planning and design, and social change and community development.

4 The Development of an International Movement

Making progress in confronting these complex realities [violence against women in cities] means analysis and proposals that are more comprehensive and innovative, negotiation mechanisms, collaboration and solidarity. It also implies conceptual and theoretical developments, as well as learning from concrete experiences. (Falu (2008) in [Falu and Segovia](#) (Ed.), p. 9–10).

In 2002, the first international conference on women's safety "Making the Links" took place in Montreal, Canada, and brought together a wide range of participants from 33 countries, including 55 cities and municipalities, and produced a manifesto setting out its conclusions. The conference also led to the creation of the NGO *Women in Cities International* (WICI), based in Montreal.⁴ It was founded by a group of city practitioners and academics to act as an international network and undertake action research on women's safety. When WICI organized the first Women's Safety Awards in 2004 it received 96 applications from 28 countries again illustrating the extent of interest and activity (WICI 2004).

In the United Kingdom, for example, the Women's Design Service, founded in 1987 to ensure that the built environment met the needs of women, began developing a number of projects in different communities using safety audits from 2002 onwards.⁵ In Sweden, the planning department of the City of Goteborg developed a handbook on Safer Cities (Goteborg 2002), which focused on women's access to city spaces. A large number of initiatives have been developed in Latin America.

⁴ The Montreal Manifesto and other WICI publications can be accessed at www.femmesetvilles.org.

⁵ See the website www.wds.org.uk The London-based Women's Design Service was wound up in 2012.

They included the extensive work initiated by a group of non-government organizations, notably the Red Mujer y HABITAT de America Latina (Women and HABITAT Network of Latin America), the Centre for Exchange and Services of the Southern Cone Argentina (CISCA), and the Centre for Peruvian Women Flora Tristan in Peru. Apart from developing women's safety initiatives with cities in their countries of location, these organizations all played a major role in the UNIFEM⁶ Regional Programme on *Cities Without Violence against Women, Safe Cities for All* in the 2000s (Falu and Segovia 2008).

At the international level, organizations such as the HUAIROU Commission which coordinates networks of grassroots women's organizations, and United Cities and Local Governments have campaigned for women's participation in local governance, and UNIFEM and UN HABITAT among others both played a significant role in promoting women's safety at the local level and promoting participatory processes and partnerships with women on the ground. UNIFEM's Regional Programme was initiated in 2006 and built on the experiences of an earlier women's safety project in 2004 in Argentina and Peru. The Programme was implemented in the cities of Rosario, Argentina, Santiago, Chile, Bogota, Colombia, and Recife, Brazil, engaging local governments, non-government and community based organizations (Falu and Segovia 2008; Falu 2010; Vargas 2007). Cities in Guatemala and El Salvador joined the Programme in 2008.

UN HABITAT's Safer Cities Programme, established in 1996 at the request of a number of African mayors, recognized the significance of safety issues for women in urban settings from the start. Having initiated a number of victimization surveys in African cities, and with a major focus on inclusion and vulnerable urban populations, they funded a number of programmes to improve women's safety in public settings and strengthen their role in urban governance (UN-HABITAT 2001). This includes projects in Dar el Salaam, Tanzania, for example, where women's safety audits were used as one tool to assess women's safety in markets, streets and other public settings, resulting in a number of changes to the urban environment by the city. They have also funded reviews and evaluations of the use of women's safety audits across different regions (WICI et al. 2008a, b).

Inevitably, when action research is funded by governments or organizations, one of the challenges is to be able to establish that real changes have taken place as a result of interventions. One early assessment the use of the women's safety audit methodology, as a tool for both analysis and empowerment, concluded:

Through this study of six women's safety audit initiatives in three continents, we have shown that this tool can be effective in validating local women's experiences, developing partnerships with local governments and other key urban decision-makers, creating the impetus for spill-over effects such as women's employment programmes, or training for architects and planners, and making small but concrete improvements to places. The question of whether these improved built, social, and policy environments have, in turn, led to behavioural changes amongst women and other vulnerable groups, still remains

⁶ UNIFEM (UN Development Fund for Women) was one of the four predecessor entities, which became UN WOMEN in 2010.

under researched. Women's safety audits can thus be conceptualized as a promising tool not only in reducing violence and insecurity in public space, but as a mechanism for increased gender equality in urban planning, design, and governance. (Whitzman et al. 2009).

In 2004 the second international conference on safer cities for women took place in Bogota, Colombia, with representatives from civil society, academics, urban planners, NGOs, police forces, national and municipal governments and international women's networks, as well as UN-HABITAT, the United Nations Development Programme, and UNIFEM.

By 2010, the third international conference held in Delhi, India included some 240 participants from 40 countries, primarily from the global South. The Delhi conference highlighted the urgency of the situation for women and girls in terms of the impacts of globalization. The majority of the world's population is now urban, and cities are growing at an exponential rate. In addition to urbanization, some of it affected by climate change, environmental disasters and conflict, there is increasing movement of people across borders, as well as human trafficking and smuggling (ICPC 2014b).⁷ The proportion of women and girls in migrant and refugee populations has been increasing markedly in recent years while women and girls are also the primary targets of trafficking for the purposes of sexual exploitation (UNODC 2012; ICPC 2014b).

In the case of each international conference on women's safety a consortium of non-government organizations, municipalities, national governments and international organizations have provided support and resources, illustrating the cross-sector and collaborative nature of turning advocacy and research into concrete action and policy change.

5 Developing Methodologies and Comparing Experiences Between Cities and Countries

One of the important contributions of action research is its flexibility and ability to adapt to local social, cultural and economic circumstances, as well as the possibilities for sharing information and learning from the experiences of others (Whitzman 2008). This was evident from the UNIFEM Regional Programme in Latin America, as well as those developed by WICI, for example.

A three year project, coordinated by WICI and funded by Status of Women Canada from 2007 to 2010, worked with women's groups in four different Canadian cities, in each case focusing on women who in various ways were marginalized

⁷ ICPC's *4th International Report on Crime Prevention and Community Safety* was launched in November 2014 in Palermo, Sicily. This edition focuses on the movement of people—especially migration, human trafficking and indigenous populations migrating to urban areas—and the impacts on those individuals, including women and girls, and receiving communities and on local governments. The report can be found at www.cipc-icpc.org.

or vulnerable. They included Aboriginal women in Regina, Saskatchewan, disabled women in Montreal, elderly women in Gatineau, and women from immigrant and visible minority backgrounds in Peel, Ontario (WICI 2010). In addition to initial training on the methodology and use of safety audits for the four women's organizations implementing the projects on the ground, representatives from each site met together on several occasions to exchange experiences and discuss the challenges they faced in implementing the project: how they had created partnerships across the city, how they accessed media support, who they talked to among city administrators and services, and some of the innovative ways they had adapted the safety audit to their environment and concerns. At the end of the project it was concluded that:

The diverse makeup of each of the groups, and between the groups, is the real richness of this project. Differences among participants' first languages, ages, ethnic identities, places of residence, and abilities provided the basis for unique and touching stories of ideas and experiences of women's safety in Canada. Most of the women had never before taken part in activities linked to women's safety. The awareness that similar work was being done simultaneously in four cities across Canada helped to validate the experiences of each and gave them courage and drive to confront challenges head on. Safety concerns facing each of the groups and in each of the cities were extremely diverse, but underlying all of them was the drive to make their city safer for the women and girls who live there, and the rest of the community. (WICI 2010, p. 53).

The experiences drawn from that project were in turn valuable in the development of an international comparative action project, the *Gender Inclusive Cities Project* (GICP). Funded by the UN Trust Fund from 2009 to 2011, this three-year project involved non-government women's organizations in the four cities of Dar el Salaam, Tanzania, Delhi, India, Rosario, Argentina, and Petrozavodsk in Russia (Viswanath 2013). The local organizations had all had some, although varying, experience of working on women's safety issues. The NGO Jagori in Delhi, a feminist organization established in 1984, for example, has a long history of working on issues of justice for women, and had developed the *Safe Delhi Campaign* which undertook a series of safety audits in 17 different areas in Delhi, essentially mapping the city from the perspective of women and girls (Jagori 2007). They had established a good partnership with the police and transport authority to educate and train staff on women's safety issues, undertaken public awareness campaigns and worked with young men and women on gender issues in public space.

One of the "defining features" of the GICP project, illustrating the evolution of work on women's safety, was the range of research tools used (WICI 2012; Viswanath 2013).⁸ In each city, both qualitative and quantitative methodologies were used to provide base-line information on local and national policies affecting women's safety issues, including legislation and regulations, city plans, budgets and services. Key stakeholders were identified and interviewed, and information on

⁸ A number of publications report the outcomes of the GICP and be accessed at www.femmeseetvilles.org.

women's safety experiences and concerns collected through street surveys and women's safety audits in a variety of public sites commonly used by women in their daily lives. A series of focus groups was also conducted. An external evaluator worked with the project from the beginning to establish outcome indicators and enable comparison of the baseline findings, and output and outcome results across cities.

Not surprisingly, the outcomes varied across the cities, reflecting cultural differences among other factors. Women in Petrozavodsk, for example, were more reticent than those in other cities in talking about their personal concerns, and while they were able to create partnerships with the police and municipality, the implementation of recommendations proved to be less easy than elsewhere.

As Viswanath (2013), p. 80) concludes in summing up the outcomes of the GICP:

Early work on creating safer cities was largely focused on developed nations (the United Kingdom, Canada, Australia), and the emphasis was largely on physical design and urban planning...The GICP recognizes that the growth of cities, especially in the developing world, is a story of the marginalization of the poor and vulnerable...Thus the range of issues that came to the forefront included poverty, drugs, lack of faith in the police and deep-seated patriarchal attitudes as playing a role in creating unsafe and exclusive cities.

6 Marginalized Groups and New Challenges

In a separate action research project, also undertaken in Delhi, the focus was on access to essential services, in this case public toilets and community water taps (WICI and Jagori 2010; Jagori 2010). The project focused on residents in two poor relocation or resettlement communities, many of them slum dwellers who had been evicted or relocated for the purposes of urban upgrading and development (Menon-Sen and Bhan 2007). Funded by the International Development Research Centre in Canada, the project used safety audits to enable women and girls to map their concerns around safety. Many of their concerns about safety and sexual harassment were associated with accessing community toilets, water standpipes and sewage disposal. In the resettlement communities, houses were built without running water or toilets in favour of shared community facilities (Khosla and Djar 2013). Access to community toilet complexes was limited at certain times of the day and they were closed at night, they were very poorly maintained, yet users had to pay a fee for their use, as well as for bathing and washing clothes. As a consequence many women and girls used open areas of public land, and often at night.

Access to water was similarly very limited, and it was often the role of women and girls to queue at taps for several hours each day or to transport water from work places. In all cases women and girls said they were very vulnerable to sexual harassment and abuse. One innovative aspect of the project was a gender responsive budget study to measure the opportunity costs of the time spent by women accessing water in terms of lost wages, as well as the opportunity costs of the

sanitation and water policies of the city in relation to resettlement communities. This gave them additional tools in their approach to local government.

7 A Broader Understanding of the Gendered Nature of Safety

7.1 Safer and Inclusive Cities for Women and Men and the Right to the City

The arguments for changing cities and public spaces to create safer places for women and girls have always stressed that those places are also going to be safer for everyone. What is evident is the evolution from the 1970s and 1980s from talking about the concept of women's safety in public space, to the more ambitious notion of safer cities for women and all citizens (Falu 2010). There is now an emphasis not only on how the urban infrastructure can be changed to improve safety, but also how laws, regulations and policies governing city life can help to promote greater safety for women, and the important of public education and awareness of the issues.

It is now more widely accepted that men and boys must also be part of the solution, so that many initiatives now specifically engage with men and boys to raise awareness of the gendered nature of safety, and help promote safer cities (Barker 2005; Barker et al. 2007; EMERGE 2015). Attention has also turned more recently to the plight of young women and girls, rather than focusing on adult women alone. In turn the concept of safety has expanded from concerns about being safe from sexual harassment or assault in public spaces, to being empowered to move about freely and access the city as a right.

One of the outcomes of the Delhi international conference on women's safety in 2010 was the publication of a book on the range of themes which have emerged as the women's safety movement has gained momentum. *Building Inclusive Cities, Women's Safety and the Right to the City* (Whitzman et al. 2013) assesses the progress which has been made, as well as the new challenges emerging for women and girls in cities. It looks at such issues of safety on public transport, migrant women, issues of the intersection between gender, race, class and poverty, the use of partnerships, at emerging tools such as social media and cultural and artistic interventions for public awareness, advocacy and empowerment, and at the evaluation of action research in women's safety.

The concept of women's safety now includes not just freedom from fear and violence, and exclusion from decision-making, but freedom from poverty, and financial and housing insecurity. It is also closely linked to the concept of the "right to the city", the freedom to enjoy the benefits of living in a city with access to transport, work, leisure and education (Brown and Kristiansen 2009). The concept of the right to the city is discussed in more detail in this volume by Platzer.

Currently, at the international level, the broader vision of safe cities for women is well illustrated in UN Women's flagship programme the *Global Programme on Safe Cities Free of Violence Against Women and Girls*. The programme was launched in Delhi in 2010 at the women's safety conference. It grew out of, and expands on, the work of UNIFEM and Red Mujer y HABITAT in Latin America, and draws from the experience and lessons of UN HABITAT's Safer Cities Programme on the use of women's safety audits in cities, and the *Gender Inclusive Cities Project* coordinated by WICI. The initial programme is working in local communities in five cities: Quito, Ecuador, Cairo, Egypt, New Delhi, India, Port Moresby, Papua New Guinea, and Kigali, Rwanda, undertaking baseline assessments and research and evaluation of policies to prevent sexual harassment and violence against women and girls. The project's *Impact Evaluation Strategy* is flexible using a "theory of change" model, and sensitive to the challenges of comparing cities and countries with very different experiences and capacities. Overall, the strategy aims to:

- measure the impact of the intervention model(s);
- assess which strategies have been successful and which have not;
- show how the results were achieved;
- assess the circumstances or conditions which helped determine their effectiveness.

A second UN WOMEN initiative, *Safe and Sustainable Cities for All*, is a joint programme launched in 2011 with UN-HABITAT and UNICEF. This programme is working in collaboration with the cities of Rio de Janeiro, Brazil; San José, Costa Rica; Tegucigalpa, Honduras; Nairobi, Kenya; Beirut, Lebanon; Marrakesh, Morocco; Manila, Philippines; and Dushanbe, Tajikistan.⁹

8 Promoting the Safety of Girls in Cities

A further evolution is the shift from a focus on violence against adult women in public space to include girls and young women (Plan International 2010). A number of recent projects illustrate this trend in addition to UN WOMEN's Global Programme. A three year project in Montreal, Canada, *My City, My Safety!* worked with young women using participatory tools to increase personal and public awareness of violence, and empower the participants (WICI 2013). Funded by Status of Women, Canada, the project was part of a federal "Blueprint" programme on "Engaging Youth: Preventing Violence Against Girls and Women". It involved young women aged 13–17 from three secondary schools in three different and diverse communities, and used a variety of tools and activities to engage young

⁹ See <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/creating-safe-public-spaces#sthash.1H9Lx8UW.dpuf>.

people, including workshops, theatre, safety walks, media and social networking, and facilitation and leadership training.

At the global level, the *Because I am a Girl Urban Programme* is a joint international project jointly organized by Plan International, WICI and UN-HABITAT. The overall aims of the programme are to increase the girls' safety and access to public places, increase their participation in urban development and governance, and to increase their autonomous mobility in the city. The initial phase involves the five cities of Cairo, Delhi, Hanoi, Kampala and Lima. In each case baseline studies using participatory tools have been undertaken to understand the issues faced by adolescent girls from different communities, as they move about the city (Plan International 2013, 2015). This has include mapping existing stakeholders, programmes and policies; key informant interviews to assess the safety issues affecting adolescent girls; social cartography exercises enabling both girls and boys to map their use of space and their ideal vision of their city; girls' assessments of the elements that make cities safe and inclusive; and a series of girls' safety walks. In each case girls, governments and community members have been involved in the assessments and consultations, and the results discussed at consultative meetings. A series of training curricula has been developed for adolescent girls, government stakeholders and transport authorities and staff.

9 The Importance of the Role of Civil Society in Engendering Crime Prevention

The action research projects discussed above illustrate the importance of what are variously referred to as community-based organizations, women's groups and grassroots organizations, in changing norms and advancing policy change. In all cases they have worked to engage with local authorities and services in shaping policies and initiatives.

A strong case has been made for the importance of civil society in promoting progressive policy change (Htun and Weldon 2012). Taking the example of feminist women's groups advocating for change in policies on violence against women, the authors examined national policies over four decades in 70 countries. They concluded that civil society pressure by women's organizations—what they term a “strong autonomous feminist movement”—has been more important in effecting changes in government policies and improving responses to VAW, than a number of other factors. They outweighed the contributions of such factors as the presence of women in government, left-leaning political parties, or levels of national wealth, which are more usually thought to be critical factors influencing public policy change.

Since the time of “take back the night” marches, pressure on governments to act to increase women's safety has often followed a tragic event such as the assault or murder of a women in a public setting. This was the case in India after the

horrendous gang rape of the 23 year old young woman on a bus in Delhi in December 2012, who subsequently died from her injuries. Delhi has long been known as the rape capital of the country (Jagori 2007; Sen 2013). In that case a huge national and international public outcry resulted in the appointment by the government of the Verma Committee. It was chaired by former Chief Justice Verma, and given a month to make recommendations on changes to the much out-dated criminal law.¹⁰ Parts of the Criminal Code dated back to the nineteenth century, exempted marital rape, and described verbal sexual assault as “an insult to a women’s modesty”. The committee received over 80,000 responses from the general public, women’s groups, victims and lawyers. The report published on 23 January 2013 made some major recommendations on laws relating to rape, sexual harassment, trafficking, child sexual abuse, domestic workers, and medical examinations of victims, as well as police, electoral and educational reforms. The latter extends down to sexual education in schools. While not all of the recommendations were seen as going far enough and have neither so far been acted on by the government, the report was called “insightful and ground-breaking”. It was hoped that it would have far-reaching repercussions in changing the debate and attitudes towards violence against women in India.¹¹ This had not stopped the continuing sexual violence against women and girls in cities or in rural areas in India, but they appear to receive far greater attention in the media than in the recent past.

As has been noted, and underlined by Michael Platzer in his chapter, the movement, which resulted in the development of the *World Charter on the Right to the City* was itself initiated by grassroots organizations, not by governments (Brown and Kristiansen 2009). In the case of the women’s safety movement, therefore, it would seem that women’s groups have often been the catalysts for change in persuading local governments to establish committees and forums, and engage in multi-sector partnerships with civil society and non-government organizations to promote women’s safety.

There comes a point, as Michael Platzer’s chapter well underlines, when the actions of national and regional governments take on a momentum which results in changes to international norms and standards. This was also evident in the study by Htun and Weldon (2012). They found that when international agreements and declarations begin to incorporate policy changes relating to VAW, then the influence of civil society groups declined relatively. Once there is movement at the government and international level, they argue, the catalytic role of civil society groups becomes less evident.

¹⁰ *Report of the Committee on Amendments to Criminal Law*, Justice J.S. Verma, Justice Leila Seth and Gopal Subramaniam January 23 2013.

¹¹ Kalpana Kannabiran “A moment of triumph for women”, *The Hindu*, January 25, 2013; Brinda Karat “Insightful and path-breaking”, *The Hindu*, January 28, 2013, <http://www.thehindu.com>.

10 Conclusion: Policy Travels, International Norms and Doha and Beyond

The transfer or replication of crime prevention policy from one setting to another is always a complex process (Crawford 2009). Especially when policies travel across borders, there is a need for adaptation to specific country, city and neighbourhood situations. Many attempts to transplant prevention programmes to other settings have not been successful because of major social, cultural or economic differences, or political histories. Nor is policy change necessarily always a progressive process. Policies can be influenced by changes in government, where new incumbents choose new priorities, or seek to dissociate themselves with the initiatives of predecessor governments. Yet what has been interesting about the women's safety and the safe city movement, has been that many of the action research projects, while small in themselves in terms of their geographic coverage, or time-limited, have by nature been flexible and adaptable. They have provided tools enabling women's groups with relatively few resources to develop their expertise and successfully engage with urban governments.

Many cities in developing and developed countries have accepted that specifically promoting their cities as safe places for women and girls *is* part of their responsibility, and have invested in safety initiatives and continued to sustain them. As suggested at the beginning of this chapter, there are very strong cultural links between private and public violence against women, and this represents an important step towards eliminating such violence in urban life. At the international level, norms and standards focus more explicitly on the safety of women and girls than in the recent past. Yet there is no room for complacency, violence against women in public and in private spaces, still occurs on a daily basis, and it is evident that the role of civil society organizations is not over.

Development, globalization, and migration are all major factors which will continue to affect the lives of women and girls and men and boys in cities in quite different ways, and require the tailoring of policies, services and prevention programmes appropriately. As with many other issues, continuing improvements in data collection and in the monitoring and evaluation of those policy and programmes are essential for assessing their impacts, as are public awareness and increasing gender-mainstreaming and budgeting at the city level.

For UNODC, security and justice are fundamental components for the UN Post-2015 Sustainable Development Goals (UNODC 2013). The 1995 and 2002 ECOSOC guidelines on the prevention of crime and of urban crime both underline the role of local governments—and the responsibility of national governments to facilitate and support action at the local level. A report on 100 promising practices on safer cities released in 2014 marks some of the progress made in recent years (ICPC, EFUS and UN HABITAT 2014). Currently, proposed new UN guidelines on Safer Cities are being developed by UN HABITAT in consultation with UNODC and other entities and organizations. The aim is to develop international norms which complement the existing guidelines on crime prevention, with more

detailed guidance on how cities can implant stronger policies and programmes to promote safety, including for women and girls, and boys and men.

The Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (Doha, Qatar, 12–19 April 2015) reinforces many of these trends. It has emphasized “the importance of promoting peaceful, corruption-free and inclusive societies for sustainable development, with a focus on a people-centred approach. . .” (A/CONF.222/L.6; UN 2015, para. 4). It commits to “mainstream a gender perspective into our criminal justice systems by developing and implementing national strategies and plans to promote the full protection of women and girls from all acts of violence, including gender-related killing of women and girls. . .” and in support of international obligations relating to the elimination of VAW (para. 5(f)). The Declaration also underlines its commitment “to consultative and participatory processes in crime prevention and criminal justice in order to engage all members of society, including those at risk of crime and victimization, to make our prevention efforts more effective and to galvanize public trust and confidence. . .” (para. 10).

Box 1 Defining Violence against Women, Intimate Partner Violence & Women’s Safety

Article I of the “[Declaration on the Elimination of Violence Against Women](#)” defines VAW as follows:

‘Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’ (UNGA 1993).

Many terms have been used to describe VAW occurring in intimate relationships, including intimate personal violence, family violence, spousal violence, and most commonly, domestic violence. Domestic violence is still the preferred term in some countries, although the distinction between domestic and family violence, which includes victims of all ages and relationships to the perpetrator (i.e. partners, children, other family members and domestic workers) is not always clear. More recently, intimate personal violence, or IPV, has become the preferred term internationally. It refers to any behaviour that causes physical, psychological or sexual harm expressly within an intimate relationship (WHO and PAHO 2012). It may involve current or former spouses, partners or dating relationships. While the majority of IPV is perpetrated by men against women, it also includes violence by women against men and between same-sex partners.

Violence against women in public—non-intimate settings—includes verbal, physical and emotional harassment, flashing, stalking, sexual assault and

(continued)

Box 1 (continued)

rape. It is sometimes referred to as sexual violence. The concept of women's safety has been defined as involving 'strategies, practices and policies with the goal of reducing gender-based violence and women's fear or insecurity of violence'. It acknowledges that there is a continuum between private and public violence which requires us to work on both.

Sources: UNGA (1993), WHO & PAHO (2012) and Shaw et al. (2013).

Five Questions

1. In what ways do the daily lives of girls and women in urban settings differ from those of boys and men.
2. In what ways is violence against women by intimate partners in private, linked to violence against women in public spaces?
3. Why is it important that women and girls should have a voice in local government decision-making, such as the design and planning of urban environments and transport?
4. How have women's community-based organizations helped to shape national and international norms about safer cities for women and girls?
5. Why are men and boys important components in preventing violence against women and the creation of safe cities for all?

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Juvenile Justice and Human Rights: European Perspectives

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Abstract International human rights standards and in particular the Convention of the Rights of the Child (CRC) have had a major impact on juvenile justice reforms in Europe during the last 25 years. The general orientation towards the ideal of education has been further developed in Europe. The development of human rights standards has played a major role in this context. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) of 1985 and the more binding CRC of 1989 have been mark-stones in the juvenile justice human rights movement. In Europe, the Council of Europe’s Recommendations of 2003 and 2008 have kept the general orientation towards diversion, minimum intervention, education, restorative justice and other constructive measures, even for more serious young offenders. After a period of strengthening the punitive approach in some European countries such as England/Wales (UK) and France (as in the US), a revitalization of the traditional perspectives of education and rehabilitation of offenders can be observed. Most European countries have experienced a reduction in juvenile delinquency as well as in youth imprisonment rates. Juvenile crime policy furthermore tends to expand the scope of juvenile justice to the age group of young adults (18–21 year olds) and even beyond as the new Dutch Juvenile Justice Act of 2014 demonstrates (up to 23 years). Furthermore the children’s rights movement has increasingly led to a full integration of legal guarantees in juvenile justice proceedings in order to prevent disadvantages for minor offenders.

The present chapter is an extended and updated version of the chapter in the 2013 edited book on *European Penology* (see Dünkel 2013), and inspired by the discussion on “new punitiveness” (Pratt et al. 2005) and so-called neo-liberal orientations which can be observed in some European and in particular Anglo-Saxon jurisdictions (see amongst others Tonry 2004) in contrary to Scandinavian countries that are characterized under the label of “penal exceptionalism”, see Pratt 2008a, b and Lappi-Seppälä 2007. The present chapter will show that not only Scandinavian countries, but a lot of others, and in particular juvenile justice systems succeeded in ‘resisting punitiveness in Europe’ (Snacken and Dumortier 2012). A further extension of earlier papers are the reflections on human rights standards as pointed out under Sect. 2, see for this Dünkel 2009.

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1 Introduction

In the last 25 years, youth justice¹ systems in Europe have undergone considerable changes, particularly in the former socialist countries of Central and Eastern Europe. However, differing and sometimes contradictory youth justice policies have also emerged in Western Europe. So-called neo-liberal² tendencies can be seen particularly in *England and Wales*, and also in *France* and the *Netherlands* (Cavadino and Dignan 2006, p. 215ff, 2007, p. 284ff; Goldson 2002, p. 392ff; Tonry 2004; Muncie and Goldson 2006; Bailleau and Cartuyvels 2007; Muncie 2008; Cimamonti et al. 2010). In other countries, such as *Germany* and *Switzerland*, a moderate system of minimum intervention with priority given to diversion and educational measures has been retained (Dünkel et al. 2011). In many countries, elements of restorative justice have been implemented (see in summary Dünkel et al. 2015a, b).

This chapter evaluates youth justice policies and practice in Europe from a comparative perspective.³ The focus is on tendencies in youth justice legislation and on the sentencing practice of prosecutors and judges in youth courts. Attention is also paid to the traditional “welfare” and “justice” models of youth justice and how they have become intertwined in modern European practice. The claim that a “new punitiveness” is the prevailing strategy is questioned and attention is drawn to the practice of many youth justice systems, which seem to be fairly resistant to neo-liberal policies. Snacken (2012, p. 247ff) has recently sought to explain why continental European countries in general have succeeded in resisting “penal populism”. In the conclusion this reasoning is applied to youth justice systems in particular.⁴

¹ A note on terminology: I have used the terms, youth and youth justice as well as juvenile justice in this contribution in the same sense. The term juvenile justice is in use in a number of international, European and national instruments, where it usually refers to persons under the age of 18 years. However, the Convention on the Rights of the Child uses the term, “child” to refer to anyone under the age of 18 years. I have not followed this usage of ‘child’, as it is not always appropriate in this context. Finally, I use the term, young adults, to refer to persons at the age of 18 until 21 who are treated as youths or juveniles as it is proposed by the European Rules for Juvenile Offenders Subject to Sanctions or Measures (Rec. (2008) 11), see Rule Nr. 17.

² The meaning of the term “neo-liberal”, which derives from the concept of Garland’s ‘culture of control’ contains different concepts and aspects that cannot be simply characterized by more repressive sanctions or sentencing: see Crawford and Lewis 2007: 30 ff. These include the criminalization of anti-social behaviour (ASBO’s), increased use of youth custody, managerialism and the reduction of risk by social exclusion rather than by integrating vulnerable offender groups through specific programmes.

³ The comparison is based largely on a survey of 34 countries conducted by the Criminology Department at the University of Greifswald: Dünkel et al. 2011. The project was funded by the European Union (AGIS-programme) and by the Ministry of Education of the Federal State of Mecklenburg-Western Pomerania in Germany.

⁴ See also Snacken 2010 and the contributions in Snacken and Dumortier 2012.

2 International Human Rights Standards Concerning Juvenile Offenders

2.1 *The Role of the UN: Standard Minimum Rules for the Administration of Juvenile Justice (Beijing-Rules) of 1985 and the Convention of the Rights of the Child of 1989*

One of the first mark-stones in developing human rights standards concerning juvenile offenders were the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“*The Beijing Rules*”), which were adopted by the General Assembly as Resolution No. 40/33 of 29 November 1985 ([A/RES 40/33](#), Annex). The major aim was to encourage the establishment of a separate juvenile justice system and juvenile courts in order “to further the well-being of the juvenile and her or his family” (see Fundamental Principle No. 1.1 and Rule No. 5). Rule No. 5 further specifies the aims of juvenile justice systems that shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence (see also Rule 17.1 lit. a). Since then the principle of proportionality has become an essential part of juvenile justice legislation by also furthering the principles of diversion and minimum intervention and of education instead of punishment as expressed in Rules No. 11 (diversion) and 17 of the Beijing Rules and in the following years in the European recommendations described under Sect. 2.2. Of particular importance is Rule No. 17.1 lit. c which restricts juvenile imprisonment and deprivation of liberty in general to cases where juveniles are adjudicated of “a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response”.

Rule No. 17.1 lit. b further states that “restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.” All following international standards emphasize that the deprivation of liberty shall not only be a measure of last resort, but also be as short as possible in order to avoid long-term imprisonment as it is practised in many countries in particular for adult offenders.

The priority for alternative (community) sanctions is expressed by Rule No. 18.1, which requires the member states to provide for a large variety of disposition measures that “shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible.” As examples for community sanctions or measures are enumerated care, guidance and supervision orders, probation, community service orders, financial penalties, compensation and restitution, intermediate treatment and other treatment orders, orders to participate in group counselling and similar activities, and orders concerning foster care, living communities or other educational settings see Rule 18.1 lit. a-g).

Countries such as the USA and some Asian or Arabic countries for a long-time had difficulties to accept Rule No. 17.2, which stipulates that “capital punishment shall not be imposed for any crime committed by juveniles.” It was only in the year 2005 that the US-Supreme Court outlawed capital punishment for juvenile offenders in its decision *Roper v. Simmons* (No. 03-0633 of 1 March 2005).

The *Convention of the Rights of the Child* (CRC, 1577 UNTS 3) of 1989 is an even more powerful instrument of human rights standards as the countries that ratified this convention have a binding obligation to follow it. Only Somalia, South Sudan and the USA so far have not ratified the CRC yet. The CRC goes far beyond dealing with juvenile offending, most regulations concern general children’s rights issues (see in detail Belser et al. 2009). In the context of the present chapter Art. 37 and 40 are of major importance.

Art. 37 deals with the prevention of torture and other cruel, inhuman or degrading treatment and arbitrary deprivation of liberty (Art. 37a and b CRC). Art. 37b further stipulates that deprivation of liberty must be “a measure of last resort and for the shortest appropriate period of time”. Furthermore the preservation of the child’s human dignity and respect for the needs of the child (‘best interests’) shall be observed, see Art. 37c. Art. 37d requires prompt access to legal and other appropriate assistance particularly to children deprived of their liberty.

Art. 40 CRC contains specific aspects of due process standards such as *nulla poena sine lege*, the presumption of innocence, the right to a defence council or other appropriate assistance, to bring the case to an appeal court, to have access to an interpreter etc. According to Art. 40.3 the States Parties are encouraged to promote the establishment of laws, procedures, authorities and institutions specifically applicable to juvenile offenders and in particular to define by law the minimum age of criminal responsibility. Under lit. b diversion is mentioned as a priority measure “whenever appropriate and desirable”. Similar to Rule 18.1 of the Beijing Rules Art. 40.4 of the CRC requires a “variety of dispositions” and “alternatives to institutional care”, emphasizing the principles of proportionality of well-being of the juvenile offender.

As can be shown, these principles of the CRC and the Beijing Rules had a major impact on the development of juvenile justice in Europe. Many of these rules and standards have been taken over and further developed by the Council of Europe (see Sects. 2.2 and 2.3) and often also by national legislation.

2.2 The Recommendation on “New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice”

The Recommendation of the Council of Europe on “*New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice*” (see Council of Europe 2003 and the texts of Council of Europe Recommendations under www.coe.int) of the year 2003 pursues the following paramount goals:

1. The prevention of offending and re-offending,
2. the rehabilitation and reintegration of offenders, and
3. regard for the needs and interests of victims of crime.

The strategic approach incorporates the following perspectives:

The juvenile justice system has to be treated as a component of a wider community-based strategy for the prevention of juvenile delinquency that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs (No. 2 of the Recommendation). Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending where possible (No. 3). There is a need for the development of more suitable and effective measures of prevention and reintegration that are tailored to young migrants, groups of juveniles, young girls, and children and young people under the age of criminal responsibility (No. 4).

Sanctions should—as far as possible—be based on scientific results of what works, with whom and under which circumstances (No. 5).

