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General Prevention and Social Control

Prewencja ogólna i kontrola społeczna

Превенция и общественный контроль

1. INTRODUCTION

In the late 60ies a renewed interest in the problem of general prevention and general deterrence can be observed in western criminology. The relationship between general prevention and social control, the role of deterrence in maintaining and stabilizing social order as well as individual conformity became a major topic in criminology and partially in the field of criminal policy and penal law, too. A nearly forgotten theme attracted attention, a "reactionary" idea was reborn.¹

The question of general prevention is to be addressed from two different viewpoints according to the two branches of science which are preoccupied with crime, criminal behavior and the criminal justice system. The first viewpoints is concerned with the role of general prevention in the normative framework of the criminal justice system, especially its function in the endeavors of criminalizing human behavior and furthermore in the sentencing process and in determining penalties. Penal law in this context has to face ethical, moral and political questions in justifying strategies of general prevention. The second viewpoint is dealing under the perspective of the social scientists approach with the empirical evidence of the doctrines of general prevention as well as its theoretical and methodological basis.

¹ J. Andenaes: *General Prevention Revisited*, [In:] *General Deterrence*. eds. The National Swedish Council for Crime Prevention, Stockholm 1975, p. 12.

The meaning of general prevention and the assessment of its relevance for penal policy and penal law is covering two, not conflicting but rather different perspectives. There is a concept of general prevention based in the European tradition of penal law and penal philosophy, which integrates the ideas of Feuerbach and Meyer stressing:

1) the crime reducing effect which the threat of punishment embodied in penal statutes may have on potential law breakers and offenders by creating fear in situations where criminal behavior may be seen as potentially rewarding;

2) the long-term effects which are related to the moral, educative and integrative influences of penal law systems.

In the Anglo-American criminal justice system, however, the topic of moral and educative influences of criminal law does not play a central role, the focus is on deterrence and incapacitation, producing thus some considerable differences in the ongoing discussion on the subject of deterrence and prevention. The differences include changes in the penal philosophies, in the underlying sentencing procedures and the way preventive mechanisms are constructed.

Although we can observe a growing interest in empirical knowledge on the mechanism of general deterrence and prevention in both the European and the Anglo-American scene as well as a growing concern for normative implications of these concepts in terms of constitutional rights there seems to exist a much faster change in penal philosophies in the Anglo-American system than in Europe.

2. SENTENCING PRINCIPLES AND GENERAL PREVENTION

The principles of sentencing in the Federal Republic of Germany, but also those of other European countries such as Italy or Austria, always incorporated goals like rehabilitation and general prevention within the limits of deserved punishment which should be appropriate to the guilt of the offender. But there is no doubt that general preventive effects including deterrence should be achieved primarily by activities of legislative bodies through the implementation of penal statutes. Once there are limits of punishment fixed by penal law statutes punishment must be meted out according to the guilt of the criminal, leaving only small discretionary power to vary penalties in individual cases along hypothesized deterrent or rehabilitative effects. Thus the so-called rational principles of sentencing are organized around the leading principle of just and desert punishment. In this perspective the rule-making process

has to fulfill the need for general prevention including deterrence by defining those values which should be protected by penal law and furthermore setting the limits for punishment. Criminal courts will then apply those rules and fix the penalty according to the guilt of the offender. The goal of resocialisation or rehabilitation is to be pursued through the execution of the penalty, for example by prison or probation administrations. Of course, this represents an idealized picture of competences and responsibilities and we should not forget that the development of penal policy in the FRG brought a major shift towards a strengthened position of criminal courts and public prosecutors in determining penalties and other penal measures according to rational goals. There are major points in the decision-making process prescribed by penal law which require judges to take into account probable effects of decisionmaking on the offender's further conduct or the society as a whole. As § 46 of the Penal Code which is regulating the sentencing decision puts it: "Those effects which the penalty may have on the future life of the sentenced person, must be taken into account."

But the main criticism of general deterrence, the moral principle of Kant that punishment may be adopted solely because the offender has broken the law, not to bring about any other effects, should be reflected adequately in this model of criminal justice by locating preventive mechanisms in the legal threat embodied in the existing penal statutes and in the uniform application of penalties individualized along the guilt of the offender.

Nevertheless, there is a long tradition of decisions of Higher Courts in the FRG allowing variation of punishment within the limits set by personal guilt according to deterrent or/and rehabilitative needs, emphasizing that individual considerations must sometimes be sacrificed to the interests of society. But the problem of relating rational goals like rehabilitation and general prevention to the so-called irrational principle of individual guilt must lead to the question whether guilt on the one hand and general prevention and deterrence on the other can be interpreted as independent criteria. The problem whether the principle of guilt can provide reliable limits to the influences of deterrence doctrines in sentencing offenders is not yet solved. The normative theory of punishment accepted by the Supreme Court, states that there are upper and lower limits of guilt-appropriate punishment which can be found at the first stage of sentencing decision by applying certain guilt indicating normative criteria. Within those limits rehabilitative, educational and/or deterrent needs are allowed to help individualizing the penalty at the final stage of the sentencing decision. There are plausible arguments

which stress the point that the ascription of guilt may also be a function of perceived general preventive necessities.²