The consequences for ethnic minorities require particular policy attention. Therefore, the persons in charge are to be obliged to compile so called *impact statements* (No. 6).

The Recommendation proposes the following ‘new responses’:

The expansion of the range of suitable alternatives to formal prosecution should continue. The principle of proportionality is to be upheld, and the voluntariness of the offender must be regarded (No. 7). Regarding serious, violent and persistent juvenile crime, (proportional) community sanctions should be further developed (this can also imply the inclusion of the parents into the criminal responsibility of their children, so long as this is not counter-productive), especially such measures that incorporate elements of reparation and restoration to the victim (Nos. 8, 10).

The recommendation to expand community sanctions in cases of serious crime is remarkable in that emphasis is usually placed on the necessity of imprisonment in this context. However, experiences with suspended sentences as well as with community education-/treatment programmes within the framework of the probation or youth welfare services have shown that positive results can be achieved with repeat and/or violent offenders or groups of offenders. Insofar, juveniles who were viewed as the traditional clientele of the juvenile prison system 20 or 30 years ago can now be successfully supervised in the community.

With regard to the extended phases of (school and vocational) education and transition into adulthood, the sanctions of juvenile criminal law should be applicable to young adults according to their degree of maturity and development (No. 11). This matches the stated positive experiences that have been made in Germany, and mirrors contemporary legal reform in, for example, Lithuania, Spain and Austria (see above).

Incidentally, the recommendations repeatedly emphasise the need for “risk assessment, evidence based interventions and empirical evaluation”. Although aspects of neo-correctionalist” thinking (for example regarding parental liability) can also be observed, the Recommendation Rec (2003) 20 remains adherent to the

tradition of a moderate justice system that prioritizes education (key term: “minimum intervention”) and that emphasises community based interventions also in cases of more serious offending. This should serve as a mental note for counter-reforms in a more repressive direction.

The implementation of the 2003 Recommendation is to be executed in close collaboration with the local prevention and intervention agencies and should take quality standards into account. Continuous “*monitoring*” and the *dissemination* of good practices also belong to the recommended strategies.

It remains to be seen to what extent the Recommendation shall influence the reforms in Europe, especially in the central and eastern European countries. Unfortunately, one can assume that there shall be problems with the funding of scientific evaluations. The importance of evidence based criminal justice policy can, however, not be valued highly enough.

2.3 The European Rules for Juvenile Offenders Subject to Sanctions and Measures of 2008

In January 2006 the Committee of Ministers of the Council of Europe adopted the new *European Prison Rules* (EPR). At the same time the *Committee on Crime Problems* (CDPC) set up a further expert group which was to draft European Rules for juveniles under community sanctions and measures and deprived of their liberty. The terms of reference explicitly referred to community sanctions and sanctions with deprivation of liberty and thus went beyond the scope of the EPR. But also with regards to deprivation of liberty the new Rules are more comprehensive than the EPR as they cover all forms of deprivation of liberty such as pre-trial detention, detention in (closed) welfare institutions, youth imprisonment and psychiatric juvenile facilities (see for the text and a commentary Council of Europe 2009).

The Rules have been drafted until April 2008, and the CDPC in first session from June 2008 has accepted them (with minor changes), and on 5 November 2008 the Committee of Ministers of the Council of Europe has passed the Rec. CM/Rec (2008) 11 on “*European Rules for Juveniles Subject to Sanctions and Measures*”.

The Rules are structured in eight Parts. In the same way as the EPR they start with “Basic Principles” which concern the imposition and execution of community sanctions and all forms of deprivation of liberty. Rules on the scope of application and definitions also belong to Part I. The most important issue in that respect is that the scope of application is extended to young adults of 18–21 years of age (as far as national law provides the application of juvenile law or sanctions or special rules for the execution of sanctions or measures for this age group). The second Part deals with community sanctions and measures, while Part III covers issues regarding the deprivation of liberty. Part IV concerns “legal advice and assistance” and Part V is dedicated to “complaints procedures, inspection and monitoring”. Questions related

to staffing are dealt with in Part VI, those related to evaluation and research as well as to work with the media and the public are contained in Part VII. The closing Rule 142 requires the Rules to be regularly updated.

The preamble formulates the following general directive: *“The aim of the present Rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions and measures or any form of deprivation of liberty. Nothing in these Rules ought to be interpreted as precluding the application of other relevant international human rights instruments and standards that are more conducive to ensuring the rights, care and protection of juveniles. In particular, the provisions of Recommendation Rec(2006)2 on the European Prison Rules and of Recommendation R (92) 16 on the European Rules on Community Sanctions and Measures shall be applied to the benefit of juvenile offenders in as far as they are not in conflict with these Rules.”*

This statement makes it clear that the present Rules do not go beyond the guarantees formulated in earlier Recommendations and Rules concerning the human rights of offenders. This must be interpreted as a formal prohibition of any discrimination or restriction of rights and legal guarantees for juveniles, for example with regard to educational needs. Basic Principle 13 requires in the same way: *“Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.”*

The 20 “Basic Principles” are as follows (see Council of Europe 2009: 7f):

1. *Juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights.*
2. *The sanctions or measures that may be imposed on juveniles as well as the manner of their implementation shall be specified by law and based on the principles of social integration and education and on the prevention of re-offending.*
3. *Sanctions and measures shall be imposed by a court or, if imposed by another legally recognised authority, they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.*
4. *The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.*
5. *The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.*
6. *In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.*

7. *Sanctions or measures shall not humiliate or degrade the juveniles subject to them.*
8. *Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.*
9. *Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).*
10. *Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.*
11. *Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).*
12. *Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.*
13. *Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.*
14. *Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where it is appropriate to do so.*
15. *Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure an holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).*
16. *The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.*
17. *Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.*
18. *All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.*

19. *Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.*
20. *The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.*

The following comments are largely based on the commentary to the Rules which have been drafted by the experts of the Council of Europe since 2007 (see Dünkler 2008, 2011a, b).

Rule 1 corresponds to Rule 1 of the EPR. As stated in the Preamble, the European Rules on Community Sanctions and Measures of 1992 are of particular relevance as well. Human rights issues arise not only when deprivation of liberty is used, but also when community sanctions and measures are applied. Both full-scale deprivation of liberty and lesser restrictions of liberty can be intrusive and may violate human rights if the principle of proportionality contained in Rule 5 is not applied. It is a basic standard of all international instruments that the human rights of juveniles have to be protected in the same way as it is the case for adults. The United Nations Convention on the Rights of the Child as well as the recommendations of the Council of Europe in the field of juvenile justice emphasise this issue. It should be noted that Rule 1 refers to protecting not only human dignity, but all human rights of juvenile offenders both deprived of their liberty or under community sanctions and measures. It should be clear that, in addition, other international instruments such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 14 December 1990 (the so-called Havana Rules) have also played an important part in the development of these Rules.

Rule 2 refers to the fact that all juvenile justice and welfare systems are based on the principles of social integration and education with regards to imposing and executing community sanctions and measures and sanctions of deprivation of liberty. This leaves much less space, and in some countries no space at all, for the principle of general deterrence or other (more punitive) aims that are a feature of the criminal justice system for adults.

In the field of juvenile justice it is recognised that the personalities of juveniles are still developing and open to positive influences. Emphasis must be placed on the possibility of re-integrating young persons. This may be achieved in some cases only by intensive educational or therapeutic efforts. The rule on social integration would therefore not allow long-term security measures or life sentences that aim solely at protecting society from juvenile offenders and do not give them the prospect of release within a reasonable period. (See in this respect the case law of the European Court of Human Rights: *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999; *V. v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IXT).

The emphasis that is placed on the major aim of education for the prevention of re-offending is important. In most international instruments education is not clearly defined. This is problematic as the term “education” may be misused as can be seen by repressive forms of authoritarian education, for example military style detention

regimes that do not correspond to the European concept of human rights and dignity. On the one hand, the aim of preventing re-offending is modest, for it does not seek to achieve more than law-abiding integration into society. On the other hand, it is ambitious, for it is connected to the term social integration and therefore aims at promoting the juveniles' personal and wider social development, and their taking responsibility for their behaviour. Education therefore should be understood as including measures such as enhancing their communication skills or requiring them to make reparations, for instance writing appropriate letters of apology. Equally, society has to enable these changes to take place. It is important that the opportunities for learning and the interventions chosen to achieve these goals should be evidence-based and should contribute to the development and differentiation of the capacities of perception, interpretation, decision-making and responsible action.

The restriction of the power to impose sanctions and measures to a court or to another legally recognised authority—as stipulated in *Rule 3*—enshrines the principle of legality. Prompt judicial review where the imposition is decided by another authority is a further guarantee in this regard. Detention only for a legitimate purpose follows the requirements set by the European Court of Human Rights in its interpretation of Article 5 of the ECHR. It further relates to *Rule 2*, which emphasizes the primary goals of any sanction or measure imposed on juvenile offenders.

It is important that all sanctions and measures imposed on juveniles be of determinate duration because of the need for legal certainty and realistic prospects for reintegration into society. Where the sanctions or measures are open-ended this can be achieved by making them subject to regular review. The principle of proportionality applies both to the imposition and to the implementation of sanctions and measures. This principle should be applied at every stage of the procedure, so that juveniles are not subject to unnecessary restrictions.

The principle of minimum intervention in *Rule 3* refers to the sentencing stage. Sanctions and measures should be imposed “*for the minimum necessary period*”. *Rule 9* contains the same idea but for the level of the execution of sanctions and measures, and *Rule 10* emphasises this idea with regards to deprivation of liberty (see below).

Rule 4 stipulates that the law should set a minimum age for any type of intervention resulting from an offence. This includes the determination of the age of criminal responsibility as well as the age from which more punitive penal measures can be taken. It follows directly from the universally recognised principle of legality: the condition for any criminal liability is that the criminalized behaviour and the possible offender must be described by law. The principle of legality applies in the same way to other types of intervention.

The age of criminal responsibility has to correspond to “an internationally acceptable age” (see *United Nations, Committee of the Rights of the Child, General Comment No. 10 (2007), para. 32 (CRC/C/GC/10)*). Although it might be difficult to find a general European consensus, such a minimum age should not be too low and should be related to the age at which juveniles assume civil responsibilities in other

spheres such as marriage, end of compulsory schooling and employment. The majority of countries have fixed the minimum age between 14 and 15 years and this standard should be followed in Europe. Criminal responsibility for juveniles of less than 12 years exists only in a few countries such as England and Wales (UK) and Switzerland (see Table 1).

In any case, very young offenders who are formally criminally liable should not be admitted to juvenile penitentiary institutions. In some countries the age for admission to such institutions is 15 (as in Switzerland) or 16, whereas the general age of criminal responsibility might be lower, usually between 12 and 14 years.

Rule 5 provides that all sanctions and measures must be subject to what is in the best interests of the juvenile, and this needs to be established in every individual case. This implies regular assessments by social workers, psychologists, psychiatrists or other professionals. On the other hand, the best interests of the juvenile should not be an excuse for excessive or disproportionate interventions. Measures that promote social integration are generally in the best interests of the juvenile.

This Rule contains two further interrelated principles. The principle of individualization is inherent in traditional juvenile justice. When a sanction or a measure is imposed, the age, physical and mental well-being, development, capacities and personal circumstances of the offender shall be taken into consideration. Information about these individual circumstances of the juvenile will usually be obtained from psychological, psychiatric or social inquiry reports and therefore a multi-agency approach as indicated in Rule 15 is necessary. The principle of proportionality serves as a corrective to avoid extended educational sanctions or measures that cannot be justified in terms of the gravity of the offence. The principle of individualisation should, therefore *not* be used to justify interventions that are disproportionately severe with respect to the offence.

Rule 6 stipulates that in the implementation of sanctions and measures a certain degree of discretion must be given to the implementing authorities in order to meet the individual circumstances of each case. This should, however, not lead to serious inequality of treatment. There should be careful documentation of the sentencing practice as well as of the implementation of sanctions and measures. In order to avoid discrimination particular attention must be paid to identifying local, cultural, ethnic and other differences and determining whether a different treatment would be justified in order to achieve the same results of social reintegration, education and prevention of re-offending.

Rule 7 prohibits any violation of human dignity. Overcrowding in institutions and harsh, military-type regimes, solitary confinement, depriving juveniles of social contacts are examples of what should be avoided. Equally, some forms of community work can also stigmatise juvenile offenders and would not be consistent with this rule (special uniforms which identify them as offenders, etc.).

Rule 8 corresponds to Rule 102.2 of the EPR. There should be no forms of implementation of sanctions or measures that aggravate their afflictive character, for example by hard and degrading work either in prisons or as a form of community service. Therefore, different regimes in juvenile penitentiary institutions which are (for punitive reasons) related to the gravity of the offence are not allowed.

Table 1 Comparison of the age of criminal responsibility and age ranges for youth imprisonment

Country	Minimum age for educational measures of the family/youth court (juvenile welfare law)	Age of criminal responsibility (juvenile criminal law)	Full criminal responsibility (adult criminal law can/must be applied; juvenile law or sanctions of the juvenile law can be applied)	Age range for youth imprisonment/custody or similar forms of deprivation of liberty
Austria		14	18/21	14–27
Belgium		18	16 ^a /18	Only welfare institutions
Belarus		14 ^b /16	14/16	14–21
Bulgaria		14	18	14–21
Croatia		14/16 ^c	18/21	14–21
Cyprus		14	16/18/21	14–21
Czech Republic		15	18/18 + (mitigated sentences)	15–19
Denmark ^d		15	15/18/21	15–23
England/Wales		10/12/15 ^e	18	10/15–21
Estonia		14	18	14–21
Finland ^d		15	15/18	15–21
France	10	13	18	13–18 + 6 m./23
Germany		14	18/21	14–24
Greece	8	15	18/21	15–21/25
Hungary		12 ^b /14	18	14–24
Ireland		10/12/16 ^e	18	10/12/16–18/21
Italy		14	18/21	14–21
Kosovo		14	18/21	16–23
Latvia		14	18	14–21
Lithuania		14 ^b /16	18/21	14–21
Macedonia		14 ^b /16	14/16	14–21
Moldova		14 ^b /16	14/16	14–21
Montenegro		14/16 ^e	18/21	16–23

Netherlands		12	16/23	15–24
Northern Ireland		10	17/18/21	10–16/17–21
Norway ^d		15	18	15–21
Poland	13		15/17/18	13–18/15–21
Portugal	12		16/21	12/16–21
Romania		14/16	18/(20)	14–21
Russia		14 ^b /16	18/21	14–21
Scotland	8 ^e	12 ^e /16	16/21	16–21
Serbia		14/16 ^e	18/21	14–23
Slovakia		14/15	18/21	14–18
Slovenia		14/16 ^e	18/21	14–23
Spain		14	18	14–21
Sweden ^d		15	15/18/21	15–21 ^f
Switzerland		10/15 ^c	18 ^g	10/15–22
Turkey		12	15/18	12–18/21
Ukraine		14 ^b /16	18	14–22

^aOnly for traffic offences and exceptionally for very serious offences

^bOnly for serious offences

^cCriminal responsibility resulting in juvenile detention (youth imprisonment or similar custodial sanctions under the regime of the Ministry of Justice)

^dOnly mitigation of sentencing without separate youth justice legislation

^eThe age of criminal prosecution is 12, but for children from 8 up to the age of 16 the children's hearings system applies, thus preventing more formal criminal procedures

^fYouth custody. There are also special departments for young offenders in the general prison system (for young adults until about 25 years of age)

^gArticle 61 of the Swiss Criminal Code for adults provides for a special form of detention, a prison sentence for 18–25 years old young adult offenders who are placed in separate institutions for young adults, where they can stay there until they reach the age of 30

Overcrowding is one of the well-known circumstances that can endanger the well-being and physical or mental integrity of detained juveniles. An undue risk of physical or mental harm can be caused by exposing detained juveniles to other detainees who are dangerous or violent. Conditions of detention that are not sufficiently stimulating and social or sensory deprivation of any kind are prohibited by Rule 8. As far as community sanctions are concerned, special emphasis should be given to avoiding stigmatizing or humiliating conditions (see also Rule 7 above).

Rule 9 refers to the principle of the speedy implementation of sanctions and measures. Undue delay is undesirable also because it undermines the effectiveness of the interventions. Rule 9 relates to Rule 5 and limits community sanctions or measures as well as deprivation of liberty to the minimum necessary. Therefore, review schemes must be provided by law that can shorten the execution of a sentence where continued enforcement does not seem to be necessary for the social integration of the juvenile offender. All countries have introduced early release schemes concerning imprisonment. Community sanctions and measures can also be adjusted in order to lessen their negative impact, or their duration may be reduced. The principle of minimum intervention also better protects human rights and preserves social ties while not increasing the risks posed to society.

Rule 10 reflects No. 37 of the UN Convention on the Rights of the Child, Rule 17 of the Beijing Rules and the Council of Europe's Recommendation N° R (87) 20 concerning "Social Reactions to Juvenile Delinquency" as well as Recommendation Rec (2003) 20 on "New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice". It follows from Rule 9 on minimum intervention and emphasizes that deprivation of liberty should only be a measure of last resort: normally other, less intrusive sanctions should have been tried first. The Beijing Rules give examples of what is meant by the provision that deprivation of liberty shall be limited to "exceptional cases": Deprivation of liberty shall be restricted to older juveniles involved in violent or persistent serious offending. Many national legislations have responded to this idea by raising the age for being sentenced to youth custody or youth imprisonment to a minimum of 15 or 16 years, whereas the general age of criminal responsibility might be lower (see Table 1 and the commentary to Rule 4 above).

Furthermore, deprivation of liberty is also to be restricted to the minimum necessary period. This is important as it prevents detention from being unnecessarily prolonged, for instance in order to complete educational and treatment programmes or other forms of interventions. Instead, there should be provisions so that juvenile offenders who have been released early can complete such programmes outside of the institution. Even where the initial deprivation of liberty is also linked to other goals, for instance retribution, it must be clear that preparing the juvenile for re-integration into society becomes increasingly important as the implementation of the sanction progresses ("progressive principle"). The final decision remains with the judicial authority that has the legal power to order the deprivation of liberty.

The problem of pre-trial detention is already extensively addressed by Rules 16–18 of the Recommendation Rec (2003) 20. It reflects the empirical evidence that

pre-trial detention is used extensively in many countries, for longer than justified and for purposes that are not provided by law; for example, as a form of crisis intervention or for reducing public concern. Therefore, Rule 16 of Rec (2003) 20 states: "When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial." In addition, Rule 17 of the above Recommendation clearly outlines that "where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures." The present Rules incorporate these restrictions on pre-trial detention by requiring that "special efforts must be undertaken to avoid pre-trial detention."

The principle of non-discrimination laid out in *Rule 11* is a basic principle in all human rights instruments of the Council of Europe and the United Nations (see, for example, Art 14 of the ECHR and Rule 13 of the EPR). It does not mean that formal equality should be the ideal if it would result in substantive inequality. Protection of vulnerable groups is not discrimination, nor is treatment that is tailored to the special needs of individual juvenile offenders. Therefore, this principle is not infringed by special positive measures aimed at addressing juvenile offenders or groups of juvenile offenders with specific needs.

Rule 12 emphasises mediation and other restorative justice measures that have become important forms of intervention in juvenile welfare and justice systems. In many countries recent national legislation gives priority to mediation and restorative justice as methods of diversion from formal proceedings at various stages in the juvenile justice process. These strategies should be considered at all stages of dealing with juveniles and be given priority because of their special preventive advantages for the juvenile offenders as well as for the victims and the community.

Rule 13 includes the right to be informed, to have access to legal remedies, to legal assistance, complaints procedures and other procedural rights and safeguards (see also Rule 15, Recommendation Rec (2003) 20). The principle of effective participation in this case refers to the stage of imposition as well as of execution of sanctions and measures. Independently of which specific model of criminal investigation and procedure is followed, the juveniles and their parents or legal guardians must be informed about the offence or offences the juveniles are alleged to have committed and the evidence against them. The juveniles have the right to legal defence counsel also in purely welfare proceedings. In cases where deprivation of liberty is possible, a legal defence counsel must be allocated to the juveniles from the outset of the procedure. The Rule makes it clear that there is no justification for giving juveniles lesser rights than adults. Therefore regulations that restrict the right to appeal or complaints procedures with arguments of education cannot be justified. Other examples refer to issues of data protection: The more comprehensive social inquiry reports and case records within the juvenile justice and welfare system should not be transferred to criminal records that could possibly disadvantage juvenile offenders in their later adult life. Juvenile criminal records should include

only serious sanctions and interventions in order to prevent stigmatisation as far as possible.

Rule 14 emphasizes the rights and responsibilities of parents and legal guardians to participate at all stages of investigations and proceedings. This is already inherent in the general principle of effective participation. However, it is important to stress the parents' or legal guardians' individual rights of participation. Nevertheless, these rights can be restricted if parents or guardians act against the best interests of the juvenile. The need for such restrictions should be assessed by psychologists or other professional staff of the juvenile welfare authorities and formally decided by the judicial authorities. While the participation of parents or legal guardians of juveniles is generally mandatory, this is not the case for young adults who have reached the age of civil majority. Nevertheless, their participation may still be desirable, especially if the young adults still live with them. Even if the juveniles' parents and guardians live abroad, attempts should be made to contact them. Where these parents and guardians cannot participate, their place should be taken where appropriate by an appointed representative. Restrictions may also be imposed where required by ongoing criminal investigations, but only for the period for which it is strictly necessary.

Proceedings against juveniles and the execution of resulting sanctions and measures take place in a wider context in which family members and the wider community may have a role to play where this is applicable and can have a positive impact on the juvenile and society. One example of such community involvement is the execution of a community sanction or measure where the local community is by definition involved. Reintegration after deprivation of liberty also necessarily supposes acceptance by and interaction with the local community. This too is subject to the principle that such involvement must be in the best interests of the juvenile. The corollary of *Rule 14* is that juveniles have a right to have contact with the members of their family.

The characteristics of juveniles require a specific multi-disciplinary and multi-agency approach. This is emphasised by *Rule 15*. The key disciplines to be included are psychology, social work and education. The multi-agency approach is a normal form of co-operation between youth welfare and justice agencies in many countries. Social workers, the police, school and vocational training authorities, prosecutors and juvenile judges as well as lay organisations of juvenile welfare should work closely together in order to act in the best interests of the juvenile. The multi-agency approach should involve as fully as possible agencies and organisations outside the justice system, for they may be socially and environmentally closer to the juvenile. In this context the principle of through care is of major importance. The principle of "end to end" offender management where a community based social worker or probation officer maintains contact with the offender throughout the sentence is of particular value in providing continuity of care. Discharge arrangements should be planned carefully so that continuity of care is ensured. Institutions for the deprivation of liberty must work closely together with aftercare services and other relevant welfare agencies. However, data protection concerns must be borne in mind when cooperating in this way.

Rule 16 emphasises the rights to privacy and data protection. Juvenile offenders and their families have specific rights to privacy to protect them from negative stigmatisation. This recognises the need to help juveniles in their development to adulthood. Rule 16 places a duty on the state to provide the necessary protection for juvenile offenders and their families. In particular, the identity of juveniles and their families should not be communicated to anyone who is not legally authorised to be informed thereof.

Legal authorisation to receive information must be limited strictly to persons and institutions that require particular information related to a specific case. This should not lead to the public disclosure of entire lists of names of specific juvenile offenders. It follows too that only information that is necessary for this purpose should be collected in the first place.

Rule 17 deals with young adult offenders. Recommendation Rec (2003) 20 states in Rule 11 that “reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.” Similarly, Rule 3.3 of the Beijing Rules states: “Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.” Rule 17 continues in the same vein. Young adults in general are in a transitional stage of life, which can justify their being dealt with by the juvenile justice agencies and juvenile courts. Particularly in the past 15 years, many countries have taken into consideration this extended period of transition by either providing the possibility of applying educational measures to young adult offenders or at least by providing for special mitigation of their sentences (see for a summary Pruin 2007; Dünkler and Pruin 2012; Pruin and Dünkler 2014). Applying sanctions or measures provided under the juvenile criminal law does not automatically mean that young adults will receive milder sanctions than adults over the age of 21; but where appropriate, they should benefit from the variety of educational sanctions and measures that are provided for juvenile offenders. It is an evidence-based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into the social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation (see for example the special emphasis given to mediation, and family conferencing in many new juvenile justice laws).

Rule 18 corresponds to Rule 8 of the EPR and places the staff of juvenile welfare and justice agencies or institutions at the centre of caring for juvenile offenders as they need special and intensive assistance. Rule 18 is strongly related to Rule 15 emphasizing the co-operation of different agencies involved (multi-agency approach). All staff in the field of juvenile welfare and justice must be suitable for working with juveniles and be specially trained or experienced in developmental and educational matters. Regular in-service training and supervision should be provided. Positive role models are particularly important, as in many instances staff has to play the role, which is normally taken by members of the juvenile’s family.

The standards of care and accountability apply not only when staff are employed on a permanent basis but also when execution is delegated to, or commissioned from other agencies.

Rule 19 is related to *Rule 18* and is designed to clarify that juvenile welfare and justice agencies must receive the necessary funding in order to achieve the required educational and social integration goals. The different agencies must be equipped in a way that enables them to provide the appropriate standard of care to meet the distinctive needs of juveniles. This can also mean that services are allocated according to different needs and risks posed by offenders. The rule corresponds to *Rule 4* of the *EPR*. It conveys the message that lack of resources can never justify the infringement of human rights of juveniles. By imposing sanctions or measures on juvenile offenders the state intervenes at an age where normally the family is responsible for the juvenile's upbringing. If the state partially replaces the parents it must guarantee that its interventions are meaningful, positive and effective.

Rule 20 reflects the necessity of regular government inspection as well as of independent monitoring. This Rule corresponds to *Rule 9* of the *EPR*. Independent monitoring by persons or institutions that are not controlled by state agencies is an essential and important element of democratic control as it may guarantee effective supervision of the general juvenile justice system that is independent from individual complaints procedures. The Rule envisages monitoring by recognised bodies such as boards of visitors or accredited NGOs, ombudsmen and other similar agencies. An effective individual complaints procedure available to juveniles concerning the imposition and execution of sanctions and measures complements the inspection and monitoring mechanisms.

3 Contemporary Trends in Youth Justice Policy

Across Europe, policies based on the notions of subsidiarity and proportionality of state interventions against juvenile offenders have remained in force or emerged afresh in most, if not all, countries. Recently however, we have also witnessed developments that adopt a contrary approach in several European countries. These developments intensify youth justice interventions by raising maximum sentences for youth detention and by introducing additional forms of secure accommodation. Youth justice reforms in the *Netherlands* in 1995 and in some respects in *France* in 1996, 2002 and 2007 should be mentioned in this context, as should the reforms in *England and Wales* in 1994 and 1998 (Albrecht and Kilchling 2002; Cavadino and Dignan 2007, p. 284ff., 2006, p. 215ff.; Junger-Tas and Decker 2006; Bailleau and Cartuyvels 2007; Crawford and Lewis 2007; Hartjen 2008; Hazel 2008; Junger-Tas and Dünkel 2009; Dünkel et al. 2011). The causes of the more repressive or “neo-liberal” approach in some countries are manifold. It is likely that the punitive trend in the USA, with its emphasis on retribution and deterrence, was not without considerable impact in some European countries, particularly in *England and Wales*.

These developments at the national level, which are the primary focus of this chapter, have to be understood against the background of international and regional instruments that set standards for juvenile justice. Most important in this regard is the 1989 UN Convention on the Rights of the Child, a binding international treaty that all European states have ratified. It makes clear that the common and principal aim of youth justice should be to act in the ‘best interests of the child’—“child” defined for the purpose of this Convention as a person under the age of 18 years—and to provide education, support and integration into society for such children. These ideas are developed further in the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and at the European level in the recommendations of the Council of Europe, in particular the 2003 Recommendation regarding new ways of dealing with juvenile offending (Rec [2003]20) and the 2008 Rules for juvenile offenders subject to sanctions or measures (Rec [2008]11; Dünkel 2009; Dünkel et al. 2011, p. 1861ff).

In the last few years a remarkable shift towards the educational ideal of juvenile justice can be observed in countries, such as England and Wales (see Smith 2010; for a critical comment Goldson 2011), and the Netherlands, which claimed to be driven by neo-liberal ideas in the 1990s and 2000s. From outside Europe a comparable revival of traditional youth justice ideas can be observed in the US as well (see Dünkel 2014; Bishop and Feld 2012).

3.1 *Responsibilisation and Neo-Liberalism*

In *England and Wales*, and to some extent elsewhere, the concept of responsibilisation has become a pivotal category of youth justice.⁵ Responsibilisation is not just limited to young offenders, but also includes parents who are increasingly being held criminally responsible for the conduct of their children.⁶ Making parents more responsible may have a positive impact. There is empirical evidence that parental training, combined with child support at an early stage may have positive preventive effects. However, it is not necessary to criminalise parents, because parents who have neglected their parental duties will be better assisted by the welfare rather than the criminal justice system.⁷ Ideally, parental training should be offered by welfare agencies (as is the case in *Germany* and the Scandinavian countries) instead of being enforced by penal sanctions (Junger-Tas and Dünkel 2009: 225f.).

⁵ See critically, Crawford and Lewis 2007, p. 27, and Cavadino and Dignan 2006, p. 68 ff. with regards to the “managerial” and the “getting tough” approach.

⁶ See, for example, the so-called parenting order in *England and Wales* or similar measures in *Belgium, Bulgaria, France, Greece, Ireland* or *Scotland*: Pruin 2011, p. 1559ff.

⁷ Punitive sanctions for parents, such as fines or prison sentences, are counterproductive, as parents are often unable to afford to pay fines, and incarceration takes them away from their children.

A positive aspect of making young offenders take responsibility for their actions is that it has contributed to the expansion of victim-offender-reconciliation (*Täter-Opfer-Ausgleich*), mediation and reparation. In the English context, however, it is more problematic as it has been accompanied by the abolition of the previously rebuttable presumption that 10- to 14-year olds may lack criminal capacity. Although in practice the presumption had been relatively easily to rebut, its formal abolition in 1998 was indicative of determination to hold even very young offenders responsible for their actions. The tendencies in English youth justice may be regarded as symptoms of neo-liberalism, characterised by four key terms: responsibility, restitution (reparation), restorative justice and (occasionally openly publicised) retribution. These “4 Rs” have replaced the “4 Ds” (diversion, decriminalization, deinstitutionalization and due process) that shaped the debates of the 1960s and 1970s (Dünkel 2008). The retributive character of the new discourse is exemplified by the requirement that community interventions be “tough” and “credible”. For example, the “community treatment” of the 1960s was replaced by “community punishment” in the 1980s and 1990s. Cavadino and Dignan attribute these changes to the so-called “neo-correctionalist model” that has come to dominate official English penology (Cavadino and Dignan 2006: 210ff.; Bailleur and Cartuyvels 2007; Muncie 2008).

A number of authors have established that there are many reasons for the increase in neo-liberal tendencies (Garland 2001a, b; Roberts and Hough 2002; Tonry 2004; Pratt et al. 2005; Muncie 2008). These include the renewed emphasis on penal philosophies such as retribution and incapacitation, and related sentencing policies that demonise youth violence, often by means of indeterminate sentences. There are also underlying socio-economic reasons. More repressive policies have gained importance in countries that face particular problems with young migrants or members of ethnic minorities, and that have problems integrating young persons into the labour market, particularly where a growing number of them live in segregated and declining city areas. They often have no real possibility of escaping life as members of the “underclass”, a phenomenon that undermines “society’s stability and social cohesion and create mechanisms of social exclusion” (Junger-Tas 2006, p. 522f., 524). They are at risk of being marginalised and eventually criminalized. In this context recidivist offending is of major concern. Therefore many of the more punitive changes to the law are restricted to recidivist offenders in *England and Wales, France, and Slovakia*.

It should be emphasised, however, that most continental European countries have not regressed to the classical penal objectives and perceptions of the eighteenth and nineteenth centuries. Instead, the idea of “education” (rehabilitation) has been maintained, even though “justice” elements have also been reinforced. The tension between education and punishment remains evident. The reform laws adopted in *Germany* in 1990, the *Netherlands* in 1995, *Spain* in 2000 and 2006, *Portugal* in 2001, *France* and *Northern Ireland* in 2002, *Lithuania* in 2001, the *Czech Republic* in 2003 and *Serbia* in 2006 are examples of this dual approach. The reforms in *Northern Ireland* in 2002 and *Belgium* in 2006 are of particular interest, as they strengthened restorative elements in youth justice, including the concept of

family conferencing, and thus arguably contributed to responsabilisation without necessarily being “neo-liberal” in their fundamental orientation (Christiaens et al. in Dünkler et al. 2011; O’Mahony and Campbell 2006; Doak and O’Mahony 2011).

It must be recognized, however, that, even in countries with a moderate and stable youth justice practice, the rhetoric in political debates is sometimes dominated by penal populism with distinctly neo-liberal undertones. Nevertheless, this does not necessarily result in change, as can be demonstrated by a German example. At the end of 2007 several violent crimes in subways (filmed by automatic cameras) led to a heated public debate about the necessity to increase the sanctions provided by the Juvenile Justice Act. The leader of the Christian Democratic Party (CDU) of the federal state of Hesse, Roland Koch, made this a core element of his electoral campaign by proposing the use of boot camps and other more severe punishments for juvenile violent offenders. He also made several xenophobic statements against young immigrant offenders. Within a few days almost a thousand criminal justice practitioners and academics signed a resolution against such penal populism, and in January 2008 the CDU lost the elections. Since then penal populism has not been made a major issue in electoral campaigns again. The CDU had gone too far. Muncie (2008, p. 109) refers to this debate in Germany and interprets it as an indicator for increased punitiveness. Yet, youth justice practice in *Germany* has remained stable and sentencing levels relatively moderate (Heinz 2009).

3.2 *Diversion, Minimum Intervention and Community Sanctions*

Research related to disposals that are made applicable to young offenders has shown a clear expansion of the available means of diversion. However, this is often linked to educational measures or just warnings. Such warnings are not real sanctions, but they make it clear to the young offender that he has done wrong and that if he continues to commit crimes, more severe reactions will follow (Dünkler et al. 2011). Sometimes, however, the concern for minimum intervention still means that diversion from prosecution leads to no further steps being taken at all.

In most countries the deprivation of liberty is generally used as a measure of last resort. In practice, the concept of “last resort” varies across time and in cross-national comparison. *England and Wales*, for example, experienced sharp increases in the juvenile prison population from the 1990s to the mid-2000s, but the reduction of unconditional youth imprisonment by 45 % from 2007 to 2012 demonstrates a shift in the sentencing policy, as demographic changes were only of minor importance in regard to this reduction (Horsfield 2015). *Spain* and a few other countries showed an increase in the use of youth custody in previous years, but recent developments have reversed this trend. This is also true for Central and Eastern European countries. *Croatia*, the *Czech Republic*, *Hungary*, *Latvia*, *Romania* and

Slovenia, and recently *Russia* have achieved higher levels of diversion and community sanctions and lower levels of custodial sanctions that remain characteristic of continental Western European and Scandinavian countries. However, *Lithuania* and *Slovakia* still use deprivation of liberty more often, albeit not as frequently as in Soviet times.

With the exception of some serious offences, the vast majority of youth offending in Europe is dealt with out of court by means of informal diversionary measures: for example, in *Belgium* about 80 %, and in *Germany* about 70 % of youth offending is dealt with in this way (Dünkel et al. 2011, p. 1684ff.). In some countries, such as *Croatia*, *France*, the *Netherlands*, *Serbia* and *Slovenia*, this is a direct consequence of the long recognised principle of allowing the prosecution and even the police a wide degree of discretion—the so-called expediency principle. On the other hand, while Central and Eastern European countries do not allow for such prosecutorial discretion, a majority of youth offending is still dealt with out of court as offences that cause minimal damage are not treated as statutory criminal offences. *Italy* provides for a judicial pardon, which is similar to diversionary exemptions from punishment, but awarded by the youth court judge (see for the moderate Italian style of sentencing with particularly low juvenile incarceration rates Nelken 2009, 2010). Thus, a large variety of forms of non-intervention or minor (informal or formal) sanctions can be seen across Europe.

Constructive measures, such as social training courses (*Germany*) and labour and learning sanctions or projects (*The Netherlands*), have also been successfully implemented as part of a strategy of diversion. Many countries explicitly follow the ideal of education (*Portugal*), while at the same time emphasising prevention of re-offending, that is, special prevention (as suggested by the Council of Europe's 2003 Recommendation on new ways of dealing with juvenile delinquency and the role of juvenile justice).

3.3 Restorative Justice

One development that appears to be common to Central, Eastern and Western European countries is the application of restorative justice policies (see in summary Dünkel et al. 2015a, b). Victim-offender-reconciliation, mediation, or sanctions that require reparation or apology to the victim have played an important role in all legislative reforms undertaken in the last 15 years. Pilot mediation projects were established in the 1990s in Central and Eastern European countries such as *Poland*, *Slovenia* and the *Czech Republic*.

In some countries, legislation provides for elements of restorative justice to be used as independent sanctions by youth courts. In *England* and *Wales*, for example, this is done by means of reparation or restitution orders, and in *Germany* by ordering victim-offender-reconciliation as an educational directive (*Wiedergutmachungsauflage*) (see §§ 10 and 15 of the Juvenile Justice Act). In 2006, family group conferences—originally introduced and applied in New Zealand—were introduced

in *Belgium*. These conferences are forms of mediation that take into account and seek to activate the social family networks of both the offender and the victim. Even before the Belgian reform project, youth justice reform in *Northern Ireland* had introduced youth conferences, which have been running as pilot projects since 2003. In addition Northern Ireland, made provisions for reparation orders: an idea that had been introduced in *England and Wales* in 1998 (O'Mahony and Campbell 2006; O'Mahony and Doak 2009; Doak and O'Mahony 2011).

Whether these restorative elements actually influence sentencing practice or are merely a 'fig-leaf' seeking to disguise a more repressive youth justice system can only be determined by taking into account the different backgrounds and traditions in each country. Victim-offender-reconciliation has attained great quantitative significance in the sanctioning practices of both the *Austrian* and the *German* youth courts.⁸ If one also takes community service into account as a restorative sanction in the broader sense, the proportion of all juvenile and young adult offenders who are dealt with by such—ideally educational—constructive alternatives increases to more than one third (Heinz 2012).

In *Italy* procedural rules for youth justice introduced in 1988 have led to a move away from a purely rehabilitative and punitive perspective to a new conception of penal procedure. Restorative justice measures have gained much more attention and victim-offender mediation can be applied at different stages of the procedure: during preliminary investigations and the preliminary hearing when considering "the extinction of a sentence because of the irrelevance of the offence" or in combination with the suspension of the procedure with supervision by the probation service (*Sospensione del processo e messa alla prova*).

In general one can summarize that the idea of restorative justice has been successfully implemented all over Europe, but numbers remain moderate. Mediation, reparation and restitution orders quantitatively cover only a small part, regularly less than 10 % of all informal (juvenile prosecutor) and formal (juvenile court) reactions of the juvenile justice system (see Dünkelt et al. 2015a, b).

4 Youth Justice Models

If one compares youth justice systems from a perspective of classifying them according to typologies, the "classical" orientations of both the justice and the welfare models can still be differentiated (Doob and Tonry 2004, p.1ff.; Pruin 2011). However, one rarely, if ever, encounters the ideal types of welfare or justice models in their pure form. Rather, there are several examples of mixed systems, for instance within German and other continental European youth justice legislation.

⁸ Roughly 8 % of all sanctions imposed on juveniles, see Dünkelt in Dünkelt et al. 2011: 587; for *Austria* see Bruckmüller 2006. In summary for 36 European countries, see Dünkelt et al. 2015a, b.

Youth justice policy in recent decades has demonstrated a tendency to strengthen the justice model by establishing or extending procedural safeguards, and providing welfare measures. This tendency also includes a strict emphasis on the principle of proportionality, thereby moving away from sentences and educational measures that are disproportionately harsh.

An emphasis on the justice model also denotes a clear differentiation of the kind of misbehaviour that is subject to juvenile justice interventions. Most European juvenile justice laws rely on criminal behaviour defined by the general criminal law, whereas other forms of problematic behaviour which could endanger the juvenile and its future development are dealt with by separate welfare or family laws. A unified welfare and justice approach (as in the classic welfare model) in Europe is only to be found in Belgium, Scotland and Poland.

Recently other states have passed legislation related to certain misbehaviour (“anti-social” behaviour), which is addressed by civil law, but with a “hidden” form of criminalisation in case of civil law order violations (Bulgaria, England and Wales, Ireland, and Northern Ireland). For instance, a violation of Anti-Social-Behaviour-Orders constitutes a criminal offence, and therefore a young person may be subject to criminal punishment even if he has only violated a civil law obligation. In contrast, status offences such as truancy or running away from home in the continental European juvenile justice systems are dealt with in separate civil or welfare laws, and therefore cannot be “punished” by youth courts (see in summary Pruin 2011: 1553ff.). On the other hand, restorative justice and minimum intervention policies, as well as “neo-liberal” tendencies towards harsher sentences and “getting tough” on youth crime are not necessarily based squarely on “justice” or “welfare”, and can be viewed as independent models of youth justice (Albrecht and Kilchling 2002; Tonry and Doob 2004; Jensen and Jepsen 2006; Junger-Tas and Decker 2006; Bailleau and Cartuyvels 2007; Ciappi 2007; Patané 2007; Cimamonti et al. 2010; Pruin 2011). Cavadino and Dignan (2006, p. 210ff.) identify not only a “minimum intervention model” (including diversion and community sanctions) and a “restorative justice model” (including restorative/reparative reactions), but also a “neo-correctionalist model”, which, as mentioned previously, is particularly characteristic of contemporary trends and developments in England and Wales.

Here, too, there are no clear boundaries, for the majority of continental European youth justice systems incorporate not only elements of welfare and justice philosophies, but also minimum intervention (as is especially the case in Germany, see Dünkel 2006, 2011a, b), restorative justice and elements of neo-correctionalism (for example, increased “responsibilisation” of the offenders and their parents, tougher penalties for recidivists and secure accommodation for children). The differences are more evident in the degree of orientation towards restorative or punitive elements. In general, one can conclude that European juvenile justice is moving towards mixed systems that combine welfare and justice elements, which are further shaped by the trends mentioned above.

5 Reform Strategies

Against this background of a range of old and newly prominent ideas combined with somewhat fractured models, one can identify a number of reform strategies.

In many Western European countries, such strategies seem to have been relatively well-planned. In Austria, Germany and the Netherlands, the community sanctions and restorative justice elements that were introduced by reforms in 1988, 1990 and 1995 respectively were systematically and extensively piloted. Nationwide implementation of the reform programmes was dependent on prior empirical verification of the projects' practicability and acceptance. The process of testing and generating acceptance—especially among judges and the prosecution service—takes time. Continuous supplementary and further training is required, which is difficult to guarantee in times of social change, as has been the case in Central and Eastern Europe. Yet, reform of youth justice through practice (as developed in Germany in the 1980s) appears preferable to a reform “from above”, which often fails to provide the appropriate infrastructure.

As a result of major political changes at the end of the 1980s, drastic reform was required in the Central and Eastern European countries. The situation as it existed at the time was not uniform across the region but differed amongst groups of countries. One group comprised of the Soviet republics, Bulgaria, Romania and to some degree the German Democratic Republic (East Germany) and Czechoslovakia. These countries had developed a more punitively oriented youth justice policy and practice. The other group comprised of Hungary, Poland and Yugoslavia, which had rather moderate youth justice policies with many educational elements.

Across Central and Eastern Europe developments since the early 1990s have been characterised by a clear increase in the levels of officially recorded youth crime. The need for youth justice reform, a widely accepted notion in all of these countries, stemmed from the need to replace old (often Soviet or Soviet-influenced) law with (Western) European standards as contained in the principles of the Council of Europe and the United Nations. This process has, however, produced somewhat different trends in criminal policy.

Since the early 1990s, there has been a dynamic reform movement both in law and in practice. It is exemplified in numerous projects, including in the creation of law reform commissions and also in the adoption of reform legislation especially in Estonia, Lithuania, Serbia, Slovenia and the Czech Republic.

The development of an independent youth justice system has been a prominent feature of these reforms: as seen in the Baltic States, Croatia, the Czech Republic, Romania, Russia, Serbia, Slovakia, and Turkey. These countries have recognised the importance of procedural safeguards and entitlements that also take the special educational needs of young offenders into account. However, while Russia and Romania have succeeded in setting up their first model youth courts, independent youth courts in the Baltic States remain to be seen. It is also important to note that in general, the required infrastructure for the introduction of modern, social-pedagogical approaches to youth justice and welfare is widely lacking.

In order to deter recidivists and violent young offenders in particular, some of this new legislation not only involves new community sanctions and possibilities of diversion, but also retains tough custodial sentences. The absence of appropriate infrastructure and of widespread acceptance of community sanctions still results in frequent prison sentences. However, developments in Russia, for example, show that a return to past sanctioning patterns, where roughly 50 % of all young offenders were sentenced to imprisonment has not occurred. Instead, forms of probation are now quantitatively more common, and more frequently used than sentences of imprisonment.

What is becoming clear in all Central and Eastern European countries is that the principle of imprisonment as a last resort (*ultima ratio*) is being taken more seriously and the number of custodial sanctions have been reduced. However, it has to be noted that youth imprisonment or similar sanctions in the ex-Yugoslavian republics and to a lesser extent also in Hungary and Poland had already been restricted to a small minority of cases during the period before the political changes at the beginning of the 1990s.

Regarding community sanctions, the difficulties of establishing the necessary infrastructure are clear. Initially, the greatest problem in this respect was the lack of qualified social workers and teachers. This has remained a problem as to a great extent the appropriate training courses have not yet been fully introduced and developed (Dünkel et al. 2011). Again one has to differentiate as there are exceptions: Poland has a long tradition in social work. Also in the former Yugoslavia social workers were trained, following the introduction of “strict supervision” as a special sanction in 1960.

The concept of “conditional” criminal responsibility (related to the ability of discernment and the capability to act according to this discernment) found in German and Italian law—has recently been adopted in Estonia (2002), the Czech Republic (2003) and Slovakia (for 14 year olds, see Pruin 2011, p. 1566ff.). This is an interesting development, as it reflects another instance where reforms in Central and Eastern European countries have been influenced by Austrian and German youth justice law as well as by international standards. Despite obvious and undeniable national particularities, there is a recognisable degree of convergence among the systems in Western, Central and Eastern Europe.

6 The Scope of Juvenile Justice

On the basis of comparative research one may speak, albeit cautiously, of an emerging European philosophy of juvenile justice, which includes elements of education and rehabilitation (apparent in, for example, the recommendations of the Council of Europe), the consideration of victims through mediation and restoration, and the observance of legal procedural safeguards. However, there are some issues on which such a development is not as clear. In this regard we consider the age of criminal responsibility and its corollary, the age at which offenders cease to

be regarded as juveniles and are treated as adults. The latter issue also raises the question of whether there should be some mechanism for the converse, namely, allowing juveniles to be tried in adult courts.

6.1 Age of Criminal Responsibility

In spite of the common “European philosophy” of juvenile justice mentioned above, the minimum ages of criminal responsibility differ vastly across the European continent. Indeed, the 2008 European rules for juvenile offenders subject to sanctions or measures recommend no particular age, specifying only that some age should be specified by law and that it “shall not be too low” (Rule 4).

The minimum age of criminal responsibility in Europe varies between 10 (England and Wales, Northern Ireland, and Switzerland), 12 (Netherlands, Scotland, and Turkey), 13 (France), 14 (Austria, Germany, Italy, Spain and numerous Central and Eastern European countries), 15 (Greece and the Scandinavian countries) and even 16 (for specific offences in Russia and other Eastern European countries) or 18 (Belgium). After the recent reforms in Central and Eastern Europe, the most common age of criminal responsibility is 14 (see Table 1).

While England and Wales can be criticized for their low age of criminal responsibility, in many countries only educational sanctions imposed by the family and youth courts are applicable at an earlier age (for example, France and Greece). Also in Switzerland, the youth court judge can only impose educational measures on 10–14 year olds (who are, however, seen as criminally responsible), whereas juvenile prison sentences are restricted to those aged at least 15. The same is the case in the ex-Yugoslavian republics of Croatia, Kosovo, Serbia and Slovenia for 14 and 15 year old offenders. Further still, some countries, such as Lithuania and Russia, employ a graduated scale of criminal responsibility, according to which only more serious and grave offences can be prosecuted from the age of 14, while the general minimum age of criminal responsibility lies at 16 (for a summary, see also Pruin 2011). This graduated scale of criminal responsibility must be criticized as it contradicts the basic philosophy of juvenile justice, according to which sanctions must be decided in relation to individual development of maturity or other personality concepts rather than the seriousness of the offence (see also the criticism under Sect. 6.3).

Whether these notable differences can in fact be correlated to variations in sentencing is not entirely apparent. Even within systems based solely on education, under certain circumstances the possibility of being accommodated as a last resort in a home or in residential care (particularly in the form of closed or secure centres as in England and Wales and France) can be just as intensive and of an equal or even longer duration than a sentence of juvenile imprisonment. Furthermore, the legal levels of criminal responsibility do not necessarily give any indication of whether a youth justice or welfare approach is more or less punitive in practice. What happens in reality often differs considerably from the language used in reform debates

(Doob and Tonry 2004: 16ff.). Legal changes that make a regime more intensive not only contribute to changes in practice, but may also be the result of changes in practice. The effect of these changes varies, too. Despite the dramatization of events by the mass media that sometimes leads to changes in the law, there is often, in Germany for instance, a remarkable continuity and a degree of stability in youth justice practice (Dünkkel 2006; Dünkkel in Dünkkel et al. 2011).

6.2 *Young Adults*

There are also interesting developments in the upper age limits of criminal responsibility (the maximum age to which juvenile criminal law or juvenile sanctions can be applied). The central issue in this regard is the extension of the applicability of juvenile criminal law—or at least its educational measures—to young adults between the ages of 18–20, as occurred in Germany as early as in 1953 (see also the recent reforms in Austria, Croatia, Lithuania and the Netherlands; Pruin 2007; Dünkkel and Pruin 2011, 2012).

This tendency is rooted in a criminological understanding of the transitional phases of personal and social development from adolescence to adulthood and a recognition that such transitions are taking longer. Over the last 50 years, the phases of education and of integration into work and family life (the establishment of one's "own family") have been prolonged well beyond the age of 20. Many young people experience developmental-psychological crises and difficulties in the transition to adult life, and increasingly such difficulties continue to occur into their mid-twenties (Pruin 2007; Dünkkel and Pruin 2011, 2012; Pruin and Dünkkel 2014). Furthermore, new neuro-scientific evidence indicates that maturity and psycho-social abilities are fully developed only in the third decade of life (Weijers and Grisso 2009, p. 63ff.; Bonnie et al. 2012, chapters 4 and 5; Loeber et al. 2012 p. 336ff.), which would justify a juvenile justice system up to the age of 21 or even 24. The Dutch government has recently extended the scope of juvenile justice until the age of 23 (see for the respective reform proposals Loeber et al. 2012 pp. 368ff., 394ff.; Dünkkel 2014).

An increasing number of states have statutory provisions for imposing educational and other sanctions of the youth justice law on young adults. Historically however, such laws have not always had the same impact in practice. While in Germany the laws applicable to juveniles are applied in more than 90 % of the cases concerning young adults who commit serious crimes (overall average: more than 60 %; see Dünkkel in Dünkkel et al. 2011), in most other countries this has remained the exception. One reason is that in Germany the jurisdiction of the juvenile court has been extended to young adults, whereas in other countries the criminal court for adults is responsible for this age group. However, adult criminal courts can impose some of the measures otherwise reserved for juveniles (for example, in the former Yugoslavia, which introduced this possibility in 1960: Gensing 2011, 2014).

The Yugoslavian experience is a good example of how substantive and procedural laws have been harmonized in order to prevent counterproductive effects of such provisions. There was therefore good reason in 1998 for Croatia and Serbia, former Yugoslavian states, to transfer the jurisdiction of young adults to juvenile courts. Austria took the same step in 2001.

In other instances keeping young adults fully in the adult framework does not mean that they cannot be treated like juveniles in practice. In the Netherlands, for example, the general criminal law provides for a plethora of alternative sanctions, which can be seen as educational or rehabilitative (for example, community service) and which are not provided for in the German criminal law for adults.

The Council of Europe has taken these new considerations about the prolongation of the transitional phase of young adults into account in its 2003 Recommendation on “New ways of dealing with juvenile offenders and the role of juvenile justice” (Rec. (2003) 20) and in the “European Rules for Juvenile Offenders Subject to Sanctions or Measures” (ERJOSSM) passed in 2008 (Rec. (2008) 11). Rule 11 of the 2003 Recommendation reads as follows: “Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.”

In September 2004 the International Association of Penal Law (AIDP) held its World Congress in Beijing, China. The final Resolution of the Congress emphasizes “that the state of adolescence can be prolonged into young adulthood (25 years) and that, as a consequence, legislation needs to be adapted for young adults in a similar way as it is done for minors.” The age of criminal majority should be set at 18 years, and the minimum age not lower than 14 years (see No. 2 of the Resolution). Under No. 6., the Resolution states: “Concerning crimes committed by persons over 18 years of age, the applicability of the special provisions for minors may be extended up to the age of 25.”

Also, Rule 17 of ERJOSSM states that “young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly”. The commentary to this rule states that “it is an evidence-based policy to encourage legislators to extend the scope of juvenile justice to the age group of young adults. Processes of education and integration into social life of adults have been prolonged and more appropriate constructive reactions with regard to the particular developmental problems of young adults can often be found in juvenile justice legislation” (Council of Europe 2009, p. 42).

This inclusion of young adults (defined by the age between 18 and 21) in juvenile justice legislation is being seen increasingly across Europe, and especially in the 2014 reform of the Dutch Juvenile Justice system that extended the scope of juvenile justice even up to the age of 23.

The United Nations’ recommendations until recently did not reflect this issue by just defining the scope of juvenile justice for “children”, i. e. the age group below 18 years of age (see e.g. No. 4 of the so-called Beijing-Rules of 1985). However, in its

recent proposal for a Model Law on Juvenile Justice of 2013 the authors make an interesting statement: “States should note that a majority of European States have extended the applicability *ratione personae* of their juvenile justice laws to the age of 21 as neuro-scientific evidence and brain development studies have indicated that it is difficult to distinguish between the brain of an older child and that of a young adult.” (United Nations Office of Drug and Crime 2013: 57). The Model Law opens the floor to states who wish to do so to extend the scope also for the age group of young adults. Indeed, there exist a few examples concerning the scope of juvenile justice in Non-European countries in that way, as e. g. in Japan or in Brazil and Uruguay (see Castro Morales 2015: 18ff.).

6.3 *Transfer to Adult Criminal Courts or Jurisdiction (Waiver Procedures)*

While an extension of juvenile justice law to young adults may be seen as a way of imposing more appropriate sentences on immature young adults, there is also an opposite trend, most prominent in the USA (Stump 2003; Bishop 2009) but also found in many European countries (Pruin 2011), of referring children for trial in adult courts. Such referrals have a distinctively punitive purpose.

In some European countries, such as Scotland and Portugal, juvenile offenders as young as age sixteen can be dealt with in the adult criminal justice system. Beyond that, in a few other countries, specific juvenile offenders can be transferred from youth court to adult court, where waiver or transfer laws provide for the application of adult criminal law to certain offences (Stump 2003; Bishop 2009; Weijers et al. 2009; Beaulieu 1994, p. 329ff.; Goldson and Muncie 2006, p. 91ff.; Keiser 2008). This is in fact a qualified limitation of the scope of juvenile justice (Hazel 2008: 35) and a lowering of the minimum age for the full application of adult criminal law.

Some countries, such as Belgium, provide for the application of adult criminal law to juveniles aged 16 or 17 that commit serious offences including rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide. The reforms that took place in 2006 allowed for the jurisdiction of Extended Juvenile Courts to conduct such trials. Prior to this reform juveniles were tried by adult courts. In the Netherlands the youth court remains competent as well, but the general criminal law can be applied to 16 and 17 year-old juveniles. In 1995 the requirements were relaxed. The seriousness of the criminal offence, the personality of the young offender, or the circumstances under which the offence is committed can lead to the application of adult criminal law. The law provides the judge with a great deal of discretion. In most cases, in practice it is the seriousness of the offence that leads to the application of adult criminal law. In England and Wales, juveniles, even at the age of 10, can be transferred to the adult

criminal court (Crown Court) if charged with an exceptionally serious offence (including murder and crimes that would in the case of adult offenders carry a maximum term of imprisonment of more than 14 years). The Crown Court has to apply slightly different rules for the protection of juveniles in this case. The number of juvenile offenders who are sent to the Crown Court has fluctuated over the last 25 years without any indication of a clear-cut trend in either direction.

In Serbia and in Northern Ireland, transfers are limited to juveniles who have been charged with homicide or who are co-accused with adult offenders. In the latter case, there is an interesting alternative as well: the juvenile has to be referred back to the youth court for sentencing following a finding of guilt (O'Mahony in Dünkelt et al. 2011). In Ireland, in exceptional cases like treason or crimes against the peace of nations, murder and manslaughter, juveniles are tried by the Central Criminal Court before a judge and jury.

In France, in contrast, less serious offences, rather classed as misdemeanours, are brought before an adult court. Since 1945 in cases of misdemeanours (*contraventions des quatre premières classes*) juvenile offenders are judged by the Police Court which can issue reprimands or fines. Since 2002, the competences of the Police Court have been conferred on a specific 'proximity judge', who is neither a lawyer nor a youth justice specialist, but has the competence to 'punish' juveniles up to a certain level (Castaigñède and Pignoux in Dünkelt et al. 2011).

In Scotland there are no waivers or transfer laws, but the same effect can be achieved in another way. In most severe cases the juvenile offender will not be transferred to the children's hearings system. Formally, this is not a transfer to the adult criminal court, because the criminal court has original competence to try all cases, even if in practice the vast majority is transferred to the children's hearings system. However, Scotland shares the idea that in very serious cases the offenders should not be dealt by the juvenile criminal system but in the adult criminal system.

Countries, like those in Scandinavia that do not have specialised juvenile jurisdictions, thus (naturally) do not have provision for transfers either. It should be emphasized though, that, in general, in the Scandinavian countries the same regulations apply in cases of "aggravated" as well as "normal" offences.

The application of adult law to juveniles through waivers or transfer laws can be regarded as a systemic weakness in those jurisdictions that allow it (Stump 2003). Whereas normally the application of (juvenile) law depends on the age of the offender, transfer laws or waivers rely on the type or seriousness of the committed offence. The justification for special treatment of juvenile offenders (as an inherent principle of youth justice) is challenged by such provisions (Keiser 2008, p. 38). The fundamental idea is to react differently to offences that are committed by offenders up to a certain age, based on their level of maturity or on their ability of discernment. Waivers or transfer laws question this idea for serious offences. On the one hand, the maximum age of criminal responsibility signifies—independently from the type of offence—from which age on a young person is deemed "mature enough" to receive (adult) criminal punishment. On the other hand, however, the introduction of "transfer laws" makes exactly those offenders fully responsible who

often lack the (social) maturity to abstain from crime or even differentiate right from wrong. Furthermore, it is hard to imagine that the same juvenile would be regarded as not fully mature when charged with a “normal” offence, but fully criminally responsible for a serious offence. As Weijers and Grisso (2009, p. 67) have put it: “An adolescent has the same degree of capacity to form criminal intent, no matter what crime he commits.” A systematic approach would treat all offences equally.

States with transfer laws or waivers often argue that these laws are justified by the alleged deterrent effect of more severe sanctions on juvenile offenders. Additionally, they claim that waivers are needed as a “safety valve” (Weijers et al. 2009) for the juvenile courts because juvenile law does not provide adequate or suitable options for severe cases. However, so far criminological research has not found evidence for positive effects of transfers or waivers. In fact, research has suggested that transferring juveniles to adult courts has negative effects on preventing offending, including increased recidivism.

The second argument misses the point as well: Does adult criminal law provide adequate or suitable options for reacting to severe criminality? How do we measure effectiveness? If we look at recidivism rates, then long prison sentences—the typical reaction by adult criminal law to serious offending—are relatively ineffective in preventing further crimes (Killias and Villettaz 2007, p. 213). Furthermore, research shows that a lenient, minimum-interventionist juvenile justice system does not produce any more juvenile offenders than an active and punitive one (Smith 2005, p. 192ff.).

In practice, transfers may be of declining significance in Europe. In the Netherlands the number of transfers to the adult court has been reduced considerably: Whereas in 1995, 16 % of all cases were dealt with by the adult criminal court, it was only 1.2 % in 2004 (Weijers et al. 2009, p. 110). In Belgium the use of transfers is very limited as well: transfer decisions amount to 3 % of all judgments (Weijers et al. 2009, p. 118 with references to regional differences). In Ireland, adult criminal courts are competent in less than 5 % of all cases against juveniles. In Poland, from 1999 to 2004 the number of cases transferred to public prosecutors swung between 242 and 309, which is 0.2–0.3 % of all cases tried by the courts (Stańdo-Kawecka in Dünkel et al. 2011).

Even if waivers and transfer laws are of little significance in practice in most countries, they are nonetheless systemic flaws that ultimately undermine the special regulations for juvenile offenders. Additional safeguards in adult courts are unable to compensate for them (Keiser 2008: 38). Therefore the UN Committee on the Rights of the Child recommends abolishing all provisions that allow offenders under the age of 18 to be treated as adults, in order to achieve full and non-discriminatory implementation of the special rules of youth justice to all juveniles under the age of 18 years (Committee on the Rights of the Child 2007, paras. 34, 36, 37 and 38; Doek 2009, p. 23).

7 Summary and Conclusion

Juvenile justice systems in Europe have developed in various forms and with different orientations. Looking at sanctions and measures, the general trend reveals the expansion of diversion, combined in some countries with educational or other measures that aim to improve compliance with law (Normverdeutlichung). Mediation, victim-offender reconciliation or family group conferences are good examples of such diversionary strategies. On the other hand, from an international comparative perspective, systems based solely on child and youth welfare are on the retreat. This is not so evident in Europe where more or less “pure” welfare oriented approaches exist only in Belgium and Poland as in, for instance, Latin American countries, which traditionally were oriented to the classic welfare approach (Tiffer-Sotomayor 2000; Tiffer-Sotomayor et al. 2002; Gutbrodt 2010).

Across Europe elements of restorative justice have been implemented, both in countries that to some extent adopt neo-liberal or neo-correctional approaches, and in those with a relatively strong welfare orientation. In addition, educational and other measures, such as social training courses and cognitive-behavioural training and therapy, have been developed more widely. These developments are in line with international juvenile justice standards. The 2003 Recommendation of the Council of Europe on new ways of dealing with juvenile delinquency clearly emphasizes the development of new, and more constructive community sanctions for recidivist and other problematic offender groups. This maintains the traditional idea of juvenile justice as a purely, special “educational” system of intervention designed to prevent the individual from re-offending.

Although the ideal of using deprivation of liberty only as a measure of last resort for juveniles has been hailed as desirable across Europe, it cannot be denied that in some countries “neo-liberal” orientations have influenced juvenile justice policy and, to a varying extent, also practice (see Muncie 2008 with further references). The widening of the scope for youth detention in England and Wales, France and the Netherlands may be interpreted as a “punitive turn”. And indeed the youth prison population in these countries did increase considerably in the 1990s, a trend that has been reversed in the last few years. Muncie (2008, p. 110) refers to public debates and statements of academics in other (including Scandinavian) countries and comes to the conclusion that “such commentaries clearly suggest that not only in the USA and England and Wales but throughout much of Western Europe, punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support.”

This conclusion reflects only a facet of the full reality. A different reality emerges, however, when one considers the practice of juvenile prosecutors, courts, social workers and youth welfare agencies and projects such as mediation schemes. These continue to operate in a reasonably moderate way and thus resist penal populism. Deprivation of liberty remains the truly last resort in Scandinavia and indeed most other regions and countries (von Hofer 2004; Storgaard 2004;

Haverkamp 2007). This differentiated picture of a “new complexity” (Habermas 1985) is the main message of the research presented by the major comparative study on juvenile justice legislation and sentencing practice in Europe (Dünkel et al. 2011) on which this chapter is largely based (see in detail Dünkel et al. 2011; Dünkel et al. 2011).

Sonja Snacken has sought to explain why many European countries have resisted penal populism and punitiveness (Snacken 2010, 2012; Snacken and Dumortier 2012). She has emphasized that European states are constitutional democracies strongly oriented towards the welfare state, democracy and human rights. These fundamental orientations, which can be found most clearly in many continental Western European states, and particularly in Scandinavian states (Lappi-Seppälä 2007, 2010), serve as “protective factors” against penal populism (see also Pratt 2008a, b).

It is undoubtedly true that penal populism does not halt at the gates of youth justice (Pratt et al. 2005; Ciappi 2007; see also Garland 2001a, b; Roberts and Hough 2002; Tonry 2004; Muncie 2008). Generally speaking however, the same factors that have allowed such punitiveness to be resisted in many European countries apply even more strongly to youth justice. Moreover, juvenile offending is different from that of adults. Its episodic nature allows for more tolerance and moderate reactions.

The relative invulnerability of youth justice to punitive tendencies is reinforced by the strong framework of international and European human rights standards that apply to it, courtesy of the 1989 UN Convention on the Rights of the Child and the other instruments mentioned above. More specifically, these instruments also emphasise the expansion of procedural safeguards, on the one hand, and the limitation or reduction of the intensity of sentencing interventions, on the other hand.

Clearly more needs to be done, and this chapter has highlighted three areas in which policies are still unresolved, at the international and European level.

- One step forward would be to raise the age of criminal responsibility to at least the European average of 14 or 15.
- A second step would be to build on interesting initiatives to increase the maximum age at which young offenders can be treated as if they were juveniles. This could do much to protect a potentially vulnerable group and to divert them from a career of adult crime. The recent reform of April 2014 in the Netherlands increasing the scope of juvenile justice up to the age of 23 may be seen as the forerunner in juvenile justice reform in this respect.
- Thirdly, the tendency towards trying juveniles as adults should be resisted. Only a small minority of European countries provides such a waiver procedure, but it must be clear that this is not only doctrinally dubious, as explained above, but also holds the risk of increasing the impact of the worst features of the adult criminal justice system on young offenders.

In sum, youth justice policy as reflected in legislation and practice in the majority of European countries has successfully resisted a punitive turn. While

there is more work to be done in areas where policy is not yet clear, it is realistic to hope that neo-liberal approaches will be moderated. Important signs in this direction can be observed in England and Wales (see Smith 2010; Horsfield 2015; Dünkler 2014) or the Netherlands (see Loeber et al. 2012), where such approaches have been rhetorically prominent in the past decades. Therefore there is some important evidence that the ideal of social inclusion and reintegration will be the *Leitmotiv* for juvenile justice reforms of the twenty-first century in Europe and other continents as well.

Five Questions

1. What has been the role of international human rights standards in the development of juvenile justice policy in Europe?
2. Why has the “punitive turn” in juvenile justice policy been rather moderate or even non-existent in many European countries?
3. What would be the ideal scope of juvenile justice according to new evidence in developmental psychology, sociology and neurosciences?
4. What kind of reactions seem to be most effective in reducing re-offending and at the same time in preserving a humane juvenile justice approach and what could be the role of restorative justice measures in this context?
5. Which procedural and other principles should be guaranteed in order to establish a rational and humane juvenile justice system?

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Intergenerational Practice: An Approach to Implementing Sustainable Development and Environmental Justice

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Abstract “Sustainable development”—the concept hardly pursued in non-environmental Criminal Justice, still nascent in Crime Prevention, especially with respect to the role of women and children—is strongly linked to the concept of Environmental Justice, including via the nexus of social, economic and environmental dimensions, as well as the intergenerational context and the role of public participation in both notions. This chapter introduces an idea of Intergenerational Practice as a way to operationalize sustainable development and environmental justice principles on the local level. The importance of involving younger and older generations in communities and in sustainable development has been recognized on the international level. Intergenerational practice has been shown to enhance community cohesion, improve understanding among the younger and older population, increase participation in community development by the elderly persons, children and youth, and diminish the fear of crime in communities. Although not an explicit goal, such initiatives also offer equal opportunities to engage for younger and older women. Accordingly, this chapter provides generic clues for projecting the precepts of intergenerational learning and practice in Environmental Justice into Crime Prevention.

1 Sustainable Development and Environmental Justice

Sustainable Development is a well-familiar concept today, embraced on the international level, by the United Nations, by national and regional authorities and governmental and non-governmental organizations, and by a growing number of individuals, while its definition, scope and effectiveness continue to be debated and

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reinterpreted by scholars and practitioners (e.g. Magee et al. 2013). The generally accepted definition is that of the 1987 Brundtland report (“Our Common Future”) issued by the United Nations World Commission on Environment and Development (WCED), which defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (WCED 1987, para. 27). The three recognized “pillars” of sustainable development are social, economic and environmental, as expressed in the paragraph 6 of the 1995 Copenhagen Declaration on Social Development¹ (UN 1995), although it has been argued that “cultural” development should also be considered in this respect (Hawkes 2001, Magee et al. 2013).

Environmental Justice “refers to the right of current and future generations to a clean, healthy, and safe environment” (Hawkins 2010, p. 74). A comprehensive definition is provided by the United States Environmental Protection Agency (US EPA) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. [...] It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work” (US EPA 2013).

Many works trace the emergence of environmental justice ideas to the practice of disproportional citing of polluting industries in the areas with predominantly racial minority populations, and the response thereto (Fisher 2003, Sandler and Pezzullo 2007). However, to-date the concept has broadened to include other disadvantaged groups “deprived of environmental rights, such as women, children and the poor” (Cutter 1995 and Agyeman 2000 in Agyeman et al. 2002). In fact, the same principles are reflected in the United Nations Guidelines for the Prevention of Crime (ESOSOC resolution 2002/13, Annex), which stated that “[p]articular emphasis should be placed on communities, families, children and youth at risk” (UN 2002, sec. 8.3). Moreover, the concept reached a particularly important international dimension, due to exporting of industrial production and waste to developing countries. A well-known example is the disastrous gas leak in the facilities of a multinational corporation in Bhopal, India, which resulted in death of thousands of locals; a more contemporary present issue—the threat of the Small Island States disappearing because of the sea level rise, due partly to the global climate change, exacerbated by the industrial countries’ greenhouse gas emissions (Roberts 2007). In addition, environmental justice is not only focused on preventing environmental burdens, but also on promoting just access to environmental amenities (Agyeman et al. 2002).

The link between the concepts of sustainable development and environmental justice is evident already in the origins of the sustainable development discussion

¹ “We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people [...]” (UN 1995, para 6).

on the international level, at the United Nations Conference on the Human Environment held in Stockholm in 1972, which declared that “environment [...] essential to the enjoyment of basic human rights” (UN 1972, p. 3). Further elaboration and recognition of sustainable development on the international level continued to include references to ideas of justice: such as the assertion that nature conservation “cannot be achieved without development to alleviate poverty” by the World Conservation Strategy (WCS) in 1980 (IUCN 1980), the prioritization of essential needs of the world’s poor by the Brundtland report (WCED 1987), the recognition of the nations’ rights “to pursue social and economic progress,” and the acknowledgement of the rights to participation of the major groups, including women and youth, by the UN Conference on Environment and Development (UNCED, also known as the Earth Summit, UN 1992a, b).

More recently, the United Nations Conference on Sustainable Development took place in Brazil in 2012, 20 years after the 1992 Earth Summit (and hence referred to as Rio + 20), with a goal to renew commitments of the international community to sustainable development. The outcome document “The Future We Want” encourages “action at regional, national, sub-national, and local levels to promote access to information, public participation, and access to justice in environmental matters, as appropriate” (UN 2012, para 99), and stresses the importance of “fostering [...] social justice and cohesion” (para 156). The document also refers to Sustainable Development Goals as a blueprint to steer the development agenda of the global community after 2015 (UN 2012, para 246).

Principles of environmental justice, adopted by the First National People of Color Environmental Leadership Summit in 1991, also refer to a link with sustainable development: “Environmental Justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things” (People of Color Environmental Justice Summit 1991 in Agyeman et al. 2002 and CIEL 2002).

Several researchers have addressed the “nexus” of sustainability and environmental justice in various contexts (Agyeman et al. 2002; Fisher 2003; Ikeme 2003; Okereke 2006; Hawkins 2010). Some even agreeing that “sustainable development may well be seen as the next phase of the environmental justice movement”. (Goldman 1993 in Agyeman et al. 2002).

An example of the “nexus” on the international/intergovernmental level, is the recent symposium of the United Nations Environment Assembly—*Environmental Justice and Sustainable Development*, which approached environmental justice as the Rule of Law, following the Decision 27/9 on Advancing Justice, Governance of Law for Environmental Sustainability (UNEA 2014a). The symposium aimed at discussing “ways and means by which the further development and implementation of environmental rule of law can help ensure just and sustainable developmental outcomes” (UNEA 2014a, p. 1). The elements of environmental rule of law include “adequate and implementable laws, access to justice and information, public participation, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights” (UNEA 2014b, p.1).

“Co-activism of sustainability and environmental justice” on a local community scale is evident from the origins of the environmental justice movement (Agyeman

et al. 2002, Sandler and Pezzullo 2007). Agyeman et al. (2002) lists other examples, such as efforts to develop sustainable communities and cities (Roseland 1998; Rees 1995; Haughton, 1999 in Agyeman et al 2002.), and argues that environmental justice brings a more local and accessible dimension to the concept of sustainability.

The paper by the Center for International Environmental Law (CIEL) “One Species, One Planet: Environmental Justice and Sustainable Development” explores the legal relationship between sustainable development and environmental justice, and highlights three areas relevant for the nexus between them: (1) the right to life, including the right to a healthy environment; (2) the traditional and customary property rights of indigenous and other local communities, especially those in the Global South²; and (3) participatory and procedural rights (CIEL 2002).

2 Participation

One of the underlying principles of sustainability/justice nexus is that of public participation. According to Principle 10 of the Rio Declaration “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided” (UN 1992a, b, Principle 10).

Participation has been extensively discussed in both academic literature and in practice. Several degrees of participation are recognized, such as: awareness-raising and providing information to the public, consultation—receiving inputs of knowledge and skills from the public, cooperation through joint work, and collective decision-making (Rowe and Frewer 2005; Reed 2008). The original typology—Ladder of Participation—was proposed by Sherry Arnstein in 1969 and was based on the degree of empowerment of the public (Arnstein 1969). This highlights the eventual goal of the participation process—in addition to achieving sustainable results, it should also lead to the empowerment of the population (Bass et al. 1995; Reed 2008; Baral and Stern 2010).

Public participation in general, as well as participation of specific groups, such as women, children and youth, indigenous populations, etc. is often referred to in sustainable development agreements on the international level, such as Agenda 21 (UN 2002) and “The Future we Want” (UN 2012). Moreover, it is the focus of the Aarhus Convention on “Access to Information, Public Participation in Environmental Decision-Making and Access to Justice in Environmental Matters” of the

²The Global South generally refers to [Africa](#), [Latin America](#), and developing [Asia](#).

United Nations Economic Commission for Europe (UNECE 1998). This intergovernmental agreement aims at ensuring the “right of every person of present and future generations to live in an environment adequate to his or her health and well-being, [...] the rights of access to information, public participation in decision making, and access to justice in environmental matters” (UNECE 1998, Article 1).

In order to support participation on the national and local level, guidelines exist of how to implement participatory development initiatives (e.g. Geilfus 2008). Many initiatives are focused on one or another group, whose lack of engagement is recognized, because of historic, economic or political reasons, which excluded them from the participation process. This is often the case with women, racial minorities, as well as the elderly, youth and children. At the same time, especially on the community level, participation of these groups is often crucial not only for justice and equity reasons, but also because it is essential to the long-term success and sustainability of development initiatives (for example, because women are often more likely to pass the knowledge and skills to their children, and, respectively, to the next generation) (World 1994, 2012).

3 Intergenerational Solidarity in Action

The intergenerational context is another essential component of both *Environmental Justice and Sustainable Development* concepts. For example, Hawkins (2010) describes environmental justice as “the right of the current and future generations to a clean, healthy and safe environment” (p. 74), which makes a clear reference to both the present and the future generations, just as the Brundtland definition of sustainable development. And “intergenerational justice” is a concept widely discussed in relation to the sustainability debate (Tremmel 2006).

Some authors distinguish among the *intergenerational approach* of sustainability, (which they perceive as the relation between the currently living generation to the future, i.e. currently not yet existing people) and *intergenerational focus* of environmental justice, which concerns equity in sharing the resources among the presently living groups of population, indicating this divergence as one of the differences among the two concepts (Beckerman 2006; Lumer 2006; Tremmel 2006). However, an alternative understanding of *intergenerational* is that among the living people of the older and the younger generations, which makes much sense for the implementation of sustainable development: younger people living today are the link between the current and the future society. At the same time, different generations living today do not always enjoy equitable access to resources and opportunities to engage in the development process.

The Rio + 20 outcome document bridges the “inter-” and “intragenerational” approaches, by making references to youth and older persons, referring to “the need for promoting intergenerational solidarity for the achievement of sustainable development” and requesting the Secretary General to provide a report on this matter (UN 2012, para 86). The report of the Secretary General defines intergenerational solidarity as “social cohesion between generations”, and, notably, while addressing

the rights of the future generations, it acknowledges the importance of social participation of elderly people and children in communities and in implementation of sustainable development (UN 2013, para. 6).

Interaction and learning among generations has become of growing interest to the research community, due to the demographic changes, such as ageing (Bloom et al. 2011; UNDESA 2013), as well as economic and social processes, which reportedly have contributed to segregation among the older and younger generations (Hatton-Yeo and Ohsako 2000 in Buffel et al. 2014). While intergenerational communication has for centuries provided an informal way of transferring “knowledge, skills, competencies, norms and values” within families (Newman and Hatton-Yeo 2008, p. 31), interactions between the generations are not as prevalent in contemporary society as before (Buffel et al. 2014). Arguably, this is especially relevant in the economically stagnating regions, such as rural areas, where the younger people are moving away, due to the lack of opportunities, and the remaining older population has fewer opportunities to participate in the development process (Fischer et al. 2014). This further exacerbates the development and infrastructure challenges, the digital divide (i.e. inequalities in access to, use of, or knowledge of Information and Communication Technologies (ICTs)),³ and the loss of knowledge, culture, and traditions (see “The main drivers for intergenerational policy and practice” in the Annex (1)).

The latter might have an effect on social behavior and the culture of lawfulness among the younger population, which has fewer opportunities (and potentially also less desire) to spend time with their older counterparts (Redo 2013). Moreover, the lack of interaction among generations may lead to mutual mistrust and misunderstanding. In some areas, such as deprived urban neighborhoods, intergenerational conflicts can be especially intense (Pain 2005 in Buffel et al. 2014).

In view of the above processes, intergenerational interaction has today become more relevant in a broader “extra-familial” social context (Boström 2003; Newman and Hatton-Yeo 2008), and has been the focus of a number of initiatives, such as the Centre for intergenerational Practice (CIP) of the Beth Johnson Foundation,⁴ the European Map of Intergenerational Learning (EMIL),⁵ the Intergenerational Partnership for Sustainability of the World Conservation Union (IUCN),⁶ and the Intergenerational Foundation in the United Kingdom⁷ (Mitrofanenko et al. 2013). Among the prevalent terms to describe intergenerational interaction are Intergenerational Learning and Intergenerational Practice.

³ The definition by OECD is the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard both to their opportunities to access Information and Communication Technologies (ICTs) and to their use of the Internet for a wide variety of activities (OECD 2001, p. 5).

⁴ <http://www.centreforip.org.uk/>.

⁵ <http://www.emil-network.eu/>.

⁶ http://www.iucn.org/about/union/commissions/cec/cec_how_we_work/youth___ips/.

⁷ <http://www.if.org.uk/>.

Intergenerational learning (IL) is a process, through which individuals of all generations acquire and share skills and knowledge, but also attitudes, and values, via participation in purposeful, mutually beneficial activities (Fischer et al. 2014). A number of intergenerational learning principles and aspects have been elaborated. Some of them are included in the Annex to this chapter. IL is a component/result of Intergenerational practice (IP), which “aims to bring people together in purposeful, mutually beneficial activities, which promote greater understanding and respect between generations and may contribute to building more cohesive communities” (EAGLE 2008, p. 5). In other terms, “IPs are vehicles for the purposeful and *ongoing exchange of resources and learning* among older and younger generations” (Hatton-Yeo and Ohsako 2000 in Buffel et al. 2014, p. 1786). IP appears to be more encompassing, implying the opportunity of both individual and a wider community benefit.

As a response to the rapid demographic change and a perception of growing distance between the generations and changing family structure in Europe, 1993 was declared the European Year of Solidarity between Generations. Throughout the decade, the IP broadened in scope to facilitate community revitalization, integration of immigrants, active ageing (such as volunteering programmes for seniors) and social inclusion, and a number of intergenerational networks has developed in several countries (Hatton-Yeo 2014a). The year 2012 was devoted by the European Union to promoting active ageing as a basis for solidarity between generations. The issues of (re-)connecting generations have been tackled not only in Europe, but also in North America and throughout the globe, leading to the foundation of the International Consortium for Intergenerational Programmes (ICIP) in 2000 (Hatton-Yeo 2014a).

Despite recognition on the national, regional and international scales, according to the experts in the field, intergenerational work is rather promoted and steered from the bottom up, grass root initiatives (Hatton-Yeo 2014b). “It starts locally, is embedded, learner centered and is driven by [...] engaged citizens. Those initiatives are the ‘source’ or ‘seed’ to construct national programmes [...] Nevertheless scaling-up (not mainstreaming) of “top-down” programmes is limited and often falls back to local actors” (Fischer 2014). The latter implies substantial citizen interest in intergenerational initiatives, which must be strong enough to support the growing movement, both on the local action- and national/international policy level.

4 Intergenerational Practice in the Economic, Social and Environmental Context

The bottom-up interest and citizen engagement is critical to the success of sustainable development initiatives, evident in the widely known as “think globally, act locally” motto. In this respect, bridging sustainability with intergenerational

practice might provide a way to motivate citizens to become involved in local sustainable development actions. In fact, intergenerational practice could provide economic, social, and environmental benefits to communities, thus it can indeed be useful in operationalizing the three pillars of sustainable development.

4.1 Economic

According to Buffel et al. (2014), research, discussion and policies have tended to emphasize the economic dimension of intergenerational exchange, due to the concerns about the challenges of the growing ageing population for the future labor force and public welfare systems. While in this context the older population is rather considered a burden, the seniors could on the contrary be viewed as valuable contributors to economic development, for example, via sharing their knowledge and skills with the younger generations (Newman and Hatton-Yeo 2008). In this respect, IP can facilitate combining traditional knowledge and practices of the older population with new approaches and communication media, which might encourage innovative marketable ideas. An example is the recognized role of IP in organizational learning (Orzea and Bratianu 2012): knowledge and skills of older professionals should be kept before they retire, while new visions and approaches can be introduced by younger, newly educated employees. Likewise, IP could contribute to increasing the employability skills of young people by helping them develop interpersonal and communication skills. Finally, engagement with older people can help young people to consider future career options in health and social care, which may be increasingly needed considering the growing older population (Hatton-Yeo 2014a, b).

4.2 Social

Researchers and practitioners refer to a range of social policy agendas, to which IP could contribute: improved community cohesion, the potential to address other community related policy areas, the diversification of volunteering, educational institutions becoming more involved in their communities (Springate et al. 2008), promoting active citizenship and engagement for both the young and old, promoting healthier more active lifestyle, and enabling older people to remain engaged longer (Hatton-Yeo 2014a, b), sharing societal and professional resources, tacit and explicit knowledge among generations, supporting lifelong and life-wide learning, maintaining and building human and social capital, and balancing the need for preservation and transformation in today's society (Fischer et al. 2014).

One way IP contributes to community cohesion is by challenging the age stereotypes, which can decrease both the negative approach to the elderly, and the fear of crime in communities (Hatton-Yeo 2014a, b). In the first case, older people are viewed only as service ‘recipients’, ‘victims’ rather than as ‘active participants’ in community regeneration programmes (Simpson 2010 in Buffel et al. 2014); in the second, youth “has been portrayed only in problematic terms in community safety” (Pain 2005 in Buffel et al. 2014, p. 1788). In addition, IPs can lead to reduced crime (Sanchez et al. 2008).

An example of an intergenerational learning project, which tackled the above issues, is “A Partnership of Trust. Young Offenders supporting older people in care settings. An example of social inclusion through intergenerational practice,” which successfully brought together young offenders and elderly inhabitants of care facilities, including elders with dementia, and resulted in benefits for both generations. For the young offenders this provided an opportunity to gain professional experience, to receive positive feedback, to raise self-esteem; for the elderly—positive energy, attention, support in daily routine; and for both generations—an opportunity to shed stereotypes and form personal bonds with representatives of another generation (Granville and Laidlaw 2000).

With respect to young people, IPs can help children and youth especially in immigrant communities to understand their history and culture through intergenerational oral history and related projects, thus providing young people with a sense of place and an understanding of their roots (Hatton-Yeo 2014a, b). Moreover, intergenerational programmes can give both older and younger participants the opportunity to make a positive contribution to their communities, and support their integration, such as through various forms of volunteering and service: older people teaching in schools, or helping students with their homework, supporting integration of immigrant children, or younger people helping the older population with various needs. Intergenerational Practice can also address the problem of the digital divide for the elderly—as children and youth often eagerly teach their older counterparts how to use modern Information and Communication Technology (Mitrofanenko et al. 2013). Some examples of the IPs with social impact include: *Youth With Impact*—a community participation program in Switzerland, aiming at a better inclusion of young people in community development (Almeida Pinto 2009, p. 9); *Strategies Towards Active Citizenship (STAC)*, which brought together various IPs concerned with active citizenship of seniors in European context (Almeida Pinto 2009, p. 17); *Shared Places and Shared Spaces* program in Manchester, in which engagement in IPs facilitated involvement of older and younger people and collective community development action (Buffel et al. 2014, p. 1789); the project “*Fifty – Fifty*” *Junior and Senior Citizens discovering Social Europe through International Voluntary Service* (Almeida Pinto 2009, p. 13).

4.3 Environmental

Some studies suggest potential impacts of Intergenerational Practices on environmental activities (Sanchez et al. 2008; Springate et al. 2008; Buffel et al. 2014). For example, traditional land use practices of the older generations could be beneficial for conservation, and should be maintained, such as traditional farming (Kochler et al. 2008) or medicinal plant cultivation (Silori and Badola 2000). Buffel et al. (2014) discusses the potential of IP in developing sustainable communities and mentions the potential of engagement in environmental policy and planning by young and older people to improve the environmental quality. Mitrofanenko et al. (2015) propose IP as an approach to improve participatory protected area management.

In practice, several environmental organizations actively use intergenerational practice in their efforts of safeguarding the environment, such as the US Environmental Protection Agency via its Aging Initiative (US EPA 2013), the World Conservation Union (IUCN) via its Intergenerational Partnership (Hesselink and Stucker 2008) or the WILD foundation (WILD Foundation 2014).

Representatives of the older generation may have both professional and lay⁸ knowledge of the local environment, its historical condition and process of landscape changes, traditional land use practices, local plant and animal species. The younger generation often learns new ecological paradigms in schools, which may be new to other members of the community, and may promote environmentally friendly practices, such as recycling (Maddox et al. 2011). Exchange of knowledge and ideas about the natural resources and the surrounding landscape can both lead to better understanding and appreciation of the local area, and could have economic benefits, such as by making improvements in agriculture, or attracting nature tourism (Mitrofanenko et al. 2015).

The project *Big Foot. Crossing Generations, Crossing Mountains (Big Foot)*, focused on intergenerational learning approaches to support sustainable development in rural mountainous communities, and tested them in Berkovitsa (Bulgaria), Trikala (Greece) and Gubbio (Italy). The older residents of each community, some professional naturalists and others nature connoisseurs and lovers, led the children and youth to explore the natural beauty surrounding their communities and the cultural heritage linked with it, discussed and demonstrated potentials of sustainable livelihoods using local products. (Mitrofanenko et al. 2013; Mitrofanenko et al. 2015).

⁸ Non-professional.

5 Intergenerational Practice and Justice: In the Context of Community Participation

The above examples can also be viewed in the context of environmental justice: both the access of older and younger people to environmental amenities, and the protection from environmental hazards, as well as their right to participation in development initiatives. Buffel et al. (2014) refer to “institutional ageism” when discussing that youth and elderly persons are often excluded from participation in societal processes, for example, in neighborhood renewal (Pain 2005 in Buffel et al. 2014). The authors suggest that instead of perceiving the elderly as burden or victims, and youth as a threat to community safety, both of these age groups “can be ‘active participants’ who can help to transform the communities in which they live” (Buffel et al. 2014, p. 1788). Below some examples are provided of intergenerational practice application in the context of rural and urban communities.

Making urban and rural communities more age-friendly and including the engagement of younger and older residents in their development is the way towards ensuring that communal living spaces are accessible to people of different ages and physical abilities, and at the same time, provide a pleasant and healthy living environment (Buffel et al. 2014). In the urban context, this may involve constructing playgrounds, benches or other resting areas, sports facilities, bike lanes, sufficient lighting, green spaces, such as flowerbeds and community gardens, and safe and sufficient pedestrian spaces. In some projects, in addition to the cooperative process, where both older and younger people participated, the result was also intergenerational—reconstructed joint spaces for older and younger people (Buffel et al. 2014).

In rural communities, which are often situated in natural environments, intergenerational learning and practice can support preservation of the local cultural landscape and biological diversity, to ensure that residents of all ages and the future generations can enjoy access to them, for example, by transmitting traditional land use practices and values of respect for the local environment from the older to the younger generation (Mitrofanenko et al. 2015). During the intergenerational excursion of *Big Foot* in Berkovitsa (Bulgaria) when the elderly nature lovers organized a nature and culture hike for the local students, the younger population became aware of and concerned about the deforestation in the vicinity of their municipality (Mitrofanenko et al. 2013).

6 Gender Equality in Intergenerational Practice

Gender equality and participation of women remain a concern for sustainable development and environmental justice efforts, and a focus of debates to-date (e.g. Lubitow and Zarza 2013; Hunt 2014). Gender mainstreaming into policies and practice has brought attention to gender issues in connection with various

fields, from environmental education (Sakellari and Skanavis 2013) to sustainable tourism (Skanavis and Sakellari 2008). At the same time, some find that the state of international commitment to women's rights, as expressed in the Rio + 20 outcome, is still weak (Ratha and Mahapatra 2014).

Mellor (2000) argues that the understanding of the gendered nature of society is important for addressing the human-nature relationship, which implies its relevance for approaching sustainable development. Mallory (2013) explores linkages between Ecofeminism and Environmental Justice, and argues that all systems of injustice are "interconnected and mutually reinforcing" (p. 251). This view suggests that gender and inter/intragenerational equality also share similar characteristics, and should be considered concurrently in order to be addressed successfully.

While gender equality is not the central focus of intergenerational initiatives, they could support participation of both older and younger women in various ways:

- Equal engagement of women and girls in intergenerational practice projects can be ensured (as compared to male participants);
- Engagement in community activities can encourage girls and women, who might not have been able to do so previously (e.g. with immigrant background), to become more active, confident, and integrated into the community;
- Elderly people can provide child care services for mothers, enabling them to work (Sandler Morrill and Morrill 2013; Arpino et al. 2014);
- In patriarchal societies, it is possible to introduce ideas of gender equality via the younger generations, who could be more open to accepting it, and affecting their older counterparts.

In fact, a number of intergenerational initiatives and projects in Europe have targeted women, aiming at enhancing their participation. Examples include: Project *CROSSTALK: Moving stories from across borders, cultures and generations*—providing training in story-telling and digital technology skills for women of different ages, social and cultural backgrounds from several European countries (EC EACEA 2012, p.11); Project *OWLE50+—Older Women Learning and Enterprise*—addressing employability and entrepreneurship and later life skills for Women aged 50+ from Italy, Sweden, and UK (EC EACEA 2012, p.20); *Literacy, sewing, computer, and driving training* for young immigrant and ethnic minority women by the senior volunteers in the UK (Sanchez et al. 2008, p.120). These examples can provide ideas for further activities, targeting women participation, and with a greater focus on sustainable development.

7 Conclusion: Intergenerational Practice Towards Sustainable Present and Future

The aim of the above discussion was to point out the potential contribution of intergenerational practice to the implementation of sustainable development, and to demonstrate its relevance both on the local community level, including in the environmental justice context, and to the global sustainable development agenda. The post-2015 agenda has been defined through the Sustainable Development Goals (SDGs), proposed by the Open Working Group of the General Assembly (OWG SDGs 2014) and adopted by the United Nations General Assembly in September 2015 (UN 2015b). In order to ensure implementation of the SDGs after their final elaboration, the recent Synthesis Report of the Secretary-General on the post-2015 sustainable development agenda proposed 6 essential elements: (1) Dignity: to end poverty and fight inequalities; (2) People: to ensure healthy lives, knowledge and the inclusion of women and children; (3) Prosperity: to grow a strong, inclusive and transformative economy; (4) Planet: to protect our ecosystems for all societies and our children; (5) Justice: to promote safe and peaceful societies and strong institutions; (6) Partnership: to catalyze global solidarity for sustainable development (UN 2014, p. 16). “Dignity” and “Justice” have been combined by the UN General Assembly into one “Peace” in its draft outcome document for the adoption of the post-2015 development agenda (see Table 1) (UN 2015a, p. 2)—altogether five essential elements.

A comprehensive discussion on the potential facilitating factors and barriers for the implementation of the SDGs (such as the underlying social, economic and political processes and paradigms) is beyond the scope of this chapter. However, its aim is to demonstrate that intergenerational practice can be an approach particularly useful to enhancing participation in the sustainable development process, by the inclusion of children, youth, elderly, and women of all ages. Table 1 proposes some examples of how IP could be applicable to the essential elements to ensure implementation of the SDGs, as they are presented in the draft outcome document of the UN General Assembly (UN 2015a, p. 2). In some areas IP can be more directly applicable than others, but in all cases it can provide the means of involving women and men of all ages in the planning and implementation of initiatives, and in building inclusive, cohesive, safe and sustainable communities for all; and it can facilitate equitable sharing of the benefits of sustainable development.

Table 1 Potential application of intergenerational practice (IP) to the sustainable development agenda

Elements for delivering on the SDGs	Potential application of intergenerational practice (IP)
People: to end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment	• It is possible to introduce and reinforce ideas of gender equality in patriarchal societies via the younger generations • IP can directly contribute to all-inclusive awareness-raising and education, as well as exchange of knowledge between the generations IP can support: • participation of children, youth and elderly in the sustainable development processes, and their involvement in the workforce • entrepreneurial initiatives by combining traditional knowledge and innovation • preserving traditional agricultural approaches, subsistence—based practices, and supporting introduction of new sustainable agriculture techniques
Planet: to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations	IP can support: • sustainable, participatory, community natural resource management • professional training of young women and men in research and development in various aspects of conservation and sustainable development • transfer and use of traditional sustainable lifestyles, knowledge, skills, attitudes and values, from the older generations to the younger • introducing new sustainable approaches via the younger generations to the older
Prosperity: to ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature	IP can support: • involvement of younger and older women and men in the work force • professional training of young women and men in research and development • entrepreneurial initiatives by combining traditional knowledge and innovation, such as tourism development, etc. • transfer and reinterpretation of the societal values with respect to economic well-being and development
Peace: to foster peaceful, just and inclusive societies, which are free from fear and violence	• IP enhances community cohesion • IP can facilitate revitalized and inclusive neighborhoods • IP can lead to reduced crime • IP can support all-inclusive education and participation

(continued)

Table 1 (continued)

Elements for delivering on the SDGs	Potential application of intergenerational practice (IP)
Partnership: to mobilize the means required to implement this Agenda through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people	• Children and youth are open to global solidarity, exchange and cooperation, and these ideas and practices can be facilitated by IP - IP can support: • participation and involvement by the women and men of all ages incl. children and elderly in the local, national and international sustainable development processes • cooperation and exchange among the older professionals and active youth on an international level

Five Questions

1. What similarities exist between intragenerational equality and gender equality?
2. How can equal participation of older women and girls be ensured in intergenerational practice?
3. What can elderly women and men teach the children about environmental justice? About sustainable development?
4. What can the older generation learn from children about sustainable development?
5. Which aspects of Sustainable Development can be linked to crime prevention?
How can intergenerational practice be useful to prevent crime in this respect?

Annex: Intergenerational Learning

1. The main drivers;
2. Principles;
3. Building blocks;
4. Benefits;
5. Practice ideas; and
6. Project examples

The Main Drivers for Intergenerational Policy and Practice
(Adopted from Fischer 2013, p. 5)

- Demographic change, longevity, ageing society and workforce;
- Changing economic, insurance and welfare patterns;
- Increasing economic disparities;

- Shift from full- to part-time employment; economic need for mobility and flexibility;
- Shift from a industrial to a Knowledge Society;
- Individualised/atomised societies, flexible lifestyles;
- Dissolving traditional family structures, single households, social isolation of the elderly;
- Urbanization;
- Globalization, migration and ethnic diversity.

Eight Core Principles: Qualities of Intergenerational Approaches (Adopted from Almeida Pinto 2009, p. 20)

- Mutual and reciprocal benefits;
- Participation;
- Asset based;
- Thorough planning;
- Culturally grounded;
- Strengthening of community bonds and promoting active citizenship;
- Challenge to ageism;
- Cross-disciplinarity.

The Intergenerational Learning Building Blocks (Adopted from Kolland 2008, p. 7)

- Relation to interdependence and reciprocity;
- Importance of pursuing common activities and growing together—a relationship is more than a mere interaction;
- Explicitly addressing the different experiences of the different age groups or generations;
- Orientation towards the exchange of experience, use of the skills specific to each generation;
- Design fostering critical thinking about:
 - stereotypes
 - individual differences between people
 - inaccuracy of generalizations;
- Aim of counteracting a negative stereotype of ageing
- Taking into account the level of competence of the elderly and its relevance in the education of younger people.
- Intergenerational learning has the task of developing understanding of the attitudes of other age groups and correcting these as required.

Societal Benefits from Intergenerational Learning (Adopted from EAGLE 2008, p. 6)

- Uniting segregated generations and building better understanding between generations;
- Encouraging active citizenship and social participation;
- Encouraging cross-generational working;
- Sharing societal and professional resources, tacit and explicit knowledge among generations;
- Challenging social problems cross-generationally;
- Addressing different social & e-Inclusion objectives and competence areas simultaneously;
- Supporting Lifelong and Life-wide Learning;
- Maintaining & building human and social capital simultaneously.

Typology of Intergenerational Practice ideas (Adopted from EAGLE 2008, p. 15)

- Community development, living and safety, including intergenerational living and meeting places;
- Education, training and learning, including general education and training, Lifelong Learning, language learning, literacy, numeracy, digital literacy, senior universities, knowledge exchange, hobbies;
- Mentoring i.e. intergenerational support, services and consultancy;
- Mediation, such as problem/conflict solving, prevention of violent behaviour
- Media education, such as Information and Communication Technologies (ICTs);
- Social inclusion/participation, active citizenship;
- Employability;
- History and reminiscence, such as oral history, preserving cultural heritage, work with contemporary witnesses;
- Health;
- Arts, including culture, theatre, play, music;
- Environment and environmental protection;
- Grandparents and grandchildren and older kin;
- Travel, excursions and leisure time.

Examples of Intergenerational Projects (Adopted from EAGLE 2008, p. 18)

- Older and younger people coming together to share learning experiences and gain a better insight about each other;
- Older volunteers mentoring pupils in school;
- Skills and competence sharing;
- Young volunteers providing services and support to older people—helping them go to the shops, reading to them, visiting, running errands;
- Older volunteers supporting young parents;
- Toddlers visiting people with dementia in residential settings;
- Older people working with pupils on a project to promote cultural exchange using oral history or the arts;
- People of all ages working together to improve their community.
- People from different generations working together to transform a waste area into a neighborhood park;

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Biopolitics, Ethics and the Culture of Lawfulness. Implications for the Next Generation?

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Abstract Europe is ageing faster than any other continent. The demographic crisis and the possibility of replacement of generations are currently among the problems most frequently discussed. The form of specific legal regulations depends on the axiological foundations accepted in a given system of law. This chapter describes the process of the formation of pastoral biopower (Foucault's concept of biopolitics) within the framework of the European culture of lawfulness. From the late nineteenth century, states became more and more interested in controlling the population. Foucault's analyses need to be supplemented by an indication of how contemporary bioethics determines a way of understanding the essence of the human being and his or her rights, and/or duties, in the sphere of procreation. The chapter shows how the schools of pronatalism, antinatalism and environmental ethics have shaped the policies of European countries with regard to procreation, as well as people's behaviours in that area. It also describes how demographic policy has evolved under the influence of progress in biotechnology.

1 Introduction

The axiology of law is the set of values that the law expresses. A particular set of values becomes incorporated into it through the processes of rationalization, legitimization and the creation of legal instruments. Axiological foundations for Western legal civilization were laid down by legal positivism, aiming to realize the ideals of Enlightenment philosophy, in particular the Kantian idea of an autonomous human being, capable of self-determination. Positive law was intended to protect those rights. The state was to be law-governed. Positive law became the basis for the functioning of public authorities and social institutions (the principle of legalism). The end of the eighteenth and start of the nineteenth century saw the beginning of the development in continental Europe of the doctrine of the

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Rechtsstaat, based on recognition of the innate and natural rights of the individual, which may be restricted by the authorities only in especially justified cases. This concept, developed by German lawyers (Johann Wilhelm Placidus, Carl von Rotteck, Robert Mohl), emphasized the need for human freedom to be recognized across as broad a scope as possible, and for it to be defended against excessive interference and appropriation by the state. This material understanding of the *Rechtsstaat* was close to the Anglo-Saxon concept of the rule of law (Unger 1977, pp. 52–54 and 185–187, 273–274; MacCormick 2008, pp. 181–189 and 254–256; Bingham 2011). At the end of the nineteenth century the concept underwent formalization. The law gradually lost its dimension of *ius*, leaving only *lex*. The *Rechtsstaat* turned into a *Gesetzesstaat*—a state based on statutes. Positive law became separated from morality. Habermas referred to this process as juridification—a colonization of the lifeworld (Habermas 1975, pp. 1–8; idem 1989, pp. 355–357 and 367–373; 391–396).

Jurisprudence in the nineteenth century and the first half of the twentieth was dominated by the legal positivist paradigm. This was the age of modernism, which was supposed to free people from magical, transcendently entangled thinking about the world—it was to “break the spell” that the world was under. A sovereign state creates positive law as necessary for the exercise of its increasingly numerous functions. To a greater and greater extent, the law becomes a social technique, or even embodies the concept of “social engineering through law”. However, as Western societies evolved from the industrial to the post-industrial stage, the existing way of understanding the law proved to be inadequate, or even anachronistic.

A turn away from positivism in jurisprudence (recognition of the necessary relations between law and morality) was initiated by the work of Gustav Radbruch, Lon L. Fuller and Herbert Hart (Lyons 1984, pp. 71–75; Kelly 1992, pp. 415–421). We can also observe a trend towards communicative ideas (as put forward by J. Habermas and R. Alexy). On the other hand, there sprang up various schools of law described as postmodernist: Law and Economics, Critical Legal Studies, Feminist Legal Theory, Law and Literature (Minda 1995, pp. 83–167; Litowitz 1997, pp. 7–19; Balkin 1994, pp. 370–374; Morawski 2005, pp. 48–80). Postmodernism heralded the end of the Enlightenment project (Carty 1990, p. 1) and of the “grand narratives”—the traditional classical paradigms of learning, including those of law (Lyotard 1984).

In contemporary times, the belief in a need to respect natural and innate rights as fundamental rights of the individual, in particular the autonomy of the individual, the right to liberty and the right to defend one’s property, as the basis for justice and the rule of law, is known as the Culture of Lawfulness.

Analyses of the juridical model of law characteristic of modernism are not the only ones possible. Another model of analysis of the changes in ways of understanding power, the law and its subjects can be found in the work of Michel Foucault. “*The analysis does not revolve around the general principle of Law or the myth of Power, but concerns itself with the complex and multiple practices of a ‘governmentality’ which presupposes, on the one hand, rational forms, technical*

procedures, instrumentations through which to operate and, on the other hand, strategic games which subject the power relations they are supposed to guarantee to instability and reversal" (Foucault 1984, pp. 337–338; Golder and Fitzpatrick 2009, pp. 29–35; Hunt and Wickham 1998, pp. 52–55).

The rule of law is generally seen as an indispensable element of the liberal model of the state. In Foucault's view, there is no necessary connection between liberalism, the rule of law and representative democracy. *"Liberalism sought that regulation in 'the law', not through a legalism that would be natural to it but because the law defines forms of general intervention excluding particular, individual, or exceptional measures; and because the participation of the governed in the formulation of the law, in a parliamentary system, constitutes the most effective system of governmental economy. The 'state of right', the Rechtsstaat, the rule of law, the organization of a 'truly representative' parliamentary system was, therefore, during the whole beginning of the nineteenth century, closely connected with liberalism, but just as political economy"* (Foucault 1997, pp. 76–77). Power (in his later work Foucault uses the term "power relations") has more than one face: there is juridical-discursive sovereign power, disciplinary power (discipline), governmentality, and biopower.

Foucault described extensively and in detail the evolution of disciplinary power, born in the second half of the eighteenth century, into biopower, which began at the end of the nineteenth. Biopower is a form of realization of biopolitics. Earlier, however, the human being had been made subject to an objectifying discourse.

2 The Discourse of Disciplinary Power Involves a Code of Normalization. An Introduction to Biopower and Biopolitics

To begin with, Foucault was interested in the archaeology of discourse. He deals with this subject in works published in the later 1960s and early 1970s: *The Order of Things: An Archaeology of the Human Sciences* (1966), *The Archaeology of Knowledge* and *The Discourse on Language* (1969, 1971). A problem is posed by the ambiguity of the term "discourse" as he uses it. On the one hand, discourses are autonomous systems of rules, which constitute objects, concepts, subjects and strategies. On the other hand, from an analytic point of view, discourses are something other than social practices, institutions and techniques (Howarth 2000, pp. 80–82). In the aforementioned books, written using the archaeological method, Foucault is concerned primarily with linguistic (discursive) practices, the manner of their emergence in the modern episteme. The relations between them were of a discontinuous nature, and transition from one to another took place by way of a severance (Gutting 1989, pp. 181–260). In his later works, Foucault is more interested in vertical relationships. These exist between empirical practices, such as the foundation of hospitals, psychiatric institutions or prisons, and a specific type

of discourse—medical, psychiatric, legal (Foucault 2001c, pp. 542–546). Unfortunately, the term “discursive ensembles” as used by Foucault also lacks an unambiguous definition. In *The Order of Things* these are sometimes descriptions of regularity in discursive systems, sometimes rules laying down the scope of permissible statements in discourse, and sometimes causes of the formation of discursive orders. Foucault is concerned above all with the institutionalization of discourse (Foucault 1998, p. 309).

In *The Discourse on Language*, He referred directly to the control, selection, delimitation and redistribution of the production of discourse in society by specified procedures. “*There are many systems for the control and the delimitation of discourse, (...) they function as systems of exclusion. (...) Disciplines constitute a system of control in the production of discourse, fixing its limits through the action of an identity taking the form of a permanent reactivation of the rules*” (Foucault 1972, p. 220).

Following his analyses of the coming into being of various types of discourse—psychopathology (*Madness and Civilization: A History of Insanity in the Age of Reason*), medicine (*The Birth of the Clinic: An Archaeology of Medical Perception*), grammar, political economy (*The Order of Things. An Archaeology of the Human Sciences*)—he begins to criticize them. The archaeological method of analysis is replaced by the genealogy of knowledge-power (*savoir-pouvoir*). “*Indeed, it is in discourse that power and knowledge are joined together. (...) Discourse transmits and produces power*” (Foucault 1978, pp. 100–101).

Questions concerning knowledge have an important connection with those concerning power. The possession of knowledge enables domination and provides the power to subjugate. Foucault speaks of disciplinarization, normalization, appropriation of the social world by disciplines, a new type of law. Contemporary power is a disciplining power. This does not mean that “law fades into the background or that the institutions of justice tend to disappear, but rather that the law operates more and more as a norm, and that the judicial institution is increasingly incorporated into a continuum of apparatuses (medical, administrative, and so on) whose functions are for the most part regulatory” (Foucault 1978, p. 144).

Sovereign power was superseded in the eighteenth century by another type of power, namely the new technology. In *Abnormal. Lectures at the Collège de France 1974–1975*, Foucault referred to “*a new economy of the mechanisms of power: a set of procedures and analyses that enabled the effects of power to be increased, the costs of its exercise reduced and its exercise integrated in mechanisms of production. By increasing the effects of power I mean that there was the discovery in the eighteenth century of a number of means by which, or at least, the principle in accordance with which power could be exercised in a continuous manner, rather than in the ritual, ceremonial, discontinuous way it was exercised under feudalism and continued to be exercised in the absolute monarchies. That is to say, it is no longer exercised through ritual, but through permanent mechanisms of surveillance and control*” (Foucault 2003a, p. 87).

There is a constant increase in the number of “disciplinary mechanisms”, mechanisms for controlling people and making use of them. In the classical

episteme, psychiatric, medical and legal discourse provided a method for separating the normal and abnormal, healthy and sick, insiders and outsiders, prisoners. Now, discursive practices have been replaced by subtle methods for normalization and the localization of people in a defined space. In guiding individuals to strive for optimum performance relative to some norm, discipline does not have a sense of coercion. In *Discipline and Punish*, Foucault gave the following definition: “*the mechanisms of the disciplinary establishments have a certain tendency to become ‘de-institutionalized’, to emerge from the closed fortresses in which they once functioned and to circulate in a ‘free’ state; the massive, compact disciplines are broken down into flexible methods of control, which may be transferred and adapted*” (Foucault 1979, pp. 181–182; 211). There is a change in the scale of control of the body (every gesture, movement, speed) and in the object of that control (it concerns the economy, or effectiveness, of movements of the body). There is created a “political economy of the body”; the body is blocked by relations of power and dominance, and is conflated in a system of subjugation. State authorities organize the micro-physics of power. Penitentiary systems become part of the political economy of the body, where the body as a productive force is blocked by power and dominance relations. There is created a political technology of the body, which is not manifested in concrete institutions or procedures. “Disciplines” appear, as universal forms of dominance. These are methods of minute control of bodily actions, based on the criterion of the body’s usefulness or manipulability.

The object of disciplinary power is a human body that is named, described, and placed in an appropriate space—an objectified, subjugated body. Foucault uses the term *assujétissement*. This has been translated as “subjectivation” (in Foucault’s writings on sexuality and ethics) or as “subjugation” (in his writings concerning power). In *The Subject and Power* he explains: “*This form of power that applies itself to immediate everyday life categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him that he must recognize and others have to recognize in him. It is a form of power that makes individuals subjects. There are two meanings of the word “subject”: subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power that subjugates and makes subject to*” (Foucault 2000b, p. 331). He also writes: “*Discipline ‘makes’ individuals; it is the specific technique of a power that regards individuals both as objects and as instruments of its exercise*” (Foucault 1979, p. 170; Dreyfus and Rabinow 1983, pp. 153–160). Discipline is the mode of subjection (Simmons 1995, p. 31).

Foucault often uses the terms “power” and “power relations” interchangeably. Power relations lead to objectification of the subject (*assujétissement*)—its location in specified places. Those who cannot or do not wish to fit into their assigned social roles (the insane, vagrants, criminals, soldiers, pupils) are excluded. New, previously unknown, institutions of individual control come into being: psychiatric institutions, penal colonies, juvenile detention centres, hospitals, prisons, schools, barracks. Some of these operate on the basis of a binary division (the insane—later

called mentally ill—versus the sane; normal versus abnormal). Others serve to train individuals, make them uniform and normalize through differentiating repartition and subjection to constant surveillance (Ransom 1997).

The most perfect method of subjugation is the placement of the human being (his or her body) within the authority's field of vision, and the most perfect device making it possible to see those placed in spatially separate places (cells) is the Panopticon—the ideal prison (Schwan and Shapiro 2011, pp. 127–139). The Panopticon is not just an ideal prison, it is the principle of a system (Foucault 2001b, p. 466; Foucault 2001e, pp. 1474–1477; Gros 1998, pp. 73–74). It may be used to supervise prisoners, but also to treat the sick, educate pupils, or oversee workers. *“And indeed what Bentham proposed to the doctors, penologists, industrialists and educators was just what they had been looking for. He invented a technology of power designed to solve the problems of surveillance”* (Foucault 1979, pp. 195–209; Foucault 1980a, p. 148). In *Discipline and Punish* Foucault stated that discipline was liberalism's not-so-silver lining. In *Security, Territory, Population* he writes: *“I believe that I was wrong”* (Foucault 2007, p. 50). Rather, under biopower, liberty becomes a prerequisite, a necessary condition for the exercise of governmental authority (Behrent 2009, p. 22).

The eighteenth century brought changes both in the scale of control (every aspect of bodily functioning, movements, gestures, postures), in the object of control (the economy of bodily movements), and in its modality. There is a constant coercion imposing a defined process of action in accordance with codes and rules, which parcel up time, space and gestures. *“The human body was entering a machinery of power that explores it, breaks it down and rearranges it. It defined how one may have a hold over others' bodies, not only so that they may do what one wishes, but so they may operate as one wishes, with the techniques, the speed and the efficiency that one determines. Thus discipline produces subjected and practiced bodies, ‘docile bodies’”* (Foucault 1978, p. 138; see also Rouse 1994, pp. 92–111). The law, to a greater and greater extent, performs regulative functions, and the role of normalization increases at the cost of the juridical system of law.

Hierarchical observation is the first instrument used to discipline. Disciplining becomes a method of exercising power, which provides procedures for the education and training of individuals and society. Other “disciplining technologies of power” include examination and the passing of normalizing judgments (punishment). Disciplinary devices have changed the nature of punishment—they have introduced penalization based on a norm. This new kind of penalization penetrates all places, controls all instances of disciplinary institutions, and then compares, differentiates, hierarchizes, homogenizes and excludes human bodies. It serves to normalize (Foucault 1979, pp. 183–84). Thanks to discipline, the power of the Norm appears. Together with surveillance, it became one of the basic instruments of power at the end of the classical age. Normalizing power compels homogenization, even though—by making it possible to measure deviations from the norm, by defining levels, determining specialities and exploiting differences by matching them—it also individualizes (Ewald 1992, pp. 201–221). Power is no longer

repressive, but productive. Normalization proceeds by way of confession rather than repression (Caputo and Yount 1993, p. 6).

By “norm”, Foucault did not mean “rule” or “principle”. He consistently counterposed his use of the term “norm” to these legal meanings (Foucault 2003a, p. 50; Foucault 2007, p. 56). Foucault gives the term a meaning close to that of the previously used concept of “discipline”. A norm is a natural rule appearing in the discourse created by disciplines. Norms should be identified with standards. A set of standards or norms, understood in this way, in a given system of law at a given time might be called not a discursive formation, but a normative formation (Ewald 1991, pp. 38–61). Disciplines create their own discourse, separate from that of law. The legal discourse, and the associated concept of rule of law, are a product of the will of the sovereign or his representatives. Disciplines create a network of compulsions which bind the social body together. A power game is played out between law and disciplines, although disciplines are different from legal rules. The law operates by means of prohibition and punishment.

In disciplinary practices, the main role is played by norms and standards of proper behaviour. What can be defined as “normal” behaviour comes into being through the repetition of normalizing requirements. Disciplines are a kind of infra-law, transferring general legal norms to the level of individual behaviour—they are an element of the micro-physics of power (Foucault 1979, p. 222; Rouse 1994, pp. 93–99). Foucault writes of the “colonization” of the discourse of universal law and of the abstract juridical subject by the technologies and procedures of normalization (Foucault 1980c, p. 107).

Disciplinary power rapidly, and as early as the second half of the eighteenth century, took on a different character. Foucault concludes that a new, non-disciplinary, technology of power appeared at that time. Making use of the moulded, disciplined, subjugated human body, it transfers its action to another plane. Its object is now the human being as a biological entity. It wishes to supervise, control and exploit the multiplicity of individuals, the mass, the population. Its action encompasses the population, and within it, the birth, sexuality, productivity and death of beings who had previously been individualized, but are now massified.

The period from the latter half of the eighteenth century saw the development of state policy in relation to birth control and rate of birth. Other fields of intervention associated with biopolitics included a range of phenomena associated with old age and infirmities. Biopolitical government included various forms of control over the environment: water, swamps, conditions of urban life. Biopower intervenes in “*the birth rate, the mortality rate, various biological disabilities, and the effects of the environment*” (Foucault 2003b, pp. 245–247).

Disciplinary power transforms into biopower. While the object of sovereign power was the individual and a society created by a social contract between such individuals, and the object of disciplinary power is the individual and his or her body, the field of operation of biopower is the population. Within the population, serial processes of events take place. Hence biopower introduces new mechanisms of power, different from those which were employed by disciplinary power. They

will include statistical estimation and forecasting, techniques to reduce human mortality, increase lifespan and stimulate reproduction, and for the regulation and optimization of life (Foucault 1980b, p. 125).

3 Foucault's Biopolitics

The central point of philosophical considerations concerning politics in the seventeenth and eighteenth centuries was the concept of sovereignty, the origin of power, the rights enjoyed by the king as sovereign. Foucault recalls, however, that the political philosophy of that period also discussed human life, above all as the object of the sovereign's power. The right of life and death belonged to the sovereign. One of the most important political changes in the nineteenth century was a change in the existing formula of the rights of life and death and their relationship with the power of the sovereign. *"It is the power to 'make' live and 'let' die. The right of sovereignty was the right to take life or let live. And then this new right is established: the right to make live and to let die"* (Foucault 2003b, p. 241).

Foucault's conception of power is concerned above all with its effects, with the repressive function of the law in societies governed by Western liberalism, and with the relations of power and knowledge. Foucault wrote about "modern states". He means the populations that are assigned to the territorial unities of liberal-democratic states in Europe and North America. As Michael Dean says *"He was Eurocentric"* (Dean 2001a, pp. 41–64). The study of colonial power relations and colonial bodies is largely absent from Foucault's studies of discipline and sexuality (Stoler 1995). In India, the post-liberalization era initiated in 1991. This attention to the welfare of the population was a form of biopower, one of the hallmarks of Foucault's governmentality (Gupta 2001, pp. 65–94). In China this was the official state politic of one child (Greenhalgh and Winckler 2005).

Importance is attached to the techniques and rationality of government, and methods of directing people and the state. There is a need to depart from the juridical-discursive presentation of power, and to concentrate on analysing transformations of the forms and techniques of power: from the appearance of disciplinary power at the end of the seventeenth century, up to the emergence of a different, non-disciplinary technology of power—biopower—in the second half of the eighteenth.

The term "biopolitics" has different meanings, depending on who is using it and in what context (Lemke 2011). Giorgio Agamben (1998, pp. 6, 19 & 122, 172–174; 2005, p. 1) and Roberto Esposito (2008, pp. 13–44) define biopolitics as the process of incorporating *bios* (bare life) into cultural, political and legal discourse (politicization). An authority (the sovereign) has the power to decide whose life is worthy of protection, and who can be killed with impunity (*homo sacer*). The camp becomes a paradigm: toward a paradigm of the extinguishing of differences. The state of exception becomes the norm; the norm becomes the state of exception (Norris 2005, pp. 2–8; Patton 2007, pp. 203–228).

The term “biopolitics” as used in Foucault’s work is also ambiguous. Its meaning changes and evolves in successive texts. The determination of a uniform meaning for the term is further hindered by the fact that Foucault also writes about biopower, and does not make any explicit distinction between the two concepts (Bertani 2000; Revel 2002; Colucci 2005).

Biopolitics is, first, a certain new type of power and of technology of power which, in a historical sense, supersedes sovereign power. Using the term in this meaning, Foucault is able to trace the transition from sovereign power in the classical episteme to biopower in the modern episteme (*Society Must Be Defended. Lectures at the Collège de France 1975–1976*).

Secondly, biopolitics was the reason for the birth of modern racism, and at the same time a form of politics of the population (*Society Must Be Defended*).

Thirdly, it is a technology of power characteristic of the development of liberalism (*Security, Territory, Population: Lectures at the Collège de France 1977–1978; The Birth of Biopolitics: Lectures at the Collège de France 1978–1979; The History of Sexuality vol. I: An Introduction 1978*) (Lemke 2011, pp. 33–35; Tepper 2010, pp. 78–82; Karskens 2009, pp. 122–127).

For Foucault, biopolitics is another name for the technology of power, biopower, which needs to be distinguished from the mechanisms of discipline that emerged at the end of the eighteenth century. This new configuration of power aims to take “control of life and the biological processes of man as species and of ensuring that they are not disciplined but regularized” (Foucault 2003b, p. 246). Biopolitics is juxtaposed in Foucault’s analysis with the power of sovereignty, leading to an important distinction between them. He writes: “Biopower is the power to make live. Sovereignty took life and let live. And now we have the emergence of power that I would call the power of regularization, and it, in contrast, consists in making live and letting die” (ibid., p. 247; Dean 2013, pp. 36–37). The nature and form of the new disciplinary and biopolitical modes of power are largely incompatible with the old forms of law and sovereignty. But sovereignty has not vanished, of course. It has been reactivated in the service of political regulation and security (Foucault 2007, pp. 8–10; Jaeger 2010, pp. 54–57).

For Foucault, biopower constituted nothing less than the entry of life into the order of politics—the emergence of a “society in which political power had assigned itself the task of administering life” (Foucault 1978, p. 137; Golder and Fitzpatrick 2009, pp. 20–22).

Biopolitics does not invalidate or annihilate the technology of disciplinary power. Biopower transfers the problem of the human body, which was the object of disciplinary power, to a higher level. It directs the processes of human life, controlling and modifying them. From now on a person is not exclusively a legal subject, but a living being which will be subject to the influences of biopower at the level of life itself. The basic targets of biopolitical control come to be the processes of birth, mortality, longevity, ratio of births to deaths, rate of reproduction, the fertility of a given population, and the like. The first statistical measurements of these phenomena and processes are introduced. Scientific demographics comes into

being. “We see the beginning of a natalist policy, plans to intervene in all phenomena relating to the birth rate” (Foucault 2003b, p. 243).

Foucault links the birth of biopolitics and biopower with the evolution of liberalism at the end of the nineteenth century and the appearance of ordoliberalism in the 1920s and 1930s. In his lectures given at the Collège de France between January 10 and April 4, 1979, titled *Naissance de la biopolitique* (The Birth of Biopolitics), Foucault made a precise and profound analysis of the birth and development of economic and social liberalism, as well as the relations between liberalism and legal theory. Only by describing the changes in the way of treating the human body, subjugated by disciplinary and normalizing power, controlled and subjected to coercive, totalizing socialization carried out in social institutions for the management of individuals (the family, schools, psychiatric hospitals, prisons, the armed forces, the police, collective administration, individual medicine, etc.), does it become possible to understand the process of the emergence in the late nineteenth century of a new technology of power: biopower (Foucault 2008, p. 22). However, the biopolitics of population was a technology of power that was assimilated and creatively exploited by totalitarian states as well. Both Nazism and socialism carried out a generalization of biopower. The Nazi state bound the biopolitics of the population with racism. It raised the organization, control and protection of the biological nature of the population to an absolute level. At the same time a modification was made to the sovereign right to kill—to kill anyone, Germans as well as those “whose life was not worth living”. Both socialist and capitalist states are tainted with racism. In the case of the socialist state, this is not purely ethnic racism, but rather racism of an evolutionistic type, a biological racism (ibid., pp. 254–263; Lemke 2011, pp. 40–42). Biopolitics and biological factors play a role in the analysis of other fields of social and political behaviour: education (Pierce 2013), bureaucracy (Flohr 1986), and criminology (Murray and Herrnstein 1996; Rushton 1998).

Another field in which biopolitics operates involves issues relating to the unfitness or worthlessness of certain individuals for work—their neutralization. From the start of the nineteenth century this would involve cases of disability, accidents at work, or old age. “This biopolitics will establish not only charitable institutions (...) but also much more subtle mechanisms that were much more economically rational than an indiscriminate charity. (...) We see the introduction of more subtle, more rational mechanisms: insurance, individual and collective savings, safety measures, and so on” (Foucault 2003b, p. 244). Biopolitics is not just a technology of power whose object is the individual human body and control of the individual’s life processes. The fundamental level on which biopolitics operates is the global level—that of the population. It is necessary to reduce the randomness associated with the life of the population. The objective is the optimization of life—bioregulation by the state. “There is absolutely no question relating to an individual body, in the way that discipline does. It is therefore not a matter of taking the individual at the level of individuality, but, on the contrary, of using overall mechanisms and acting in such a way as to achieve overall states of equilibration or regularity; it is, in a word, a matter of taking control of life and

the biological processes of man-as-species and of ensuring that they are not disciplined, but regularized" (ibid., pp. 246–247). Biopower becomes a pastoral power (Foucault 2000a, p. 307; Dean 2001b, pp. 73–97).

Since the start of the eighteenth century, society has been subject to an increasing degree of medicalization. The medical technologies of government change across time, they tend to cohere around security problematics posed to, and by, the vitality, fecundity and productivity of the population (Foucault 2003c, pp. 320–322). Around the mid-eighteenth century there emerged and developed a biopolitics of the population dealing with the regulation of population processes (problems of natural population growth, human longevity, urbanization and processes of migration). It was the subjugated, trained and comprehensively normalized human body, a creation of disciplinary power and the power of the Norm, that was the social foundation on which the biopolitics of the population grew. The human body was to meet the requirements of reproduction of capitalist relations (political economy of the body). After individual bodies had been subjugated by the general application of techniques of disciplinary power in schools, colleges, barracks and prisons, from the mid-eighteenth century the era of biopower begins, an era of controlled regulation of bodies as a species (Foucault 1978, pp. 139–140). Foucault states that the emergence of biopower, as a modern form of power, was a necessary element in the development of capitalism. Capitalism adapted population phenomena to economic processes; however, it required new tools and techniques for exercising power. It became necessary to combine the accumulation of population with the accumulation of capital. People had to become more and more obedient and productive; they needed to work efficiently.

It was not by chance that at the end of the nineteenth century the first social laws were introduced. State authorities and other social organizations were interested in new methods of influencing the population's health, vitality and fertility. The life of humans as a species was made subject to knowledge and power. New methods and techniques of power (biopower) direct processes of life, subjecting them to classification, control and modification. *"One would have to speak of biopower to designate what brought life and its mechanisms into the realm of explicit calculation and made knowledge-power an agent of transformation of human life"* (ibid., p. 143). Biopower used two main techniques for managing individuals. Earlier there appeared an anatomo-political power over the body, whose goal was to integrate the forces of the human body with systems of effective economic control. *"The new technology that is being established is addressed to a multiplicity of men, not to the extent that they are nothing more than their individual bodies, but to the extent that they form, on the contrary, a global mass that is affected by overall processes characteristic of birth, death, production, illness, and so on. (...) After the anatomo-politics of the human body established in the course of the eighteenth century, we have, at the end of that century, the emergence of something that is no longer an anatomo-politics of the human body, but what I would call a 'biopolitics' of the human race"* (Foucault 2003b, pp. 242–243). In the eighteenth century, these two techniques were still separated—there had not yet been shaped a single discourse that combined them. The nineteenth century, however, saw the

constitution of a further, coherent technology of power, which Foucault called the *dispositif de sexualité*.

The binding together of power, knowledge, and the sexuality of both the individual and the population is a third area of interest of biopolitics. Biopolitics refers not only—or even most prevalently—to the way in which politics is captured by life, but also and above all by the way in which politics penetrates life. Foucault concludes: “If one can apply the term bio-history to the pressures through which the movements of life and processes of history interfere with one another, one would have to speak of bio-power to designate what brought life and its mechanisms into the realm of explicit calculation and made knowledge-power an agent of transformation of human life” (Foucault 2001a, pp. 95–97).

In *The History of Sexuality*, Foucault analyses the way in which modern biopower has induced people to submit to its mechanisms (subjugation, *assujettissement*) using specific confessional techniques and ethical identity-related practices (Dreyfus and Rabinow 1983, pp. 126–127). At the beginning of the first volume of *The History of Sexuality* Foucault set out a conception of the relations between knowledge, power, sexuality and the body. He called this the repressive hypothesis.

The repressive hypothesis is immanently connected with the characteristic Western “juridical-discursive” concept of power. Reference to this concept of power, and the stressing of its sovereign nature and the legality of actions, makes it more difficult to analyse the actions of other forms of power, which occur simultaneously with it and in whose description Foucault was primarily interested. It was the subjugated, trained and comprehensively normalized human body, a creation of disciplinary power and the power of the Norm, that was the social foundation on which the biopolitics of the population grew (Muble 2014, pp. 78–80). The human body was to meet the requirements of reproduction of capitalist relations (political economy of the body). After individual bodies had been subjugated by the general application of techniques of disciplinary power in schools, colleges, barracks and prisons, from the mid-eighteenth century the era of biopower begins, an era of controlled regulation of bodies as a species (Foucault 1978, pp. 139–140).

The repressive hypothesis explains the change in the attitude taken by the authorities towards sexuality: from the treatment of sex, in the classical age, as a part of human nature, (“The scheme for transforming sex into discourse had been devised long before in an ascetic and monastic setting. The seventeenth century made it into a rule for everyone”—Foucault 1978, p. 20), to the treatment of sex that does not serve procreation as a sin and an object of confession (Catholic doctrine), increasing repressiveness (from the seventeenth century onwards—*ibid.*, p. 15) and the continuous proliferation of discourse concerning sex in the eighteenth and nineteenth centuries. “Sex was not something one simply judged; it was a thing one administered. It was in the nature of public potential; it called for management procedures; it had to be taken charge of by analytical discourse. In the eighteenth century, sex became a ‘police matter’ – in the full and strict sense given the term at the time: not the repression of disorder, but an ordered maximization of

collective and individual forces" (ibid., pp. 24–25). Liberation was brought only by a new discourse on sexuality in the post-modern age.

The fundamental change which took place in the eighteenth century was the recognition of the population as an economic and political problem. The object of government is not people, only the population: "*population as wealth, population as manpower or labor capacity, population balanced between its own growth and the resources it commanded (...) population with its specific phenomena and its peculiar variables: birth and death rates, life expectancy, fertility, state of health, frequency of illnesses, patterns of diet and habitation.*" However, the most important problem of the population is sex. "*It was necessary to analyze the birthrate, the age of marriage, the legitimate and illegitimate births, the precocity and frequency of sexual relations, the way of making them fertile or sterile, the effects of unmarried life or the prohibitions, the impact of contraceptive practices*" (ibid., pp. 25–26).

Sex becomes the basic object of interest of the authorities and the state. Sex is to serve the goal of procreation. The state analyses the sexual behaviours of individuals, their determinants and consequences. It does not stop at just observation and analysis—the state wishes to oversee and to plan these behaviours. Sex is not only a biological question, but an economic one: a new domain for the political economy of the body. The state, apart from its traditional means—moral and religious dictates and prohibitions, tax burdens (higher taxes on the income of unmarried and childless men)—creates new mechanisms for stimulating procreative behaviours in the population: advertising campaigns promoting the family, control of fertility through legal prohibition of abortion, control of sex education and of the availability of contraceptives. It supports the traditional, Catholic model of the family: the man works professionally, while the woman looks after the home and children. It reinforces standards and norms of sexual, marital and family life. It defines the proper social roles of individuals. Sex is no longer just a part of people's private, intimate lives. It is the subject of manifold discourses and of scientific knowledge (McNay 1994, p. 96). "*From the singular imperialism that compels everyone to transform their sexuality into a perpetual discourse, to the manifold mechanisms which, in the areas of economy, pedagogy, medicine, and justice, incite, extract, distribute, and institutionalize the sexual discourse*" (Foucault 1978, p. 33).

4 Ethical Aspects of Human Procreation: On the Need for a New Definition of Morality Arising Out of Neo-Naturalist Environmental Ethics

Biotechnological progress in the field of medicine gives rise to many ethical problems whose resolution is of immeasurable importance, not just from the perspective of the individual, but also in the context of population policy and the

operational techniques of biopower. One of the areas at issue is human procreation. Dilemmas relating to that area have become especially apparent in the globalized world. They cannot be considered in isolation from cultural determinants.

From the perspective of the culture of lawfulness, a fundamental role is played—as has been mentioned previously—by the conviction that it is necessary to protect innate individual rights, in particular the right to freedom. Human procreation is one of the fundamental rights, being linked to the concept of human dignity and the right to self-determination. Decisions in the area of procreation are of a dual nature. They concern on the one hand the right to have children, and on the other—the right not to have them.

The right to have children is expressed in, among other things, the ability of potential parents—exercising the liberty that the law guarantees—to realize their procreative plans autonomously by striving to give birth to a child. In case of problems with getting pregnant, modern medicine provides them with the possibility of fertility treatment, using methods of artificial insemination and *in vitro* fertilization. In some countries, there is also legal access to pre-implantation diagnosis and surrogate motherhood services. The parental instinct can also be satisfied through adoption. The right not to have children, on the other hand, is linked to the possibility of using methods to prevent reproduction (usually in the form of contraceptives, and more rarely through sterilization), but also to the ability to take a decision to terminate a pregnancy.

Issues relating to procreation are among the fundamental problems of modern ethics, and in particular of that branch which goes by the name “bioethics”. Because of the possibilities that modern medicine offers, there is a broadening of the range of problems relating to human procreation considered in the context of demographic (population) policy. It also comes to include questions concerning the possibility of “creating” future generations, for instance by the use of pre-implantation diagnostic techniques to impart desired features to children who are yet to be born. This will have an influence on the quality of the population and of future generations.

There is currently a noticeable fascination in bioethics with futuristic visions of a “bionic” human being (*homo bionicus*), or one who is everlasting (*homo continuus*), and thus of a person who is to live for as long and in as good a condition as possible. In view of the possibilities offered by medicine, some foresee that in the near future there will exist a practically immortal human being: genetically improved, reproducing by cloning, resistant to cancers, making use of gene therapy, using the potential of stem cells to grow replacement tissues and organs, etc. Naturally some of these visions still lie within the domain of science fiction, but many of them have become realistic thanks to biotechnological progress. Medicine is able to make real (at least partially) ideas that until recently would have been considered entirely utopian. Numerous questions nonetheless need to be answered. Is it right that doctors should make use of existing technologies and carry out all possible forms of interference with the human body, even if this leads to an increase in the fertility rate? Is the fact that the expected result of actions may prove favourable for society as a whole a sufficient argument for the legitimacy of those actions? How

are we to determine the legal limits of medical (and in particular genetic) experiments carried out on humans?

The eternal dilemma between the law of nature and enacted law (between *ius* and *lex*) takes on a new importance. The chief cause of moral and legal controversy is that biotechnology has now encroached on the “sanctuary of the secret of life”, while mankind is preparing to carry out processes in which it itself will be the object of transformation. With the development of genetics, there is now a blurring of the boundary between nature and organic equipment, between subject and object, between the natural and the artificial (Ostasz 1994).

The logic of technical progress apparently forces the assumption that medicine (and genetics) will continue to develop. These fields will also certainly exert a growing influence on the life of individuals and of society. Considering the inevitability of this process, modern states ought to prepare for the elimination of potential threats: to ensure that the achievements of science are made to serve the common good. Properly constructed laws should be an instrument for attaining that goal.

A fundamental issue in bioethics is the dispute over the permissibility of medical intervention relating to human procreation, as well as related controversies concerning the essence of humanity. These controversies have an undoubted impact on specific decisions concerning the directions of demographic policy, whose purpose is also to shape population relations in such a way as to produce a desirable population in terms of numbers and structure. Two basic approaches can be distinguished in this area of policy: the pronatalist one, where the state acts to increase the fertility rate, particularly in the context of the projected sub-replacement rates in highly developed European countries; and the antinatalist one, where the aim is to decrease this rate, usually due to concerns relating to projected overpopulation in certain parts of the world (such as China and India).

The dispute over the definition of a human being is connected with, among other things, the fact that in the twenty-first century there is a visible friction between traditional culture and the “fluid” culture of the modern world. Traditional values have proved incongruent with the pluralist, global reality, based on individualism, pluralism and rationalism. At the same time, the modern philosophy of optimistic pragmatism appears to be lacking a “transcendental extension”. The primary challenge comes to be the utilitarian balance sheet, belief in success and potential benefits, which are available to every individual, on condition that he or she is sufficiently dynamic, strongly motivated, healthy and efficient. Such an individual should have—as has already been mentioned—a legally guaranteed autonomy, including in the area of procreation. Usefulness, rationality, economy and ecology take precedence over the domain of morals and philosophy. New approaches to the eternal problem of human procreation are therefore a consequence of the appearance of new value systems.

There is currently a growth in the popularity of ideas which oppose the traditional positivist and natural-law approaches. A revaluation of issues relating to the essence of humanity is proposed by what is called “environmental ethics”. This addresses existential, morally important matters, being the result of the problems of

mankind (society, globalized humanity) with the natural environment. The sphere of philosophical inquiry is the totality of interdependencies and mutual interactions between people and nature, and their interpretation from the point of view of the well-being of humans and of the biosphere.

Environmental ethics was founded in the late 1970s and early 1980s. The fundamental object of its considerations came to be *bios* (life), seen chiefly from the perspective of relations between species. Environmental ethics leads to the formulation of moral principles concerning the co-existence of *Homo sapiens* with its natural surroundings. Specific issues are resolved based on the conclusions of evolutionary axiology. Moral patronage of the founding of environmental ethics can be considered to belong to the voluntaristic “ethics of reverence for life” of Albert Schweitzer (Schweitzer 1966). The idea that concern for the future of humanity is the overriding duty of people in our modern technical civilization, while metaphysical responsibility goes beyond the individual fate of *Homo sapiens* and begins to concern the rest of the living world, was promulgated thanks to Hans Jonas (Jonas 1996). A need was perceived for a redefinition of the category of nature, in accordance with the ideological matrix of sustainable development and taking account also of nonhuman interests (Bińczyk 2012, p. 170).

As environmental ethics has evolved, various options have developed within it. One of these is known as “ethical humanism”. This is an application of traditional humanist ethics (anthropocentrism) to moral issues relating to aspects of protection of the natural environment. It should be noted that environmental ethics seen from this perspective does not in fact require either a new definition of morality, or a departure from the intellectual tradition of the Mediterranean cultural area (the European-American model of utilitarian culture). The target of regulatory measures is the human being, while the protection of nature is an instrument serving to provide humanity—as the master species—with general well-being.

In considerations concerning biotechnological progress, a particular role is played today by what is called *neo-naturalist environmental ethics*, which puts forward new proposals for defining morality, these being of particular significance in connection with the technological capabilities offered by modern medicine (and by genetics in particular). This ethics attempts to determine methods for resolving the moral and legal dilemmas arising from such progress. It includes a set of individualistic ethics known as humane moralism or biocentrism. This school has given the whole of counter-anthropocentric environmental ethics a decidedly anti-Cartesian character. Living organisms of all species are treated here as sensitive—and above all sentient—individual beings. The result is the postulate that we should respect the sensitivity and the ability to distinguish good and bad experiences—particularly as regards pleasure (happiness) and pain (suffering)—exhibited by what are called nonhuman animals. The humanist axiology is therefore extended to cover sentient beings which are not human, but are in biological terms fundamentally similar. A key issue addressed by the originators and theoreticians of this approach (such as Peter Singer, Paul W. Taylor, Tom Regan and Robin Attfield) is the identification of an evolutionarily determined threshold for being considered a morally and legally relevant object (Wawrzyniak 2000, pp. 49–50).

In considering environmental ethics, one should not neglect the importance of what is known as biomedical ethics. This has been developing intensively since the mid twentieth century. It is stimulated by the new capabilities and conflict situations created by rapid scientific and technical advances in diagnostics and therapy, while legal regulation in this area remains stagnant and inadequate. *“The fundamental values (...): life (biological survival), health and freedom from pain, as assigned to specific people, are as a rule not realized simultaneously in situations of danger, and medical actions remain inherently characterized by a dual effect (the effects inevitably accompanying therapeutic and care procedures, and the expected but undesirable biologically destructive consequences of those procedures)”* (ibid., p. 64).

Answers to questions concerning the essence of humanity, which are essential from the standpoint of biomedical ethics, are clearly affected by cultural factors. An enormous influence is exerted by the Judeo-Christian roots of European culture, and in particular by Catholic doctrine.

Deriving from classical ethical concepts, a dispute came to light at the end of the twentieth century between competing visions relating to the problem of human life. The traditional, abstract and not totally coherent—grounded in the Judeo-Christian cultural model—ethics of the “sanctity of life” (bound up in the paradox of the axiological absolutization of the physiological layer of life, and then only in relation to the species *Homo sapiens*) began gradually to be displaced by the realist ethics of the “quality of life” (understood as respect for personal life which has a defined value; for conscious life). This new view of human life—treated as an object of moral evaluation—is undoubtedly a consequence of medical progress. The fact that the quality of a person’s life is determined not only by the body, but above all by the human capacity for autonomous action, has been confirmed by a large number of court judgements relating to, among other things, issues of procreation. The view has become more and more common that autonomy or its potential attainability is a necessary condition for someone’s life to deserve fully to be called a human life. At the same time, increased social acceptance for the ethics of “quality of life” has been (and continues to be) accompanied by the question of how to measure that quality (Chańska 2009, p. 108).

In considerations concerning the ethics of life, there are at present two fundamental ways of defining the essence of humanity: the metaphysical and the descriptive.

According to the metaphysical (axiological) view, a person is a particular being, different from other beings, at least because of its specific genotype. It is a “pre-value”, subject to legal protection irrespective of its phase of development, without regard to any incidental circumstances or features (such as psychophysical state). Such a view of the essence of humanity is based on the monistic definition of the human being, formulated classically by the Roman philosopher and theologian Boethius. According to this definition, a person is a substantial unity of soul and body. This unity lasts from the moment of conception and does not end at the time of death. An embryo or foetus is a “potential human”, and thus from the beginning is entitled to human dignity (Boethius 1990, p. 24). Views of this kind were later put

forward by Saint Augustine, Thomas Aquinas and the proponents of Christian personalism. In contemporary times this approach retains a consolidated position in Christian countries, and particularly those (such as Poland) in which Catholic ethics are dominant.

Besides the metaphysical approach just described, increasing popularity is being acquired by the descriptive approach, which is particularly important from the standpoint of neo-naturalist environmental ethics. It is based on an attempt to find other defining features of humanity, other than the specific human genome, which can distinguish the human being from other living beings. Science has already forced a re-evaluation of many of the features traditionally associated with the essence of humanity, such as ability to feel pain and suffering, consciousness, ability to rationalize, memory of the past, and ability to plan. Qualitatively, a person does not differ very much from animals.

At the roots of descriptive approaches to the essence of humanity lies the dualist definition of the human being, due to Descartes. This is based on a new way of understanding carnality. It is assumed that the body is an autonomous entity with respect to the soul, and does not co-create humanity. The body is a system of parts—a material object which decomposes at death. Its actions can be described in the categories of mechanics. A human being, however, is a mind or soul. Its essence is that it alone, of all living species, is aware that it exists (Descartes 1989, p. 3). Neo-naturalist environmental bioethics has re-evaluated these theses, raising the status of other nonhuman beings capable of feeling pain and suffering and having a certain level of consciousness (certain mammals and birds). By the same token there arises the question of the status of the human embryo, which according to neo-naturalist environmental ethics is accorded a status equal to that of other nonhuman animals. It has been proposed that “potential life” (an embryo or foetus) should not be considered equal to life “already in existence”. The difference between potentiality and actuality is well summed up in the statement that eggs are not omelettes, acorns are not oak trees (Stanton and Harris 2005, p. 222). Indeed, even after a person is born, it is becoming considered more and more legitimate to make differentiations or gradations of quality of life (the quality of the life of someone in a permanent vegetative state not being comparable to that of a healthy person).

Medical progress has made it possible to observe the development of a human being from the very start. This provides a basis for precise planning of the moment of conception and selection of appropriate gametes, and for creating life in entirely artificial conditions. The conception of a child need not involve even casual intimate relations between two people. It may take the form of a medical service using gametes from the future parents or from anonymous donors, or it may be made the subject of a surrogate motherhood agreement. The technicalization of human procreation thus entails a difficult encounter between *Homo sapiens* and *homo technicus*. Natural conception has been replaced by artificial fertilization, which may occur inside a woman's body, but may also take place outside it. The foetus need not necessarily develop in a woman's womb—that of either the genetic or the surrogate mother. Proponents of ectogenesis research point out that when an

artificial womb is created, an age will begin which will either bring a definitive end to natural motherhood, or will provide the possibility of choice between types of motherhood—natural or artificial. The new medical possibilities are intended to help, among others, women who see maternity as a “biological yoke”, and the experience of pregnancy as a kind of slavery.

In the context of ethical discussion concerning the status of the human embryo, attempts have been made in the bioethical literature to determine the moment at which someone begins to be a human being. This is particularly important with regard to the legal consequences of the recognition of a given being as a legal subject. Apart from the genetic criterion, defining a human as an entity with a specific genotype (corresponding to the metaphysical viewpoint), other criteria have also been offered. Of particular significance are the legal criterion (which makes someone a natural person from the time of birth until death), and the related obstetric criterion (where the beginnings of a human being are linked with the start of the labour process, including as a result of caesarean section). An increasing role is played, however, by “developmental” criteria, which include the neurological criterion (according to which one starts to become a human being when brain activity begins, namely around the eighth week of prenatal life), the criterion of animation (the start of human life takes place when the foetus moves in the womb, at around 13–20 weeks), and the criterion of viability (where what matters is the capacity for independent life outside the mother’s body, at around 24 weeks).

The most controversial is the psychological criterion. Here, an attempt is made to identify the start of one’s becoming a human being as the time at which the human organism acquires awareness of its own existence. It has been proposed that human rights should be attributed only to self-aware beings. Suggestions of this type are found in the works of Peter Singer (Singer 1980, 2009), Derek Parfit (Parfit 1984), Hugo T. Engelhardt (Engelhardt 1996, pp. 135–138) and Michael Tooley (Tooley 2010). A degree of outrage was provoked by the proposal of the Italian bioethicists Alberto Giubilini and Francesca Minerva, who attempt to give legal and moral justification for so-called “postnatal abortion” (Giubilini and Minerva 2013). The starting point for those authors’ considerations was the abovementioned psychological criterion, along with scientific findings that an infant acquires awareness only some time after birth. “Postnatal abortion” would become an expression of the procreative autonomy of the parents, who ought to be given time to decide whether they wish to be parents or not.

The development of genetics gives rise to new debates concerning the essence of humanity, particularly with regard to genetic manipulations (instrumental and anthropological), linked to technological possibilities of creating hybrids and chimeras. This problem was raised by Francis Fukuyama (Fukuyama 2004). The author is concerned that the “posthuman future” may be a world in which the concept of humanity loses its meaning, if only because human genes become mixed with the genes of so many species that it will no longer be entirely clear who or what is a human (*ibid.*, p. 286).

Questions concerning the essence of humanity are made all the more relevant by the current biotechnological experiments which lead (by way of genetic

manipulation) to the production of various types of “transgenic” beings that cannot be unambiguously classified. One might recall the work titled *Edunia*, created by the artist Eduardo Kac, a representative of the bio-art movement. The work is a central element of the project *Natural History of the Enigma*, and was first exhibited at the Weisman Art Museum in Minneapolis in 2009. The artist has incorporated his own DNA into a genetically modified petunia flower. The title of the work alludes to the attempt to merge together two entities, “Eduardo” and “petunia”, into a single one, called by the name “Edunia”. This new form of life is described as a *plantimal* (a cross between plant and animal). Critics have described the work as a “*strange and radical form of humanization of a nonhuman other*” (Gajewska 2012, pp. 105–114). This transgenic hybrid appears on the surface to serve as a symbolic and physical missing link, expressing the closeness of human and nonhuman species, but ultimately it becomes an attack on the traditional view of man as a being that is hierarchically superior to all other entities. It leads to a levelling of the distinction between human and nonhuman beings (DeGrazia 2002; McMahan 2003; Chamayou 2012, p. 68).

The problem of defining the essence of humanity is also complicated by the development of information technologies, robotics and mechanics. Advanced work is being done which aims to construct machines and computer programs capable of performing selected functions of the mind and the human senses. The euphoria associated with predictions that the near future will see the creation of artificial intelligence (and possibilities of using “thinking” machines in the service of people) is accompanied by fears as to whether such an “electronic person” can be made to fit into a system of humanist values. Who will such an entity be in relation to human beings? Is it to be given the protection of the law? In view of its self-awareness, should a machine be accorded the dignity characterizing a human being (Braidotti 2013; Sedlak 1980)?

The examples given above indicate that increasing molecular biological and genetic knowledge, and the technological practices based thereon, erase the traditional lines separating nature and culture, biology and society: “*In this way, recourse to a pre- or extrapolitical nature is blocked, and biology cannot be separated from political and moral questions*” (Lemke 2010, p. 100). Modern technologies enable the disassembly and recombination of the body, which Foucault did not foresee when he linked biopolitics with an integral body (ibid., p. 94). Thanks to the possibilities afforded by modern medicine, a person who dies is never in fact entirely dead. Human material is no longer tied to the same biological rhythms as the organic body. Parts of a dead person, his or her cells or organs, blood, bone marrow, etc. can continue to exist in the bodies of other people, improving the quality of their life or delaying the time of death. Human material can be stored as information, held in databases or grown in stem cell lines (ibid., p. 95).

Ethical problems relating to human procreation are bound up with cultural contexts (particularly religious ones), which condition the axiological evaluation of particular actions. Environmental ethics affirms the internal diversity of being, regarding culture as neither bad nor good in itself, nor as constituting a rule

structure which might replace organic evolution and change the principles of coexistence of various forms of organization of life. Culture has the status of a naturally selected manner of existence for the species *Homo sapiens*. It ought to be understood as a kind of adaptive system: as a multidimensional ecological niche for mankind. According to this view it is a nomological locality in the biosphere, similar to the spectra of particular ecotypes of other species. The very existence of a cultural niche, of its internal regularity (and particularly of the conscious purposefulness of human actions) is subject to the macro-rules of natural being. Failure to respect these rules leads to the self-elimination of the human species from the biosphere, which has already begun. This is revealed by statistical data indicating low birth rates in modern states that subscribe to the culture of lawfulness.

It should be noted that environmental ethics not only reaches basic ontological, axiological and meta-ethical conclusions concerning human existence (in relation to, among other things, human procreation). It also formulates specific prescriptive proposals. Its assumptions are based on the thesis that prescriptivism does not exist extra-empirically. Only that which is empirical can become prescriptive. Being a value is a certain manner of existence of an empirical fact, namely a fact, which can be described and explained by scientific methods. The “factualization” of values from a realistic-empirical perspective enables a better justification of the moral obligations of *Homo sapiens* in the biosphere. The empirical recognition of reality and the constitution of prescriptions on that basis is made possible by references to the complex of socio-natural disciplines: biology, evolutionary philosophy, genetics, ecology, comparative ethology, sociobiology, evolutionary epistemology, cognitive science, comparative zoopsychology, linguistic philosophy, and so on. These disciplines supply detailed data and theoretical generalizations, which can be used to re-equip the human being with a full biocultural dimension from an anthropological-philosophical perspective.

From the standpoint of environmental ethics, Foucault’s proposed concept of “biopolitics” seems somewhat constricted. It does not enable one to grasp fully how ecological management and discourses on protection of the environment interfere with the (re)production of the human species. It is consequently proposed to extend the semantic field so as to apply the concept of biopolitics in relation to the management and control of the conditions of life in their entirety (Rutherford 1999). The anthropocentric simplification of biopolitics as found in Foucault (who remained influenced by the view that the ability to act is a human feature) is being more and more frequently criticized. In the light of the new anthropology (reflective and symmetric anthropology) the following question recurs every so often: empirically, who can be included in the set of “social persons”? According to neo-naturalist environmental ethics, subjects capable of action include humans as well as nonhuman animals (Lemke 2010, p. 96). At the same time, not every human being has such a capability. It cannot be ascribed to a person in the phase of prenatal life (a human embryo or foetus). People in permanent vegetative state also lack the ability to act. The question therefore arises as to whether they are to be treated by the law as “persons” or as “human beings”. If the second option is taken, their legal status ought to be equal to that of nonhuman animals. Conclusions as to what

entities (and in what conditions) can be members of a society are extremely important from the standpoint of population policy.

It should be borne in mind that international (including European) standards relating to human procreation lay down only minimum requirements for the protection of human rights and the protection of a child following conception. Prescriptive formulas set a course for the interpretation of particular regulations. The overriding interpretative directive should be considered to be the duty to protect human dignity and to place the good of a human being above the interests of society or of science. Fundamentally important from a European perspective is the *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*. This document leaves the definition of a “person” as a matter for national law. However, it provides for different degrees of legal protection. Every “human being”, irrespective of his or her personal status, is subject to protection at least as regards dignity and identity, but guarantees of integrity and other basic rights and freedoms are applied only to a “person” (*Bioethics Convention* 1997).

Perhaps human procreation ought to be viewed from a broader perspective today than in the past, taking account of theoretical findings other than those formed within Judeo-Christian culture, which might prove significant for the resolution of legal questions. The solutions proposed by Christianity (and Catholicism in particular) do not fit the contemporary world. They entail the sanctification of the traditional family, treating sexuality as a social taboo. According to the teaching of the Catholic Church, one of the chief aims of marriage is to pass on life, subject to invariable and inviolable divine laws. Any interference in procreation is therefore considered a sin. The basic principles regulating family planning involve the rejection of abortion, prohibition of artificial fertilization and embryo manipulation, and respect for human life from the moment of conception (*Donum Vitae* 1987).

From the perspective of neo-naturalist environmental ethics, it may be of interest to consider other religions, particularly those of the East. Buddhism has proved to be particularly attractive, particularly in connection with the vanishing of the religious and spiritual dimension of Christianity (Churchland 2013, p. 311). Perhaps Buddhist spirituality and wisdom will be able at least partially to fill that vacuum, offering the principles of *ahinsa* (refraining from doing harm) and liberation from suffering. These principles also relate to the sphere of human sexuality, being manifest in, among other things, the treatment of sex between two loving people as a value in itself (irrespective of whether or not the partners are married). Buddhist doctrine, treating marriage and procreation as private matters, is becoming more and more popular within the juridified culture of lawfulness (Clarke 2003).

Neo-naturalist environmental ethics often alludes to feminist doctrine, emphasizing autonomy in the area of procreation, manifest chiefly in a woman’s freedom to decide about her own body. The scope of such freedom includes, among other things, conscious motherhood, birth control, abortion, surrogacy and sexual freedom. Since the problem of relations between the sexes concerns the whole of humanity, the global reach of the ideology of feminism should come as no surprise.

According to the radical feminist viewpoint, new technologies relating to fertility and reproduction are the product of a battle fought by men for control over women's bodies and procreation. It is presumed that such motives have played an important role in the history of medicine. Some express fears that these technologies may be used to strengthen the position of a specific race and privileged classes, and may serve to eliminate competition in the labour market (Sawicki 1999, pp. 190–203).

5 The Problem of the Replacement of Generations as a Challenge for the Culture of Lawfulness

The highest statistical fertility rates are recorded in certain African countries (as high as 7.03 in Niger, and over 6 in such countries as Mali, Somalia and Uganda). At the same time, African countries also record the highest rates of mortality, disease, poverty, armed conflict, religious fundamentalism, etc. (<https://www.cia.gov/library/publications/the-word-factbook/rankorder/2127rank.htm>).

Analysis of the statistics for countries that embrace the culture of lawfulness may incline one to the conclusion that their societies are dying out. There is a failure of replacement of generations—successive generations are found to be less populous than the preceding ones. It is generally accepted that, to ensure such replacement, the total fertility rate (the number of children per woman of childbearing age, that is, aged between 16 and 49) should be at least somewhere between 2.10 and 2.15.

In most highly industrialized countries, particularly in Europe, fertility rates have been decreasing constantly since the mid 1960s. The warnings of experts who predict a radical reduction in demographic growth over the next two decades are causing concern among governments, which are thus attempting to implement pronatal policies.

It is not possible to grasp the essence of this social phenomenon without making reference to people's procreative plans and decisions. These should be viewed from a broad perspective, determined by a defined sociocultural space.

One of the reasons for the population decline is the increased popularity of the "modern lifestyle" (including the acceptance of women performing professional work). This has had a negative effect on the procreative behaviours of modern societies. Some importance also attaches to the ongoing deinstitutionalization of the family. Procreation has become separated from marriage, and the importance of the marriage contract for forming a relationship has declined. Attention is drawn to the destabilization of the family, visible particularly through the growing number of divorces, as well as the growth in non-marital relationships. It is also evident that in modern society the decision to start a family often comes later than was previously the case—the average age of a woman giving birth to her first child is now between 25 and 30 (Titkow and Duch-Krzyszczek 2009).

The maintenance of a low fertility rate speeds up the process of population ageing, and exacerbates unfavourable changes in the age structure. For example, according to a projection from the Polish Central Statistical Office, by 2035 the number of persons of post-productive age will have risen to 9.6 million (an increase of 3.5 million), while the number of persons of productive age will have fallen to 20.7 million (a decrease of 3.8 million). Data for 2013 show that, statistically, the average Polish woman gives birth to 1.32 children. This is one of the worst results in Europe.

In Poland, under the influence of the dominant Catholic faith, instead of the implementation of pro-family policies, there is debate about the inviolability of the traditional family and the sanctity of human life. Sex that does not serve the purpose of procreation is still sometimes regarded as a matter for confession. Paradoxically, however, the actual number of traditional families is steadily decreasing. There is a marked decrease in the number of marriages (although the percentage of people who are married, 63.9 %, is still relatively high in comparison with other European countries). Regardless of religious influences, many women are deciding to live in informal relationships (5.1 %), and many are choosing single motherhood (one in five Polish children are born outside marriage). In spite of the prohibition on abortion, there is a thriving backstreet abortion sector. The facts therefore show that the ideal model of Christian morality is not realized in practice.

The particular character of the Polish family, different from that of families in other countries subscribing to the culture of lawfulness, is undoubtedly a consequence of the conservatism of Polish society. It is still strongly influenced by ideas of moral nature and cultural norms, which in turn are shaped by Catholicism. Of course, this is only one of the factors. Economic issues also appear to be important: these include the low level of wealth in Polish society, as well as housing problems. Also of some significance are the legal measures, which offer only fictional state assistance to families, and give preference to formal relationships. As has already been mentioned, government policy in matters of procreation is highly ideologized, oriented towards moral edification rather than the solution of real problems. At the same time it can be noticed that Polish women living abroad (particularly in the United Kingdom) are giving birth to increasing numbers of children.

Among European countries, only France is capable of achieving full replacement of generations. In 2013 the total fertility rate in that country reached 2.08, the highest figure among members of the European Union. Other leaders in terms of birth numbers include Ireland (2.01), the UK (1.90) and Iceland (1.80). Moderately high rates are recorded in the Netherlands (1.78), Finland (1.73), Denmark (1.73), Sweden (1.67) and Belgium (1.65). It would appear to be a matter of concern that in all of these countries the fertility rates are below the level required to ensure the replacement of generations.

It should be noted that France and the Scandinavian countries have been implementing procreation policies with great determination for many years, and the effects are now beginning to become visible. All kinds of mechanisms—the tax system, organization of childcare and the education system, the health service and the labour market—favour the “production” of children, who will later work to pay

for the pensions of the ageing society. Such high fertility rates may be surprising, however, in view of the fact that the position of marriage-based families in those countries is relatively the weakest. It might be thought that this would deter people from deciding to have children. At the same time, however, single-parenthood is becoming the standard—in Sweden, for example, one half of all mothers choose that model (<http://epp.eurostat.ec.europa.eu/portal/page/portal/population>).

Analysis of the facts tends to indicate that the most important role is indeed played by active policy supporting women in motherhood, including such things as a guarantee of appropriate medical care during pregnancy and childbirth, and the ability to take leave and holidays from work for childcare purposes (including for fathers). Of great importance is the shaping of a labour market, which is friendly to those bringing up children, as well as the availability and quality of care-giving institutions. An appropriately constructed system of financial and legal support is undoubtedly the most important stimulus favouring procreative decisions. The role of sex education must also not be overlooked.

Attempts to stimulate procreative behaviours among the population through appropriate government policy do not always produce the intended result, namely increased fertility rates. In some countries (such as Germany), in spite of favourable economic conditions and the authorities' pronatal initiatives, the fertility rate remains at a shockingly low level (1.43). It turns out that the number of children born in a given society is also affected by mental factors, resulting from, for example, a fashion for not having children. Such a trend has come about in Germany undoubtedly under the influence of stereotypes of deprecated women acting purely as homemakers. The slogan *Kinder, Küche, Kirche*, referring to the traditional role of the woman in society, has over time, under the influence of the feminist movement, come to be replaced by *Kinder, Küche, Karriere*, and the desire for self-realization has made a major contribution to the fall in the fertility rate.

6 Human Procreation in the Context of Medical Progress: Ethical and Legal Problems

Demographic policy evolves under the influence of progress in biotechnology. Apart from the now classical problem of abortion, the development of medicine has brought with it new problems of an ethical and legal nature, resulting from new technical capabilities such as *in vitro* fertilization and pre-implantation diagnosis. Procedures of this type intensify the controversy regarding the definition of a human being and the status of the human embryo. Attempts are made to determine whether (and to what extent) the legal regulation of abortion, artificial procreation, surrogate motherhood and genetic selection may affect fertility rates. Do restrictions on access to contraception and on prenatal and pre-implantation diagnosis, and restrictive abortion laws, lead to higher numbers of births?

The problem of where the threshold lies for an entity to be a legally relevant subject is particularly visible in the context of the abortion debate. The directions of the discourse indicate an evolution involving changes in perceptions of the essence of humanity. The fundamental question of when the life of a human begins has given way to the question: from what point in time does a human foetus acquire the status of a legal subject? Analysis of theoretical viewpoints as well as practically implemented legal measures supports to an ever greater degree the arguments in favour of the permissibility of abortion and the gradation of legal protection afforded to the foetus. Justification for the moral acceptance of termination of pregnancy is provided by the developmental criteria, and recently more and more often by the psychological criterion. It is pointed out that, since a human embryo does not yet have consciousness, which is the decisive factor in identifying someone as a subject, decisions about its identity should be made by a defined community. It has been proposed that “human persons” should be taken to include only conscious and rational beings (Singer 1997, p. 41). Degrees of acquisition of personality are at the same time degrees of the evil which can be done to a developing human body by terminating its existence: from the negligible evil represented by destruction of an embryo, to the serious evil associated with the liquidation of a self-aware person (Parfit 1984). The life of a foetus or of a severely disabled child may be of little qualitative value. The taking of a decision to terminate a pregnancy may be seen as an expression of parental responsibility. People should refrain from giving birth to children if it can be foreseen that the quality of their life will not come up to even the minimum standards (Tooley 1983; Steinbock and McClamrock 1994).

Theoretical viewpoints contribute to the predominance, in countries embracing the culture of lawfulness, of the “abortion on demand” model or a model in which the permissibility of abortion is dependent on defined indications. Both models offer reproductive autonomy, though to differing extents. They are reflected in existing legal regulations. The on-demand model is realized most fully in the United States, where legal judgments have in practice created a right to abortion, based on the constitutional right to privacy (Breczko and Radwanowicz-Wanczewska 2013).

The laws of most European Union countries, and European court judgments, are based on the indications model, which enables a compromise solution to the conflict of interests of a pregnant woman and the embryo. European laws provide freedom to terminate a pregnancy within a particular length of time (usually up to the twelfth, sometimes even the twenty-fourth, week), thus becoming close to the on-demand model. The possibility of carrying out abortion is generally made dependent on the satisfaction of specified requirements (these are usually medical, legal or eugenic indications, and sometimes also include material, social and personal factors). The most liberal abortion laws in the European Union are currently those of the UK, which are strongly influenced by American case law. The legal measures in force there are closest to the on-demand model. Countries with easy access to abortion include France, the Scandinavian countries, the Czech Republic, Lithuania, Latvia, Slovakia and Slovenia. The greatest restrictions on the

possibility of terminating pregnancy are found in the laws of Germany and Austria (ibid., pp. 364–382).

The legality of abortion has become seen as a reflection of the right of a woman to determine her own procreative wishes and to control her own body. It is emphasized that it is the woman—as an autonomous subject—who ought to have the power to decide about the fate of the foetus, whose subjectivity has a much more limited scope and is conditional. A mother should therefore be guaranteed the freedom to decide about herself and her child. Protection of not only her life, but also her physical and mental health, becomes a moral and legal priority. Only a few European countries embracing the culture of lawfulness have implemented a model in which abortion is prohibited; these are Ireland, Malta and Poland. Such a model is founded on a constitutional right to life, which applies also to the prenatal stage.

It can be observed how social views and legal and deontological assessments have changed over a period of several decades in relation to another significant ethical and legal issue: that of artificial procreation. An evolution has taken place from absolute prohibition towards increasing tolerance and assent. The philosophical debate “(...) *on the permissibility of research using embryos and of pre-implantation diagnosis has so far proceeded along the path marked out by the discussion over abortion*” (Habermas 2003, p. 37). The controversies concern chiefly the differences in definition of the value of a “potential human life”. Every *in vitro* fertilization treatment gives rise to the problem of spare embryos, which are not implanted. Serious dilemmas consequently arise in relation to their selection, storage, destruction and so on.

There is no single “rational” template for the regulation of artificial procreation. Significant differences exist between the laws of various European countries. A common feature is the absence of any explicit prohibition of *in vitro* fertilization (Bosek 2010, pp. 155–174). The differences are a result of differing constitutional traditions and socio-axiological determinants. From a European Union perspective, there are two models that play an important role, based respectively on the concepts of autonomy and dignity.

The autonomy model provides basically for the legalization of intervention in the nature of human procreation, subject to government oversight and the consent of the person involved. This model has been implemented in practice in the UK, as a result of the Human Fertilisation and Embryology Act. It is also reflected at least partially in the laws of France, Belgium, the Netherlands and Spain. In no European country has it been implemented explicitly, if only because of inconsistencies with the Bioethics Convention, which the UK has not signed. However, similar solutions are adopted in certain US states (including California).

The dignity model protects human embryos and human genetic integrity. Such a model functions in Germany, where the measures contained in the laws *On the protection of embryos* and *On the prohibition of trade in children and surrogate motherhood* reflect the precedence accorded to the dignity of the human being from the moment of conception. This is also reflected in the view of the legal status of the embryo as a legal subject, comparable to a “human person”. The position is similar in Switzerland and Italy.

Closely connected with issues of artificial procreation is the idea of surrogate motherhood. This is a particularly controversial expression of procreative autonomy, primarily because the natural parental urge collides somewhat with the laws of economics and the “production process” of a human being in a “hired womb”. Some see it as a dehumanization of human procreation, pointing to the instrumental treatment of women as incubators, and of children as the subject matter of a contract.

The spectrum of legal approaches to this issue ranges from prohibition and punishment for surrogacy agreements (as in certain US states, France, the Netherlands, Germany, Sweden and Switzerland) up to their legalization (as in Belgium, the UK, Israel, Hungary, Australia, and other US states).

Once again the development of medicine has shown how the law fails to keep pace with social reality, and many legal definitions are now out of date. This applies at least to such concepts as family, motherhood and fatherhood. With the increased use of *in vitro* fertilization, doubts have begun to appear concerning terminology. The practice of medically assisted procreation has challenged the legal understanding of family relationships that has developed over the centuries.

For example, in matters of surrogate motherhood, the courts need to determine who is the child’s legal mother: the surrogate, biological mother (the woman who gave birth to the child), the client mother (the woman whose mind produced the idea of bringing the child into the world), or else the genetic mother (the donor of the genetic material). The rich body of court judgments also illustrates other dangers relating to surrogacy agreements, such as problems of the commercialization of reproduction, exploitation of mothers, unwanted defective children, and so-called “nobody’s babies” (Soniewicka 2010, pp. 82–112).

The development of medicine constantly brings up new dilemmas relating to parenthood. Further experiments are being carried out which in practice cause still greater instability in the concepts of motherhood and fatherhood. For example, in 2012, ova from two women were combined into one, which was then successfully fertilized. This pioneering experiment was performed so that in the future it would be possible to avoid congenital defects. In this situation the child would come into being not from the combination of one woman’s ovum and one man’s sperm (as in the case of surrogacy arrangements), but with the involvement of one person more. This case shows that the mixing of genes from multiple persons has already begun in practice. This can undoubtedly be considered a serious interference with the law of nature. The question then arises as to the status of the donor—will she be a second mother? A substitute mother? A second-class mother (in view of her smaller contribution to the child’s DNA)?

Many ethical controversies are triggered by pre-implantation genetic diagnosis. The laws of most modern countries that embrace the culture of lawfulness (including Germany, Italy, Austria and Switzerland) explicitly prohibit the use of this technique. It is nonetheless legally applied in many places in the world, including the United States, the UK, Sweden, France and Australia. Embryonic selection, made possible by the development of genetics, usually involves choosing those embryos, which do not have mutations or chromosomal anomalies, and transferring

them to the woman's body. Pre-implantation diagnosis is therefore used mainly to eliminate diseases, particularly in the case of families with a history of genetic disorders. It is also becoming increasingly common to allow such selection as to produce a child having compatible tissue with a family member already suffering from a disease, so that the "designed" human being might in the future become a donor of bone marrow or stem cells. A new category has thus been created—that of a "saviour sibling". Such children are being born in many countries, chiefly in places where the law permits procedures of this type, but also in countries (including Poland) where the law takes an indifferent attitude.

Particularly controversial are attempts to extend pre-implantation diagnosis so as to create a child with specified defects. More and more often, courts have to deal with cases in which potential parents demand that doctors use pre-implantation diagnosis to enable them to give birth to, for example, a deaf child or one with dwarfism. Such situations have occurred in countries including Canada and the United States. These cases show clearly how difficult and complex have become the issues concerning the limits of eugenic activity, and how blurred and ambiguous have become typical eugenics-related concepts such as health, disease, improvement and correction (Sandel 2014).

A possible manifestation of the right to autonomy in decisions about procreation is the claims made for "prenatal injuries", identified with doctors' civil liability for damage done to a child between conception and birth. Such liability has for a long time been generally accepted in many systems of law. It most often results from unwanted or unplanned conception ("wrongful conception"). It may be related to complaints from children who feel that their life does not come up to the minimum standards of quality and that it would have been better for them not to have been born at all ("wrongful life"). Sometimes it results from claims by parents against a doctor who failed to diagnose damage to the foetus and thus prevented the possibility of abortion ("wrongful birth"). Together with biotechnological progress in the field of medicine, there has appeared over time, alongside prenatal injuries, the even more controversial concept of "pre-conception injuries"—done to someone who has not yet even been conceived.

7 Implications for the Next Generation and Conclusion

The law is only one component of a whole battery of means used by modern governments to regulate people's behaviour. It produces an ever increasing number of regulatory norms, remaining the primary system of prescription in democratic societies.

Countries, which subscribe to the culture of lawfulness apply various totalizing techniques (Foucault 2001d, pp. 1645–1646; 2000b, p. 341). These relate to many different spheres of life, both public and private. The scale of modern surveillance practices is well illustrated by the actions of the National Security Agency in the United States. The techniques used by the authorities are now coming to include

surveillance using industrial camera systems (e.g. Echelon, Impast, Carnivore). These are linked to the use of programs to aggregate data about the activity of network users and the information placed on social websites. They entail the design of public buildings and structures in such a way as to enable monitoring by ensuring visibility. More and more frequent use is also made of biometric applications and devices: sensors recording body movements (XOEye, LumoBack, Robin), or intelligent headbands, which monitor users' brainwaves (Melon). Alluding to Foucault's concepts of biopolitics and biopower, we can therefore speak today of the new fields of infopolitics and infopower. Another developing area is physiopolitics, which involves the integration of intelligent accessories for data analysis (for example, for the purpose of tracking employees) (Koopman 2014, pp. 105–106). This makes it possible not only to oversee the activities of individual human bodies and population behaviours, but also to monitor thoughts. The scope and scale of control of the behaviours of network users and the aggregation of data about them (carried out by various government and corporate agencies) mark this as one of the most serious threats to the rights of the individual and the culture of lawfulness at the present time.

Totalizing techniques are also used in population policy, chiefly through the juridification of sexuality and the existing possibilities for designing a body which is still to be created. At the same time, scientists are focusing efforts on creating a "spiritual dimension" for the future human being. A practical expression of the eternal human striving to create such an ideal is the making of deposits in sperm banks by a number of Nobel prize winners, in the hope that at some time, thanks to *in vitro* methods, children will be born who are similarly capable of earning that prestigious prize. Modern medicine offers not only abortion, artificial insemination, *in vitro* fertilization, prenatal testing and surrogate motherhood, but also genetic selection of embryos, reproductive cloning and various "intelligent accessories" which might contribute to the attainment of that eugenic goal.

The moral aspects of artificial procreation cannot remain outside the scope of rational social debate. Ethical discourse on these subjects should be cleansed of the ideological element—of taboos, myths, mental shortcuts, stereotypes, and allusions to Nazi practices. It must not serve the specific interests of particular social groups and political parties. The use of a single type of argumentation based on the assumptions of Catholic doctrine avoids the essence of the problem, and is not the right way for the bioethical debate to be conducted in a pluralist society.

It is therefore also necessary to underline the huge role played by the education of society, including sex education, taking place free of religious influences. It is this which enables rationalization of the discourse, ensuring that it is based on empirical facts, which as an end result become a basis for regulatory measures. Statistics show that in those countries, which provide rational sex education (such as France and Sweden) the fertility rate is increasing. Appropriate education can lead to changes in consciousness, which in turn have an impact on procreative plans and decisions (Michałowska and Turek 2013).

Understandably, society fears the negative consequences of artificial procreation. This problem poses a huge challenge for lawmakers, who have the task of

designing regulations in the area of population policy taking account not only of the replacement of generations, but also—as a priority value—the good of humanity, in a broad cultural context. Technological capabilities incline one to consider the possible effects of medical interventions from the perspective of future generations.

It can be claimed that humanity today finds itself in a state of “moral weightlessness”. It lacks certainty as to the legitimacy and the consequences of the actions that are made possible by modern medicine (Dworkin 2002). In this situation, it is not entirely clear whether the dignity of human life can allow conditional procreation at all (Habermas 2003, p. 27). The social effects of the creation of a “modelled” human being, and in the near future possibly also a “duplicated” one, cannot be fully foreseen. It may turn out that this new creation will be deprived of humanity, as the power of medicine leads to the disappearance of the variety of the human species, loss of people’s integrity and identity. It is not certain whether a liberal eugenics is even possible within the standards of democracy. One thing is certain—the era of genetic innocence has ended, and progress in medicine and genetics may prove either to offer a chance to improve the world, or to be the proverbial Pandora’s box.

It should be considered whether it is appropriate to maintain restrictive laws against abortion, if only because of the vast backstreet abortion industry and the ineffectiveness of bans on termination of pregnancy given the open borders of the European Union. Strict laws undoubtedly have an effect on the number of procedures officially performed, but do not, as it turns out, have a direct effect on the number of births. This was noted in Poland following the tightening of the anti-abortion law in 1997 (following a verdict of the Constitutional Court). Instead of rising in line with earlier forecasts, the number of births declined significantly. It would appear that the prohibition on abortion is not of great significance in terms of procreative plans and decisions. It is certainly not causing a national demographic renewal. It should be noted that the highest fertility rates are recorded in countries in which abortion is legal (France, the United Kingdom). A basis for the legalization of abortion in Poland might be the differentiation, promulgated by environmental ethics, between persons and nonhuman animals, with human embryos being classed together with the latter group (as human beings, but not as persons).

The possibility of giving birth is undoubtedly favoured by the general availability of *in vitro* methods. In Poland such procedures have been carried out since 1987, and although they are not approved by the Church, they are accepted by the greater part of society (as many as 60 % of survey respondents) (Titkow and Duch-Krzyszczek 2009, p. 93). These data should be used as a basis for the rapid legal regulation of *in vitro* fertilization, in accordance with the standards widely applied within the European Union. Taking account of religious factors, the most realistic direction to be taken in Poland’s case is adoption of the German model. General access to methods of artificial fertilization may prove a powerful stimulant for reproduction and an opportunity for many childless couples to realize their dream of becoming parents.

A policy of restricting access to prenatal tests can also hardly be considered a factor that would favour an increase in the birth rate. The availability of such tests

undoubtedly makes it easier for a woman to take a decision to have a child. According to research carried out in Poland, as many as 810 out of 1124 surveyed women who had had prenatal tests stated that without the availability of prenatal diagnosis they would have given up their reproductive plans entirely. Improved access to tests of this type is particularly important, if only because women are now having children increasingly late in life. The unavailability of tests may cause such women to give up the idea of having children, due to the risk of birth defects (Nowicka 2007; <http://resmedica.pl/archiwum/ffxraport1299.html>).

Society fears that genetic selection may deprive future generations of a way to self-determination. The decisive argument in this case is that everyone has the right to an open, unprogrammed and undetermined future (Feinberg 1992, pp. 76–97). It would appear that fears of manipulation of this type are a consequence of certain taboos. Rationalization of the discourse shows that in most cases there are no significant moral differences between interference with genes (such as those responsible for vision) and traditional methods for repairing dysfunctions (such as the use of glasses or contact lenses). Modern embryonic selection has nothing to do with the practices of the Nazis, or the forced procreation and sterilization that took place in that era. It can take place only with the consent and at the request of the future parents, given in most cases out of concern for the health of their child. This is an expression of conscious and responsible procreative decisions. We should note that the selection of features of one's future offspring is in fact something that is done every day—through choice of partner, diet, avoidance of alcohol, giving up of medicines, postponement of conception, etc.—and this does not arouse any social or moral controversy. The choice of a particular lifestyle so as to achieve desired characteristics for one's child (and to eliminate undesirable ones) is considered a sign of the responsibility of the future parents (Parfit 1984).

It is true that negative selection (screening out) involves a choice between embryos that have already been created, taking account of genetic defects, but this can be morally justified by rational premises: the argument from the moral principle of not doing harm, the argument from the prohibition of causing suffering, and the argument based on the concept of “wrongful life”.

The diminishment or even loss of the formative role of religion in modern secularized countries subscribing to the culture of lawfulness has become a social fact. Even in countries such as Poland, a gradual deinstitutionalization and destabilization of the family can be observed. The actual state of society, social expectations, and the good of the population and of subsequent generations require that the law stop giving preference to the traditional family, understood as a formalized relationship between a woman and a man jointly bringing up children. Such a definition does not fit contemporary reality. It is necessary also to give legal protection to informal partnerships, and this may additionally lead to an increase in the fertility rate (evidence that this may be the case is provided by the Scandinavian countries).

To conclude, lawmakers are faced with a difficult and responsible task. Considering all of the dangers associated with biotechnological progress in the field of medicine, they have the task of laying down the moral and legal boundaries of

artificial human procreation in such a way as to ensure not only that improving interventions lead to a stimulation of reproduction (to guarantee the replacement of generations), but at the same time that there is no violation of basic legal paradigms in the form of human dignity, freedom, equality and justice.

Five Questions

1. What does biopolitics really mean? Is it an idea, an ideology, a concept or a technology of power?
2. Can a culture of lawfulness be the guarantee of human rights in the postmodern world?
3. How does contemporary bioethics determine a way of understanding the essence of the human being and his or her rights, and/or duties, in the sphere of procreation?
4. Is the wrongful life becoming a new bare life concept?
5. Do women have the right to self-determination in the area of procreation or are they subject to legal regulation?

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Comparing and Delivering Juvenile Justice Across the World

Philip Reichel and Jay Albanese

Abstract There are both assumptions and evidence that undergird the official response to juvenile delinquency in different countries. The similarities and differences among these approaches are evaluated to assess their contribution to fairness, justice, crime control, and delinquency prevention. A brief historical review of the recognition of childhood innocence is followed by the nature of formal procedures for handling juvenile offenders, and specific governmental and multilateral responses to juvenile delinquency that form the basis for greater consistency in dealing with juveniles in the justice process.

1 Introduction

This chapter considers the variation in attitudes and approaches used over time and place when governments respond to misbehaving young people. It aims to make clear the assumptions and evidence that undergird the official response to juvenile delinquency in different countries. The similarities and differences among these approaches are evaluated to assess their contribution to fairness, justice, crime control, and delinquency prevention. After reviewing the historical recognition of childhood innocence, we review the introduction of formal procedures for handling juvenile offenders then proceed through specific governmental and multilateral responses to juvenile delinquency.

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1.1 *The Discovery of Childhood*

The terms juvenile and delinquency are fairly new, but the people and the behavior are not. Ariès (1962) reminds us that during the Middle Ages and well into the seventeenth and eighteenth centuries, many Western civilizations did not have words to distinguish babies from bigger children. The concept of “adolescence” was not formed until 1890. Even the term childhood is recent; apparently, first being used during the thirteenth century. Before that time, the child was seen as no more than a miniature adult.

Ariès (1962) sees the seventeenth century as a turning point in the conception of childhood. It was then that we begin to find a vocabulary relating to infancy and the idea of childhood innocence began to develop. Before this time, all types of language and behavior were permitted in front of children, since there was no idea of an *innocence* to be violated. By the end of the sixteenth and the start of the seventeenth century, Protestants and Catholics in France and England began regulating access of children to certain books. Although Christianity had implied childhood innocence centuries earlier (e.g., Christ advising people to “become as little children”), the idea did not have much impact until the 1500s and 1600s.

After the discovery of childhood, and the attaching of special meaning to it, society was forced to show how the ideal child might be produced and how the undesirable one might be prevented from developing—or controlled if one did develop. But describing just what was undesirable was still in the developmental stage. Just as society has always had children, whether identified as such or not, those children have always been rather consistent in their behavior. Consider, for example, three current areas of concern linked to juveniles: use of weapons, sexual misbehavior, and alcohol/drug abuse. In fact, juveniles have been engaging in these types of activities for centuries. As late as the seventeenth and eighteenth centuries, European children continued the medieval practice of wearing and using arms. The schools of seventeenth-century France had so many duels, mutinies, brawls, and beating of teachers that the result was regulations requiring that students store their weapons outside the school (Ariès 1962).

Sexual practices, portrayals, and references, which many may consider inappropriate if not obscene today, were often the norm in medieval times. That indulgence regarding sex carried over into later centuries. By 1760, Englishman Samuel Foote commented that public schoolboys practiced more vices by the age of 16 than anyone else would have by 60 (Ariès 1962, p. 324). Finally, the young people of the Middle Ages were heavy drinkers of alcohol. After regulations forbade it in school, they simply went to nearby taverns where it was not prohibited (Alarid and Reichel 2008, pp. 459–460).

This concept of childhood innocence began influencing how society perceived a child’s ability to form criminal intent. By the time Blackstone’s *Commentaries on the Laws of England*, was published in the late 1760s, common law had established age seven as the point at which one could understand their own actions and therefore be able to form criminal intent. Prior to that age, people were

incapable—under common law—of committing a crime. This principle of *doli incapax* (inability to do wrong) gave immunity from criminal prosecution to children under age seven and those between ages seven and fourteen were presumed incapable of doing wrong unless there was evidence to the contrary. Persons over age 14 continued to be tried as adults. We return to this topic of age and criminal responsibility later in the chapter, but first we take time to review some of the initial steps toward a formal response to children and young people who engage in criminal acts and other mischief.

1.2 Formal Responses to Misbehaving Youth

Whether credit for establishing the world's first juvenile court lies with South Australia in 1890 (Sarri and Bradley 1980, p. 46) or Cook County (Chicago), Illinois in 1899 (Platt 1969), we can agree that a formal response to juvenile offenders began taking hold in the late nineteenth and early twentieth centuries. We also know that both South Australia and Chicago, Illinois operated under a legal system that was heavily influenced by British values. Especially important among such values was the concept of *parens patriae* wherein the court (as the agent of the state) is viewed as having ultimate responsibility for junior citizens.

Because of the *parens patriae* doctrine, the initial approach of the juvenile court was non-adversarial and based on a philosophy that assumed that all court personnel were interested in the child's welfare and best interests. The result was a statutory court, rather than criminal court, with jurisdiction over offenses committed by juveniles that would be a crime if committed by an adult. Also, since everyone involved was looking out for the rights and interests of the juvenile, there was no need to be overly concerned with due process issues. Why clog things up with procedural trappings, the attitude seemed to be, since there would be only rehabilitative consequences rather than penal.

The initial juvenile court model based on the child's welfare and treatment was copied, with modification of course, throughout much of the world. Mehlbye and Walgrave (1998) and McHardy (1998) explain that within the first 25 years of the twentieth century, separate jurisdictions, penal laws, or courts for children had been created in Argentina, Austria, Belgium, Brazil, Canada, France, Germany, Great Britain, Hungary, and the Netherlands. Typically, the laws and special courts followed a welfare model as the basic approach toward child offenders. Through the remainder of the twentieth century and into the twenty-first, nations continue to determine the most appropriate way for them to respond to juveniles in conflict with the law. In some places the welfare/treatment approach continues to be preferred, but in other jurisdictions modified approaches are holding sway. To best appreciate that diversity and to understand why a standard approach is unlikely to be taken, we first consider the diversity in the broader legal traditions within which the juvenile justice systems must operate.

2 Legal Systems and Legal Traditions

There are many legal systems in the world, but they can be grouped into several types. Comparative criminal justice scholars distinguish between these functional and conceptual aspects of justice by referring to the legal system (the functional aspect) operating in a state, province, or country, as distinct from a jurisdiction's legal tradition (the conceptual aspect).

Whereas legal systems depend on the nation-state for their specifics (e.g., how to structure police agencies and organize courts), legal traditions are more cultural than political. The term legal tradition refers to attitudes, values, and norms regarding the nature and role of law. It is a broad concept that implies a deeply rooted and historically based heritage. Legal systems, on the other hand, direct attention to the specific organization and procedures a political entity sets forth to carry out the ideas of a legal tradition. Of particular concern in this chapter is the concept of legal tradition—especially as it applies to the attitudes, values, and norms influencing and directing a country's response to misbehaving youth.

Broad descriptions of legal traditions are best accomplished by identifying only a few categories in which many countries can be placed. While legal systems can be described according to how they accomplish policing, adjudication, and sanctioning, legal traditions are typically categorized as falling into one of several legal families. Comparative legal scholars do not agree on how many legal traditions, or families, exist today. Depicting legal families requires the drawing of rather random lines. There is an arbitrary aspect to the delineation, but the resulting picture should make enough sense to people that it is reasonable if not precise.

The decision to group legal systems into legal traditions is easier than deciding what criteria to use for the categories and determining how many such categories to use. Bracey (2006) argues for concentrating on three legal traditions based on the perceived source of law. Glenn (2010) uses seven categories but suggests that even more exist. Reichel (2013) highlights four legal traditions (common, civil, Islamic, and Eastern Asia). Dammer and Albanese (2014) also recognize four legal traditions but identify them as common, civil, socialist, and sacred.

A key point upon which all those scholars agree is that any categorization of legal traditions is more provisional than conclusive. As Bracey (2006) puts it, any attempt at grouping legal systems into broader categories of legal traditions results in something reflecting the designer's goals more than any agreed-upon reality. So, why do it? Because doing so provides some clarity to a very complex situation. For our purposes, that attempt at clarity will follow the lead of Reichel, Dammer, and Albanese, and use a four-category scheme. The resulting legal traditions or families are referred to as common, civil, Islamic, and mixed. A brief description of each will provide a base from which we can discuss variations in how juvenile justice is conceived and implemented around the world.

2.1 *The Common Legal Tradition*

Because common law developed in England and influenced the law's application in the British colonies, Australia, Canada, India, New Zealand, the United States, and former British colonies in Africa, joined the United Kingdom in having legal systems counted among those of the common legal tradition.

Several things distinguish common law from the other legal traditions (Dammer and Albanese 2014; Reichel 2013), but the key feature is the belief that custom provides the primary source of law. The idea is that traditional, consistent, and reasonable ways of deciding disputes provides the appropriate source of law. Determining whether something was “customary” fell to members of the community who sat as a jury of peers.

Countries differ in the specific structure and procedures established for their legal system, but if they maintain that law originates in custom they are included among those countries following the Common legal tradition (Dammer, Reichel, & He, 2014). Identifying those countries where law is based on custom is often accomplished by reference to the use of precedent or *stare decisis*. Following this principle, decisions in current cases are guided by decisions made on similar points in earlier cases. The rationale for this practice was originally an understanding that earlier court decisions were evidence of custom. Judges were expected to follow legal custom by abiding by prior decisions in similar cases. In this manner, custom could be identified by reliance on the people and through reference to several cases.

Because the traditional way of identifying custom was through the court rather than legislative process, judges came to play a pivotal role in common law. A decision by a judge was accepted as legal recognition of a custom. It is important to note, however, that the case was not referred to as the source of law; it merely provided proof that a legal principle (i.e., a custom) was once applied. Eventually prior cases were used less to prove custom and more to reference authority—typically a higher court (Reichel 2010).

2.2 *The Civil Legal Tradition*

The civil legal tradition, which is also called the Roman or Romano-Germanic legal tradition, is the oldest and most widespread of contemporary legal traditions. Originating in the codes of Roman law (e.g., the *Corpus Juris Civilis*), the civil legal tradition views law as resulting from written codes provided by a political authority. When laws are put in writing, or codified, they are believed to provide a clear statement to citizens regarding their rights and obligations. In addition, written laws allow judges to easily determine if a crime has occurred and to set the appropriate punishment. In this way, law is made by legislators (or other political authorities) and the courts simply enforce the law rather than interpret it or make new laws (Reichel 2002).

Contemporary countries identified as falling in the civil legal family were most likely inspired by the civil codes of France or Germany. The French Code Napoléon (1804) was especially influential in continental Europe and Latin America. It was developed to be an easily read and understood handbook that would allow citizens to figure out for themselves (rather than relying on a lawyer) their legal rights and obligations. Like their French contemporaries, nineteenth-century Germans believed codification of law could help pull together a new nation. However, unlike the French, the Germans did not believe it was either desirable or possible to remove lawyers from the legal system. The German Civil Code of 1896 was a historically oriented, scientific, and professional document that assumed lawyers would be needed to interpret and apply the law (Merryman 1985; Reichel 2002).

Despite some dissimilarity between the French and Germany codes, both incorporated a sharp separation of powers in which the legislator makes law and the judge does not. Instead of offering direct and specific solutions to particular problems, codes supply general principles from which logical deduction provides a resolution in each case (Sereni 1956). In this manner, civil judges need only identify the applicable code principle to decide a particular case. The solution is expected to be reached through an independent process of legal reasoning that the judge can identify and explain. This process allows the judge to apply, not make, law. Therefore, under the civil legal tradition, the solution to each case is to be found in the provisions of the written law, and the judge must show that the decision is based on those provisions.

2.3 *The Islamic Legal Tradition*

Legal traditions based on religious principles have included such important examples as the Hindu and Judaic ones. The primary contemporary example, however, is Islamic law.

The Islamic legal tradition is unique among legal families in its view of law's source as being sacred rather than secular. The other legal traditions, especially civil and common, have religious links, but they remain distinct and separate from religion. The Islamic legal tradition, on the other hand, is completely reliant on religion.

Islamic law is called the Shari'a (the path to follow). Its primary sources, the Qur'an (Islam's holy book) and the Sunna (the statements and deeds of the Prophet Muhammad), specify the legal principles linked to right and wrong behavior. The Qur'an and Sunna identify both crimes and punishments but they provide little information regarding the legal process by which offenders are brought to justice.

Because Islamic law is presumed to be of divine origin, its authority is based on God's commands instead of long-held traditions (as in common law) or directives by state power (as in civil law). In fact, the divine nature of Shari'a means that no worldly authority can change it, let alone supplement it. So, like civil law judges, Islamic *qadi* (i.e., judges) must turn to written documents for solutions to disputes.

Also like their civil counterparts, *qadi* cannot do more than identify the correct principle for use in a particular case. The difference lies in the source of that principle—the code, for civil law judges, and the Qur'an and Sunna for *qadi*.

2.4 *The Mixed Legal Tradition*

Countries included in the mixed legal tradition are those that incorporate elements from several of the traditions. Also called hybrid systems, the countries in this grouping include those where components of one legal tradition have combined with components from another legal tradition to form a mixed or hybrid system (Dammer, Reichel, & He, 2014).

Palmer (2008) and Castellucci (2008), suggest that countries in this category will clearly have elements of two or more traditions. Using a family-tree approach, Castellucci describes a forest of legal system family trees wherein the branches and foliage of each tree (each legal system) intertwines with others. Such a forest/family tree model would allow, for example, the existence of a Chinese legal system coming from a mixture of civil law and socialist law. That “tree” intertwines with, for example, Hong Kong’s Chinese-common law mix and with a Chinese-customary mix that may describe the North Korea legal system (Dammer et al. 2014).

Scholarship on mixed jurisdictions has a rich history but became more focused with the work of Palmer (2001), who argued that some mixed jurisdictions were so alike as to be considered a separate legal tradition. In 2002, the World Society of Mixed Jurisdiction Jurists¹ was organized to unite jurists and comparatists around the globe in the study and advancement of mixed jurisdictions. The initial focus was on “classical” mixed jurisdictions (those combining common and civil law) such as Israel, Louisiana, the Philippines, Puerto Rico, Quebec, Scotland, and South Africa. More recent interest has included Cyprus, Hong Kong and Macau, Malta, and Nepal (Donlan 2012).

2.5 *Legal Traditions and Juvenile Justice*

It is reasonable to expect that each legal tradition will give rise to a particular type of juvenile justice system just as it does to a criminal justice system. As explained in Sect. 4 below, that is not necessarily the case. However, it is still instructive to review the four major legal traditions because doing so highlights the diversity found in how social order is accomplished and reminds us of the role played by a country’s values and norms—both indigenous and imposed. Values, norms, and a

¹ <http://www.mixedjurisdiction.org/>.

region's history also influence how a country responds to troubled and misbehaving young people. But, children and youths present problems and opportunities that are different from those presented by adult offenders. The next section highlights some of those differences before we move to a review of juvenile justice models.

3 Children as Different

Nations around the world have drawn an arbitrary line to distinguish juvenile delinquents from adult criminals in the eyes of the law. If a criminal act is committed by a person under the legal age established by the government, the act is considered delinquency. The same illegal act committed by someone who has reached this age threshold is considered to have committed a crime. Therefore, delinquency is distinguished from crime not by the behaviors engaged in, but by the age of the offender.

3.1 Differences in Definitions of Delinquency Globally

In the United States, a person becomes an adult in legal terms at age 18. Unlike most other countries, the United States empowers individual states with unique legal authority, so in three U.S. states a person legally becomes an adult at age 16, in seven states the legal age is 17, and in one state the legal age is 19. In most states, however, the age that distinguishes juvenile delinquency from adult crime is age 18.

Around the world, there is similar variation among nations in establishing the threshold age at which an act of juvenile delinquency becomes an adult crime. An analysis of 22 countries found that the age of criminal responsibility ranged from 7 to 21 years of age (Meuwese 2003). United Nations agreements (discussed below) indicate that age 18 is the most universally accepted age of adult criminal responsibility. In most countries, including the United States, there is also a certain age below which a child cannot be held legally responsible for any law violation. In the United States, that age of minimum responsibility is usually 7 years old, but it ranges from ages 6 to 16 in different countries. The reason for establishing such a minimum age is that small children are not seen as not being old enough to fully understand the consequences of their actions, and so they cannot be adjudicated as either a juvenile delinquent or an adult criminal. Therefore, juvenile delinquency is confined, in general terms, to the law violations of young people between the ages of 7 and 18.

Some nations add a middle category for which there is no criminal liability; often this category includes children from 7 to 12 years of age, but children may still be subject to child welfare interventions. This keeps young juveniles out of the adjudication process, but permits governments to intervene in their lives due to misbehavior.

One factor in defining delinquency is the existence of status offenses, acts for which only juveniles can be held liable. Status offenses do not involve violations of the criminal law but are undesirable behaviors designed to thwart more serious delinquent behavior. Examples of status offenses include habitual truancy, curfew violations, repeated running away, disobeying the reasonable requests of parents, and, in some countries, begging and suspected gang membership. Noncriminal offenses such as these are especially common in industrialized countries, where younger children are not expected to participate in the workforce. In England, for example, children under age 10 are not held criminally liable, but those between ages 10 and 18 are heard in Youth Court and are subject to special laws and procedures. Nevertheless, countries like Canada and Germany do not have status offenses.

3.2 Use of Age Limits in Other Settings

It is clear that the selection of any precise age to distinguish delinquency from crime is arbitrary, yet age limits continues to be used throughout the world. In fact, age is used as an arbitrary demarcation in many ways in society. For example, a person must be 25 to be elected a representative in the U.S. Congress, 30 to be a U.S. Senator, and 35 to be President of the United States. In England no one can be elected a Member of Parliament until he or she is 21 years old. There are similar wide variations around the world (and within the United States) in the ages at which people can have consensual sex, marry, join the military, drive an automobile, vote, and otherwise participate fully in civil life. It should be seen that age is merely an administrative convenience that is used as an arbitrary marker for “maturity” in the broadest sense.

An alternative to using age to distinguish delinquents from criminals might be to use the adjudication process solely as a fact-finding hearing to determine whether the suspect did indeed commit the offense alleged. If proof beyond a reasonable doubt could be established in a given case, then the offender would face a disposition hearing at which a judge would impose some kind of punishment, treatment, or both, after an investigation into the offender’s background, experiences, needs, and maturity to determine an appropriate disposition (Albanese, 2008). This would be one way to avoid the arbitrary age cut-offs that cause problems in trying to answer difficult questions of the appropriate disposition when young persons commit very serious crimes, or commit very minor offenses.

4 Juvenile Justice Models

As explained earlier in this chapter at Sect. 2.5, four legal traditions were presented as one way to view the variation in how nations seek to establish a system of social order. Unfortunately, those traditions cannot easily be used to categorize juvenile

justice systems. Certainly there are norms, values, and beliefs associated with each legal tradition that influence the philosophy and procedures of a country's juvenile justice system; but not with a consistency that results in one tradition producing a particular response to misbehaving youth. Instead, descriptions of youth justice have most often been linked with adherence to, and variation from, the welfare approach that was taken by those first jurisdictions to established separate laws, procedures, and courts for children and young people.

4.1 An Underlying Philosophies Model

As explained earlier in this chapter at Sect. 1.2, the first juvenile justice systems followed a welfare approach built on the *parens patriae* model. Delinquency was a symptom of underlying family and community problems requiring treatment to improve the welfare of children. The emphasis of the justice process was changed from the adjudication of guilt to diagnosis of a condition to be corrected through rehabilitative treatment of the juvenile, not punishment.

The evolution of juvenile justice in Western Europe followed a similar path with initial emphasis on the child's welfare and treatment. However, by the mid-twentieth century, there was disillusionment with the rehabilitative philosophy of juvenile justice, stemming from the government's poor record in trying to act as a surrogate parent. There were numerous instances of child maltreatment and neglect while children were in state custody leading to cynicism about the rehabilitative ideal. The result was a shift toward a system of juvenile justice that ensured a young person's legal rights were scrupulously regarded, so that their legal rights as citizens were protected. This model took hold during the 1950s through the 1970s, and it focused on ensuring justice for juveniles by providing them **due process** rights under law, ensuring fair and equitable hearing procedures.

Finally, beginning in the 1980s, a third shift occurred during a general rise in the crime rate in many countries (Dambach 2007; French 1999; Pfeiffer 1998). This rise in the overall crime rate (although rates of juvenile delinquency actually declined in many countries), combined with disillusionment from the poor success of many rehabilitation efforts, led to the emergence of punishment as a primary objective of juvenile justice. The result was changes in attitude, law, and policy, reflecting the view that the public safety was more important than the welfare of the child. The possibility of crime and victimization came to be viewed as more important than any underlying problems a juvenile might have. The outcome was a juvenile justice system that treated juveniles similarly to adults, much in the way it was in the nineteenth century. The difference, of course, is the existence of many more legal protections in the adjudication process, but these protections increasingly treat juveniles and adults alike—resulting in a juvenile justice system that looks more and more like the adult criminal justice system (Albanese 2013; Bala et al. 2002; Urbina and White 2009).

Table 1 Three underlying philosophies of juvenile justice

Primary thrust of adjudication	Underlying philosophy	Adjudication outcome
Rehabilitative (Welfare of child)	Serve best interests of <i>child</i> by changing juvenile's ability to lead a life that conforms with the law.	Rehabilitative treatment of juvenile.
Due process (Legal rights)	Serve best interests of <i>justice</i> by ensuring a fair and equitable proceeding.	In accord with the rule of law (process more important than outcome).
Punitive (Crime control)	Serve best interests of <i>public</i> by making sure that public safety is not put in jeopardy.	Punishment to ensure public safety.

These three basic philosophies are summarized in Table 1 and they serve to remind us of important issues that essentially all juvenile justice systems hope to attain. That is, a desirable response to misbehaving youth would be one that holds young people accountable for their acts (crime control) in a manner that protects their interests and provides opportunities for their betterment (rehabilitative) while protecting the person's rights throughout the process (due process). Not surprisingly, balancing these is more problematic than is first apparent. Attempts to find the right balance must take into consideration such things as a jurisdiction's overall legal tradition, culture, institutional capacity, public perception of justice agencies and agents, crime rate, and many other matters. An example of one attempt to describe a suitable balance is found in the work of the United Nations.

5 The United Nations and Juvenile Justice

The United Nations is a voluntary organization comprised of nearly all the countries in the world. Its charter states that its mission is, in part, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom" (United Nations 2004). Juvenile justice is clearly part of the UN's mission in its efforts to promote human rights, worth of the human person, equal rights, respect for law, social progress, and better standards of living.

The United Nations attempts to achieve these goals by developing rules, guidelines, standards, principles, and conventions by consensus among member nations. These tools are used to promote most desired practices on a worldwide scale in fulfillment of the UN charter. "Conventions" are more significant than "rules," "principles," or "guidelines" because they are binding in nature, requiring ratifying nations to abide by their provisions or else face sanctions. In the area of juvenile justice, there have been four major United Nations efforts to develop international standards relating to juvenile delinquency.

- Convention on the Rights of the Child (Adopted by General Assembly resolution 44/25 of 20 November 1989)
- Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing rules,” Adopted by General Assembly resolution 40/33 of 29 November 1985)
- Rules for the Protection of Juveniles Deprived of Their Liberty (“Havana Rules,” Adopted by General Assembly resolution 45/113 of 14 December 1990)
- Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Rules,” Adopted by General Assembly resolution 45/112 of 14 December 1990)

The **Convention on the Rights of the Child** entered into force in 1990, and it has since been ratified by nearly all UN member countries. No other international agreement relating to justice has such universal support. It defines a child as a person under 18 years of age, and established many protections, such as protection against cruel, inhuman, and capital punishment. It states that arrest, detention, or imprisonment of a child shall be in conformity with the law, that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, and that children accused of law violations shall be treated in a manner consistent with the promotion of the child’s dignity and worth. It also states the desirability of promoting the child’s reintegration and resumption of a constructive role in society. Furthermore, the Convention states that children are presumed innocent until proven guilty according to law, should have appropriate assistance in the preparation and presentation of his or her defense, and must not be compelled to give testimony or to confess guilt; it also describes related legal protections (United Nations 1989).

The Standard **Minimum Rules for the Administration of Juvenile Justice** were adopted in 1985 at the United Nations meeting in China (and thus are sometimes called the Beijing Rules). The Beijing Rules are historic in that they constitute the first international legal instrument to detail comprehensive rules for the administration of juvenile justice with a child rights and child development approach. The Beijing Rules predate the binding Convention on the Rights of the Child; they provided earlier guidance for countries on protecting children’s rights and observing their needs in separate juvenile justice systems. Many of the Beijing Rules were later incorporated into the Convention on the Rights of the Child. The Beijing Rules encouraged fair and humane treatment of juveniles, emphasizing their well-being and the importance of rehabilitation for young people (United Nations 1985).

The **Rules for the Protection of Juveniles Deprived of Their Liberty** (sometimes called the “Havana Rules”), adopted in 1990, are standards for the treatment of persons under age 18 when confined to any institution or facility by the order of a court or similar body. These Rules set forth principles to universally define the circumstances under which children can be deprived of their liberty, emphasizing that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. Rules are also included for the training of juvenile justice personnel and the inspection of juvenile facilities (United Nations 1990b).

The **Guidelines for the Prevention of Juvenile Delinquency** (called the Riyadh Guidelines) were also adopted in 1990. They represent a proactive approach to

delinquency prevention involving the roles of the family, the school, the community, the media, social policy, legislation, and juvenile justice administration. Prevention should involve “efforts by the entire society to ensure the harmonious development of adolescents.” Countries are encouraged to develop community-based interventions to prevent children from coming into conflict with the law, and to use legal systems only as a last resort in addressing juvenile delinquency. The Riyadh Guidelines also call for the decriminalization of status offenses (United Nations 1990a).

The Convention of the Rights of the Child, like all U.N. conventions, is a binding document that requires all signing countries to abide by its standards in its national laws, procedures, and policies. It has become the most universally approved treaty in the world, with only two countries—Somalia and the United States—refusing to ratify it. The U.S. Senate has not, and presumably will not, ratify the convention because some individuals and groups believe the convention will interfere with parents’ ability to raise and discipline their children, and could even elevate the rights of children above the rights of parents.

When agreeing to the CRC, countries are allowed to note reservations they have regarding any of the provisions. This procedure provides countries an opportunity to avoid abiding by certain provisions as long as a majority of the other signing nations make no objection to the reservations. For example, Australia, Canada, and several other countries registered reservations regarding separation of detained children from adults. Those countries generally accept the principle involved but maintain there are situations when separation is not feasible or could even be inappropriate. Several countries following Islamic law have made reservations regarding the application of the CRC when its articles conflict with the provisions of Shari’a. Germany and the Netherlands noted that minor offenses could be tried without legal assistance (International Child Development Centre 1998). Despite the occasional reservation, however, the CRC stands as an important international document that provides minimum standards for handling young offenders and has encouraged countries around the world to recognize and respect the rights of children.

5.1 Summary of International Agreements Related to Juvenile Justice

These four international agreements demonstrate an evolving international consensus regarding the appropriate response to juvenile delinquency. The combined substance of these agreements is summarized below.

- All children should be respected as fully fledged members of society, with the right to participate in decisions about their own futures, including in official proceedings, without discrimination of any kind.
- Children have the same rights to all aspects of due process as those accorded to adults, as well as specific rights due to their special status as children.

- Children should be diverted from the formal system of justice wherever appropriate and specifically to avoid being labeled as criminals.
- There is a set of minimum standards that should be provided to all juveniles in custody.
- Custodial sentences should be used as a last resort, for the shortest possible time, and limited to exceptional cases.
- A variety of noncustodial sentences should be made available, including care, guidance and supervision orders, counseling, probation, foster care, education, and vocational training programs.
- Capital and corporal punishment of children should be abolished.
- There should be specialized training for personnel involved in the administration of juvenile justice.
- Children have the right to be released from custody unless there are specified reasons why a release should not be granted.
- Children have the right to measures to promote recovery and reintegration for victims of neglect, exploitation, abuse (including torture and ill-treatment), and armed conflict.
- States are obliged to establish a minimum age of criminal responsibility that is not set too low but reflects children's capacity to reason and understand their own actions.
- States should invest in a comprehensive set of welfare provisions to contribute to preventing juvenile crime (International Human Rights, 2004).

These rules and guidelines set minimum standards for juvenile justice by providing fair trial guarantees and basic procedural safeguards (for example, presumption of innocence, right to notification of charges, right to legal representation) and by promoting the desirability for rehabilitation and reintegration of the young person. Unfortunately successful implementation of the standards into some national legal and judicial systems has not been fully achieved, but progress is apparent.

6 Implementing the Standards

6.1 *Indicators*

The implementation of international standards occurs at the national and subnational level. Experts under the auspices of the United Nations have been gathered to develop indicators, or common measures, to assess compliance with international standards set by the conventions. The United Nations introduced 15 indicators it believed that all countries should use to gauge their juvenile justice efforts (United Nations 2007, p. 5). These indicators are shown in Table 2.

As the table shows, the proposed indicators are rudimentary, but important to document the experience of juveniles in the justice process. Some countries now collect these data, but many do not. In some cases, the lack of data reflects a more

Table 2 The UN's fifteen juvenile justice indicators

Indicator	Definition
Quantitative indicators	
1	Children in conflict with the law Number of children arrested during a 12 month period per 100,000 child population
2	Children in detention (CORE) Number of children in detention per 100,000 child population
3	Children in pre-sentence detention (CORE) Number of children in pre-sentence detention per 100,000 child population
4	Duration of pre-sentence detention Time spent in detention by children before sentencing
5	Duration of sentenced detention Time spent in detention by children after sentencing
6	Child deaths in detention Number of child deaths in detention during a 12 month period, per 1000 children detained
7	Separation from adults Percentage of children in detention not wholly separated from adults
8	Contact with parents and family Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months
9	Custodial sentencing (CORE) Percentage of children sentenced receiving a custodial sentence
10	Pre-sentence diversion (CORE) Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme
11	Aftercare Percentage of children released from detention receiving aftercare
Policy indicators	
12	Regular independent inspections Existence of a system guaranteeing regular independent inspection of places of detention Percentage of places of detention that have received an independent inspection visit in the last 12 months
13	Complaints mechanism Existence of a complaints system for children in detention Percentage of places of detention operating a complaints system
14	Specialised juvenile justice system (CORE) Existence of a specialised juvenile justice system
15	Prevention Existence of a national plan for the prevention of child involvement in crime

general inattention across a particular country. In others, it reflects a lack of priority placed on the treatment of juveniles in the justice process.

6.2 Trends

The actual implementation of international standards has not been universal or uniform. An assessment of the experience in 15 countries found that “the global progress made in terms of juvenile justice has been very uneven” (Defence for Children International 2007). The problem of most concern was the over-use of pre-trial detention and the conditions under which children were often held (including non-segregation of children and adults, poor hygiene, and lengthy pre-trial detention periods).

Also, there was found to be a lack of government data and statistics on the lengths of imprisonment and pre-trial detention imposed. Many countries did not track how long children actually remained in custody, and there was limited data regarding the extent to which alternatives to detention were employed.

Violence against children was reported to occur in juvenile justice systems in all the countries surveyed. Finally, there was a distinct lack of resources devoted toward implementing better juvenile justice practices, even when the rhetoric appeared to show a commitment to do so.

The report made a series of recommendations both for government and for civil society (Defence for Children International 2007, p. 56):

Governments should undertake the following actions:

- Monitor more closely the conditions and length of pre-trial detention in accordance with international standards;
- Establish effective complaints mechanisms within juvenile justice systems and conduct exit interviews with children to gauge the upholding of the rights of children deprived of their liberty; and commit to investigating and sanctioning those responsible for violations.
- Develop diversionary practices and alternatives to the deprivation of liberty; and, monitor their use and effectiveness;
- Develop programmes for the prevention of juvenile delinquency which do not stigmatise certain groups or children and young people in general;
- Establish a national action plan on juvenile justice if one is not already in place;
- Collaborate with NGOs throughout the development and implementation of all strategies for juvenile justice;
- Collaborate meaningfully with children throughout the development and implementation of all strategies for juvenile justice

Civil society should undertake the following actions:

- Lobby their governments to uphold the rights of children in juvenile justice systems by raising awareness about General Comment No 10 on "Children's Rights in Juvenile Justice" of the UN Committee on the Rights of the Child (2007);
- Monitor the conditions of detention centres and remand homes and report on abuses where possible; where not possible, create a visible presence and pressure nonetheless;
- Talk with children and young people; record their stories and make their voices heard;
- Educate and inform children of their rights in juvenile justice systems; provide them with a place to turn when their rights are violated;
- Work to change negative public perceptions about children and young people;
- Educate and train prison staff, police officers and judges on violence against children in juvenile justice systems and alternative forms of discipline

A recent follow-up to the DCI report was undertaken by the International NGO Council on Violence Against Children, which was established to work with NGOs and member states to ensure that the recommendations from the UN Study on Violence against Children are effectively implemented. The International NGO Council includes representatives from nine international NGOs, including major human rights and humanitarian agencies, as well as nine representatives selected from their regions. Their 2013 report (The International NGO Council on Violence Against Children 2013) found many instances of needless arrests, brutal interrogations, conviction without cause, and lengthy incarceration. It concluded that:

although there has been ample time, guidance and encouragement to address this growing crisis, distinct juvenile justice systems remain underdeveloped, underutilized, underresourced and underappreciated. All too often, promises of positive, healing interventions into children's lives have collapsed into inevitable violations of their rights. (p. 43)

The report found many instances of violations of international principles in the treatment of juveniles that continue today, despite the conventions, earlier surveys of compliance, and attention given to the situation. The 2013 report made recommendations for change, which include many that have been made before:

- *A Distinct Juvenile Justice:* Operate a separate justice system for children accused of being in conflict with the law that is firmly grounded in the rehabilitative ideal and fully recognises children's unique rights and vulnerability.
- *Reach and Jurisdiction:* Ensure that all and only children accused of being in conflict with the law are processed through the juvenile justice system, meaning that no child is tried in adult criminal court and that any child in contact with the law not suspected of committing an offence is handled through a suitable alternate channel.
- *Minimum Age:* Prevent the criminalisation of children by raising the minimum age of criminal responsibility to match the internationally accepted age at which children attain majority.

- *Staffing*: Screen and hire qualified professionals, treat all juvenile justice personnel with suitable respect and appreciation, and offer staff continued training and education on children's rights, non-violent interaction, and other pertinent topics.
- *Prevention*: Adopt a preventive focus as a front-line strategy, respecting children's rights from birth and providing the familial, educational, social and financial support necessary to help every child grow, develop and reach his or her full potential.
- *Diversion and Non-Custodial Measures*: Promote diversion and non-custodial measures, recognising both that children in conflict with the law are better rehabilitated in the community and that children may only be lawfully detained as a matter of last resort and for the shortest possible period of time.
- *Restorative Justice*: Building on traditional notions of justice, adopt community-based, restorative solutions that help children to take responsibility for their actions outside the formal justice system.
- *Data Collection*: Systematically collect data on juvenile justice indicators to determine the extent of violence against children in conflict with the law and aid in the analysis and evaluation of relevant laws, policies and practices.
- *Research*: Encourage and fund research studies in the area of juvenile justice with a view to improving the effectiveness of non-violent interventions.
- *Public Support*: Raise awareness of children's rights and the non-violent juvenile justice imperative, enhancing public support and respect for children in conflict with the law.

It should be noted that many of these observations in 2013 reflect the concerns that brought about the international standards, including the Convention on the Rights of the Child (1990), Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules," 1985), Rules for the Protection of Juveniles Deprived of Their Liberty (1990), and Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Rules," 1990). Therefore, it is clear that greater vigilance, oversight, and priority are needed to ensure that the needs and rights of juveniles are respected and acted upon across the world.

7 Conclusion

It must be concluded that the promise of justice for juveniles has not yet been met. Despite international consensus being reached and codified in important and universally acclaimed international agreements, the implementation of indicators and procedures to ensure justice for juveniles has lagged. Clearly, greater priority and resources are required (internationally, nationally, and subnationally). Vigilance is required to keep attention focused on the problem, so the world is not left to reacting to horrifying incidents, violence, and crises in juvenile justice.

The Interagency Panel on Juvenile Justice (IPJJ) was created to provide technical assistance in juvenile justice and help States comply with their obligations under the international standards adopted for juvenile justice. The IPJJ is composed of 13 United Nations agencies and non-governmental organizations actively involved in juvenile justice, and it works on the development and dissemination of implementation tools and good practices. It is only through the ongoing work of NGOs like IPJJ, together with governments, academics, and civil society (see Fritz 2011; Hamilton and Harvey 2004), that the objectives of juvenile justice will be realized in practice.

Five Questions

1. The idea of children as “different” certainly includes the concept of age as a social status, but it may also include topics related to physical, social, and psychological development. To what extent should a juvenile justice system take psychological development into consideration when determining such things as criminal responsibility and appropriate sanctions for misbehavior? How about physical and social development?
2. What do you see as the most important underlying philosophy of juvenile justice? In what way should this philosophy drive the operations of the juvenile justice process?
3. The treatment of juveniles under law, historically, has been susceptible to change, based on crime rates, school discipline problems, and other kinds of contemporary social problems. Should the treatment of juveniles change in this way, or should it be consistent over time?
4. In order to manage juvenile courts, detention facilities, and prevention programs on the national and subnational levels, local conditions must be accounted for. How should local conditions be permitted to impact compliance with international standards?
5. Review the summary of international agreements related to juvenile justice (Sect. 5.1). Do you find any of those listed to be inappropriate or unreasonable? Why? Are there other concerns that should be addressed in the list that are missing? Which ones?

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Epilogue

I have recently attended the United Nations Congress on Crime Prevention and Criminal Justice in Doha, Qatar, where Member States adopted the “Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation”.

This wider United Nations agenda involves the United Nations sustainable development goals for the period 2016–2030.

My own international law education and one and a half year involvement as the President of the Economic and Social Council, the United Nations’ principal organ for coordination and policy guidance with regard to its development agenda, prompts me to contribute a few reflections on the meaning of justice which is necessary to end poverty and fight inequalities, promote safe and peaceful societies and strong institutions.

This book addresses the impact of socio-economic inequality in countering crime and victimization of women and children. Building a safe and peaceful future for women and children—the “succeeding generations”—is the leitmotif of all its contributors.

This very focused call in the name of justice to end absolute poverty—the root cause of crime—should be an invitation for all the United Nations entities to “deliver as one” in achieving the agreed goals of sustainable development. Partnerships of all kinds will become ever more important involving government agencies, the private sector, civil society, academia, philanthropic foundations and faith-based organizations. This collaboration will prove critical for the implementation of the new development agenda.

The Thirteenth UN Congress on Crime Prevention and Criminal Justice stressed the need to integrate crime prevention, criminal justice and other rule-of-law aspects into the domestic educational systems. It called for awareness-raising programmes that convey key values based on the rule of law, to be accompanied by economic and social policies promoting equality, solidarity and justice, and reaching out to young people, as agents of positive change. The Congress

emphasized that education for all young people, including the eradication of illiteracy, is fundamental for the prevention of crime and corruption. Equally, the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities is important. In this regard, the Congress also pointed at the fundamental role of youth participation in crime prevention efforts. The Congress emphasized the need to create a safe, positive and secure learning environment in schools, as well as protecting children from all forms of violence, harassment, bullying, sexual abuse and drug abuse. Educators and practitioners from many countries contributed to this book with different perspectives, hopefully broadening our understanding of conditions around the world.

I hope that the book's gender and age-specific research will contribute to policy recommendations regarding women and youth to be more fully inscribed into the wider post-2015 United Nations development agenda.

Finally, I hope that readers may be stimulated to contribute their own ideas and energies to the sustainable development goals, in multi-stakeholder partnerships, for the benefit of peace and the succeeding generations.

Ambassador

Martin Sajdik

70th President of the Economic and Social Council

Former Permanent Representative of Austria to the United Nations
in New York

Doha, Qatar/Vienna, Austria/New York, NY, USA

2015

Post Scriptum

The United Nations Post-2015 Sustainable Development Agenda and Education in a Culture of Lawfulness

When the editors of these two volumes planned this publication they did not yet fully realise the enormity of the global refugee crisis and the problems the steady stream of asylum seekers into Western Europe would present. What we experience today is not new: the first victims of violent conflicts are always the weakest groups in society—women and children. Among the refugees who have reached in the past weeks and months Western Europe are many women and children, and many of these children have been separated from their parents and are thus even more helpless and vulnerable. Given the large numbers, aid organisations are stretched to their limits and cannot always give even the basic support the refugees would need (Kurz-Adam 2015).

In armed conflicts today the majority of victims are usually women and children. Sometimes the crimes against them have a (wrongly interpreted) religious base; religious traditions may also elevate men to a privileged position. Apart from cases of severe domestic violence, the development potentialities of women are also frequently blocked through a lack of access to education and jobs. Several chapters in the two volumes provide well-documented examples of this phenomenon (see in particular the chapters by Mehrdad and Byouki or by Pakzad and Alipour). It would however be wrong to think in this context only of developing countries, even if in some of them the situation is particularly serious. Industrialized countries too have not achieved complete equality of the sexes, for instance as far as salaries are concerned, or in the treatment of men and women by political institutions (Kury 2015). The serious victimisation of children and women often leads to their life-long traumatisation. This in turn generates considerable costs for society, not to speak of the ethical implications. As Zedner (2002, p. 429) points out: “Personal crimes such as physical and sexual assault commonly entail longer-term effects”, and she adds: “General feelings of vulnerability among women, ethnic minorities,

and the poor also increase the impact of crime” (ibid., p. 429ff.). Similarly, Skogan (1986) identified four key factors that increase the level of traumatising: isolation, lack of resources, vulnerability and previous experience. Female refugees are in this context particularly vulnerable.

Compared to their victimisation rates, the role played by women and children as actual delinquents appears rather secondary. If we take Germany as an example of an industrialised society, the proportion of women suspected of having committed an offence registered by the police was 25.7 % in 2013. As far as children were concerned (under 14 years of age) their share was only 3.3 %, for youths (14 to and including 17 years old) it was 9.1 %, and for young adults (18 to below 21 years) 9.0 %. In other words, 78.6 % of all registered offences were committed by adults (21 years and older) (Bundeskriminalamt 2014). It should be added that women and children as a rule also commit less serious offences than older youth and men. Furthermore, we must keep in mind that the age of criminal responsibility is not the same in all countries, and sometimes it is lower for women than for men (see for example Pakzad and Alipour in these volumes).

A feminist criminology, dealing particularly with such questions, has only been developed in Western industrialised countries in the 1970s and 1980s (see Hartmann and Sundt 2011; Schneider 2014, p. 443ff.). Formerly, female offenders had been often considered as suffering from a personality disorder, and the “male part” of their deviant behaviour was usually overlooked (see Lombroso and Ferrero 2004). Social causes of female delinquency were rarely taken into account, but this was also the case for male delinquent behaviour. In public discussion and in media reporting the offender is often presented as he is “now” and what counts is what he has done “now” (see for instance the chapter by Hestermann in these volumes). The question why he became an offender is rarely asked. Politicians and the public tend to content themselves with the “classical” notion that all that is needed is harsher punishment to solve “the problem” (see the chapters of Hermann and Dölling or Zapatero in these volumes, also Kury and Shea 2011; Kury 2015). Collateral damages caused by incarceration for the offender and his family are rarely taken into account (see Beichner and Hagemann, Robertson et al., or Allen in these volumes). Even if alternatives to imprisonment have been rediscovered in many countries, traditional sentences are still the norm (see the chapters of Dandurand, Hamilton and Yarrow, Ehret et al. or Kury in these volumes).

Over the last few decades, criminological research has increasingly stressed the importance of (unfavourable) conditions of early socialisation for the emergence of deviant or delinquent behaviour (see Farrington, Norens und Barnett or Marshall in these volumes). The psychological damage that children and young people experience, who have to flee their home country may have a negative impact on their socialisation that may later result in deviant behaviour. Much depends on how well the host country is able to integrate them and in particular give them access to education and professional training, in order to enable them to find satisfying jobs and a sufficient income for their needs (see in particular Barberet in these volumes).

In the book “Revisiting Keynes. Economic Possibilities for our Grandchildren”, one of its authors reminded us how naïvely Keynes assumed the total eradication of

poverty in today's world (Baumol 2010, p. 203). When the United Nations were established in 1945 this naïve assumption still prevailed. At the time of the adoption of the UN Charter, its stipulation to promote higher standards of living, full employment, and conditions of economic and social progress and development, and the solutions of international economic, social, health, and related problems and international cultural and educational cooperation (art. 55) implied a nearly linear progression from poverty to affluence. In fact, only sixty years later, at the end of the First United Nations Decade for the Eradication of Poverty (1997–2006), according to the World Bank's analysis the total number of people in the world living on less than US\$1.25 a day has begun to decrease sharply (Chen and Ravallion 2008). Not the immediate post-Second World War generation, but the likewise impoverished people succeeding it could start experiencing substantial improvements in the quality of life. If this trend continues, from the current one billion poorest people, by 2030 there may be none left—a very hopeful and inspiring vision for the United Nations post-2015 sustainable development agenda. We should however also take note that at the same time in industrialised countries, in Germany for instance, the gap between rich and poor is growing: whereas the middle class is shrinking the number of the very rich and very poor—the latter especially among the elderly—is growing.

The post-2015 agenda envisions also a substantial reduction in various forms of crime, in particular of organised crime and corruption. Here too, we should not lose sight of the fact that closer international ties, the opening of borders, for instance in the European Union, or new technologies such as the internet create new opportunities for criminal activities, many aimed at women and children, such as trafficking in persons, (child-)pornography and sexual exploitation (see e.g. the chapters by Kangaspunta et al., Howell, or Quirchmayr et al. in these volumes).

Poverty eradication is certainly an important step in the fight against crime, but it is not enough. Below are seven general suggestions for succeeding generations, suggestions, which must go beyond the confines of economic arguments.

First, because economic inequality or poverty (to use this more colloquial term) as a “root cause” of crime, even if totally eradicated will not put an end to crime. “Causes”, “factors” or “motives” are by far more intricate drivers of human nature and crime than is the fixed, compelling and elaborate UN rationale to end absolute poverty by 2030. There is no society without crime, and it can therefore not be the aim to completely wipe out crime but to deal with it more effectively.

The views of two Nobel Prize winners in economics and two winners of the Stockholm Prize in Criminology (contributors to this publication) will be for us a departure point to deliver our final words in these volumes about “Women and Children as Victims and Offenders”.

Gary Becker, the first of the two afore mentioned Nobel Prize winners in economics (1992) together with Luis Rayo observed that human nature is insatiable. This is because in nature there is no “absolute” of any kind, as the needs are relative. In a classically utilitarian fashion Becker argues that “as individuals strive to do better, they partly but never fully succeed since their reference points continue to rise along their earning power” (Becker and Rayo 2010, p. 181). And, indeed, the

UN analysis suggests that individuals or groups are most likely to engage in crime if they perceive a gap between what they have and what they believe they were deprived of (UN Habitat 2006/2007, pp. 143–144). Here, education and public attitudes play an important role in what the media present as a desirable aim, as “success” in life.

The UN analysis outlined above inscribes itself into a broader observation about the criminogenic role of relative deprivation. It alerts us to the need for preventive education and clear policy decisions that take to a greater extent into account sustainable development goals (SDGs) than is the case now.

Moreover, material and time deprivation do condition each other. “[T]hose who are present-oriented are swept into the future that others have laid out for them” (Rifkin 1995, p. 166). Regarding children, if inattentive parents do not prepare them for mainstream culture’s daily routines that ordain kids’ lives, their idle time activities may involve drugs and delinquency (Levine 1997, p. 189).

As of 1987 (the year of the first UN definition of sustainable development (SD) by the World Commission on Environment and Development), SD has been understood as “development which meets the needs of the present without compromising the ability of future generations to meet their own needs” (A/42/187, Annex, para. 2). In 2002, UNESCO, in addition, defined the meaning of education in SD. It made SD “a dynamic concept that encompasses a new vision of education that seeks to empower people of all ages to assume responsibility for creating and enjoying a sustainable future” (UNESCO 2002, p. 1).

UNESCO projected into this concept of education key SD issues for teaching and learning, “for example, climate change, disaster risk reduction, biodiversity, poverty reduction, and sustainable consumption”. SD “also requires participatory teaching and learning methods that motivate and empower learners to change their behaviour and take action for sustainable development. Education for Sustainable Development consequently promotes competencies like critical thinking, imagining future scenarios and making decisions in a collaborative way” (ibidem).

One author of these volumes (Mitrofanenko) documented this more advanced sense of SD as the intergenerational learning process. This is a welcome orientation that may be helpful in extending this process to other walks of life. However, among one of the complexities of sustainable development in general is that the future Environmental Justice—in societies hopefully more affluent than now, and with generations of people living even longer than now—may be confronted with a far more health-endangering environment than we have now, if it is true that affluence and environmental diseases go hand in hand (Landes 1998, p. 11). In the light of this claim, the United Nations sustainable development agenda 2016–2030 may have to be critically analysed by all concerned.

In his Presidential Address to the American Society of Criminology, Laub (2004) noted that criminology has a developmental life course with specific turning points that allow for innovations in how we understand and respond to crime. The UN sustainable development agenda has now five such essential interlocked elements: “Planet”, “People”, “Prosperity”, “Peace”, and “Partnership” (A/69/L.85).

They may help to project into the post-2015 education (and the crime prevention education for succeeding generations relevant to these volumes) the concepts, methods, and—eventually—mandates and policies that will genuinely and effectively alter the rather superficial ways of dealing with sustainable development in general. Criminology and other disciplines may be helpful if they draw more often and more comprehensively on SD as a fundamental “unit of analysis” for charting social progress. In academic discussions the content of that unit varies more in terms of close ups than generically (Weisburd 2015). The UN generic focus on SD should motivate both academics and field practitioners to invest more in it.

Second, aware of the very energetic and recent review by the United Nations of its sustainable development agenda, we now would like to advance further the SD concept relevant to women and children as offenders and victims of crime. As pointed out in these volumes by Jan Van Dijk, winner of the Stockholm Prize in Criminology (2012), violence by intimates is most prevalent in countries where gender inequality is greatest. We therefore propose that the academic and policy-making world should more incisively and comprehensively include in it gender- and age-sensitive crime prevention as a balancing force for countering the criminogenic potential of relative deprivation.

In our view, SD includes a self-generating, creative, albeit also conflicting mechanism for renewing socio-economic and other resources. SD is geared toward their multiplication and, generally, the broadening of human intergenerational capital in any creative area of humankind, including science and education—the necessary doorway to a change in mind-set and behaviour. To live in and pursue a culture of lawfulness necessitates a change in behaviour by everyone. Citizens, companies, local and regional authorities, governments and international institutions are called to counter the threats looming over our planet (climate change, loss of biodiversity; industrial, health and security risks; excessive but preventable economic and social inequality, likewise crime and victimization levels, and so on), in the SD gender and age-sensitive crime prevention manner. This includes new paradigms, such as Restorative Justice (see the relevant chapters in volume 2), but should also include more incisively innovative anti-corruption policies.

In support of this proposal, we would like to recall what James J. Heckman, winner of the Nobel Prize in economics (2000) and David Farrington, winner of the Stockholm Prize in Criminology (2013) and many other distinguished researchers have been communicating to the world. They all emphasize that the sooner children, their parents and other educators engage in the prevention of conflict with the law, the better returns this yields for the law-abiding conduct of the children later (Heckman 2008; Farrington in these volumes). At the same time, the important role of just and visible social policies has to be stressed.

Third, the (un)successful intergenerational transmission of values is relevant to the broad interpretation of sustainable development outlined above. For instance, if one agrees that it is very difficult to alter the personal dispositions of criminals, would this not be a strong reason to modify their behaviour by changing social and situational risk factors and their perceptions of those factors (social and situational crime prevention)? Can this be done by assisting communities in developing and

pursuing legitimate ownership of certain crime prevention activities, so they themselves facilitate an investment climate to prosper in the future? If such communities fail, what else can be done to prevent humanely and effectively crime?

Fourth, both questions suggest the need of a critical and multidimensional analysis of the relevance of criminological theories from their aetiological and preventive side to see whether or not they account for SD. SD is a global and universal idea of such a high rank that it breaks all intellectual clichés. It opens a path to a broader reconceptualization and verification of the suitability of criminological ideas, especially the older ones. Some of them could stand the test, others not. Basically, several sociological theories, most particularly those belonging to social learning theories, would initially qualify for their reinterpretation and verification, if and when they emphasize the importance of equal life chances in making a rational choice of behaviour (“rational choice theory”, balance of chances). But also the aetiological theory of relative deprivation would retain its scientific and practical relevance at the present stage of global socio-economic development because its imbalances (sharp inequalities) undermine sustainable development.

Fifth, the concept of sustainable development may be instrumentalized and operationalized in terms of countering particular forms of crime. So far, only the sister term of “alternative development” has practically been applied to counteract one form of organized crime in developing countries—illicit drug cultivation. For the 2016–2030 SDGs, this goes not far enough.

Sixth, critical as this practical application is for countering narcotic drug addiction that “constitutes a serious evil and is fraught with social and economic danger to mankind” (Single Convention on Narcotic Drugs, 520 UNTS 151), these volumes took an interdisciplinary view of sustainable development (see also the experiences with less punitive forms of reacting to illegal drug misuse in Portugal, Kury and Quintas 2010a, b; Hughes and Stevens 2010, 2012). By if we emphasize that the treatment of women and children is even more fundamental to the future of humankind than the battle against drug addiction (i.e. SDG 3.5). This is because against the historical background of the concept of sustainable development we have to recognise a more basic evil that threatens them—slavery (Landes 1998, ch. 5; Redo 2015, p. 71).

Those deliberating universal moral values wonder whether slavery is an evil that is merely prohibited or *mala in se*. Reportedly, economists claim that the eventual prohibition of slavery was the result of its diminishing exploitation profits, and not the recognition of its inhuman nature (Landes 1998, p. 119). Rather than continuing these endless deliberations, Leszek Kołakowski (1927–2009), a Polish moral philosopher, cut them off. He pointed out that: “When one attempts to derive human rights from historical or anthropological material, these will always be the laws of particular groups, races, classes, nations that on the strength of those laws are free to eliminate or enslave other groups. Humankind is a moral concept, and if we do not accept it, we have neither a good basis to question slavery nor its ideology” (Kołakowski 1990, p. 87).

Eradication of slavery as a universally laudable moral objective is the core ideology of sustainable development, as the UN puts it (SDGs 5.2 and 16.2). To

understand this objective's essential role, it must be recalled that the UN origin of sustainable development dates back to the right to self-determination of the post-colonial era. That latter right, in turn, coincides with the UN origin of human rights. It precedes the right to development of countries where that development was earlier debilitated by slavery (Landes 1998, p. 122; Redo 2012, p. 79).

The UN concept of sustainable development can thus only be understood fully when one sees that it intertwines the right to self-determination and the right to development. Internationally, the latter entails not only the compensation for earlier economic exploitation through slavery, but also the shared responsibility of countries and civil societies for the international and intercultural countering of "uncivil societies" implicated in sustainable development problems (A/51/950), whereby slavery/trafficking in people is merely one of them. "Shared responsibility" implies technical assistance in every aspect of sustainable development. For the donor countries, assisting in national capacity building in developing countries to make them more self-sustaining will be a major challenge in the years to come. If that challenge is surmountable, in 2030 sustainable development goals may be met.

Last but not least, and probably most importantly, the United Nations sustainable development agenda 2016–2030 has therefore a stimulating and transformative character. Not only are its goals progressive in the way outlined above, but they also aim at equalizing the life chances with gender mainstreaming that meets the needs of succeeding generations—all this in the name of peaceful, just and inclusive societies.

To this end the UN seeks to advance normatively the rules of our life by contributing to free societies from fear and violence. In this context, the Organization resolved "to protect human rights and promote gender equality and the empowerment of women and girls" (A/69/L.85, pp. 2/35 and 3/35). Surely, in both cases, social justice and other improvements are possible—indeed, for all children and both sexes. Therefore educationists, educators, academics, students, practitioners and others interested in gender mainstreaming, crime prevention and criminal justice reform, and all interested in any of the other sustainable development reforms according to the United Nations agenda, should begin looking into the SDGs soon.

These SDGs will advance the sustainable livelihood of succeeding generations. They also may enrich the academic science with new interdisciplinary background, facts and figures relevant to women and children. They finally can lead to the further evidence-based prevention, reintegration of women and children as offenders and victims of crime and, generally, to further social progress in the world.

A few years ago, a scholar of Polish-German Second World War history and of the difficult time of post-war reconciliation wondered:

When you look back in history, you cannot but question, what would be today's world like, if all energy, resources and intellectual potential that were dedicated by empires and dictatorships to build ideologies against other nations were spent on universities, schools and common meeting places (Wolff-Powęska 2011).

Let us hope that our successors will find a positive response for the future we want for all.

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