The development of criminal policy in the FRG shows that the idea of general prevention has affected in some aspects penal law and the criminal justice system, especially under the perspective of indirect, educative and moralizing functions of legal threat and coercion but also under the perspective of direct deterrent effects. In this regard it is notable that in the 70ies the Constitutional Court of the FRG (Bundesverfassungsgericht) had to deal with the question whether the decriminalization of abortion within the first three months of pregnancy by Federal legislation would meet the criteria set up by the constitution of the FRG. The final decision stating that decriminalizing abortion should be unconstitutional was based primarily on the argument that state legislation must be responsible for the protection of basic values such as the beginning life and, therefore, should be obliged to use criminal law as an instrument of protection even in circumstances where there is plenty of evidence that major parts of society will not follow this rule. The Constitutional Court stressed the importance and the constitutional obligation of setting educative and moralizing signs through legislation, and enforcing this way changes in the moral climate of society. While this decision concerns duties and obligations of legislative bodies, the penal law itself requires the consideration of general preventive functions in some parts, too. The term "defense of legal order" which stands for general educative and moralizing needs can be found in those statutes which are to discriminate different kinds of punishment. For example the decision between fining an offender or giving him a short prison sentence (up to 6 months) has to take into account educative or integrative needs which may arise out of the perception of a future loss of the general population's confidence in the criminal justice system. The same is true for decisions about the suspension of a prison sentence and the mere cautioning of an offender after a finding of guilt.

Although there can be no doubt that normative legal thinking on the subject of general prevention is favoring the educative and reinforcing function of penal law, direct deterrent effects of penal sanctions are pursued in some areas of deviance, too. This is the case in offences against narcotic laws, where recently the maximum penalty was increased from 10 up to 15 years. Decisions to take up business crime or corporate crimes and pollution crimes in the context of the classical penal code also reflect the thinking of deterrence doctrine. But, nevertheless, this system of justifying legal punishment seemed to be more immune in the case of

² G. J a k o b s: *Schuld und Prävention*, Tübingen 1976.

changes in the assessment of attainability of rational goals by means of penal law than was the Anglo-American system, where in the 60ies the criminal justice system including sentencing guidelines was organized at the whole around rehabilitation and the treatment of offenders. The decline of the ideology of treatment or the rehabilitation idea in the 70ies caused the need for new and convincing concepts of punishment, for cheaper strategies perhaps, too. Sentencing strategies such as indeterminate sentencing, the introduction of treatment in prisons and other closed institutions were accompanied by critics which stressed the failure of treatment and treatment oriented procedures (Lipton, Martinson, Wilks³) as well as critics which focused on the absence of controls and legal safeguards in applying treatment oriented punishment. The way back to determinate sentencing, to the principle of "just and desert" met with the deterrence doctrine which provided an adequate explanation and justification of punishment and thus seemed to be able to replace the idea of rehabilitation.⁴ Thus we can observe a revival of the classic deterrence doctrine in the Anglo-American scene, whereas the development of penal policy and law in countries of continental Europe shows a far more modest shift to general prevention emphasizing furthermore educative and integrative functions of law and punishment.

Justifying sentencing outcomes with arguments which are derived from the doctrines of general prevention or general deterrence raises problems related to the empirical evidence of such reasoning. If we consider deterrent sentencing or deterrent criminal policy as morally and ethically tenable there are remaining questions such as: how much punishment do we need to deter offenders efficiently, what is the best level of punishment to maximize deterrent effects, which kind of punishment is the best to deter offenders or which elements in the crime control process (e.g. police activities, public prosecutors activities, courts activities) have deterrent properties. These are questions which may be seen as hypotheses of criminal policy concerning the effects of hanged patterns of criminal justice routines on crime rates. There can be no doubt that the change in penal philosophies from rehabilitation or individual prevention to general prevention and "just and desert" has stimulated a considerable body of empirical research on the above mentioned criminal policy hypotheses.⁵

³ D. Lipton, R. Martinson, J. Wilks: *The Effectiveness of Correctional Treatment, A Survey of Evaluation Studies*, New York-London 1975.

⁴ J. Q. Wilkins: *Thinking about Crime*, New York 1974; E. van den Haag: *Punishing Criminals, Concerning a Very Old and Painful Question*, New York 1975.

⁵ See e.g. the summarizing work of D. Beylveld (*A Bibliography on General Deterrence*, Westmead 1980).

3. LEGAL COERCION AND CRIMINOLOGICAL THEORY

Beyond these interests in doing research on criminal policy hypotheses we can observe a remarkable shift in the theoretical thinking in criminology and sociology since the 60ies. Increased interest in empirical theories on general prevention and general deterrence did not arise only from the desire to determine the efficiency of criminal law sanctions and strategies but, from the independent interest to find a new theoretical determination of basic conditions of human socialization and social order. The development of social theory in the 20th century showed an emphasis on consensus, to the disadvantage of conflict-oriented approaches in explaining human behavior and social order. Social theoretical analyses were based in particular upon the idea that successful socialization and education results in the identity between social or society demands and necessities on the one hand and individual and personal needs and desires on the other. If socialization is successful this identity eliminates the potential for conflict and obviates the need for social control through criminal law as well as other means of social coercion. In this perspective human beings are capable to be guided by social and legal norms because they have internalized the underlying social values and interests, thus perceiving them as their own.

The problem, put forward by Hobbes seemed to be solved. Under the approach of the structural-functional theory non-deviant behavior on the individual level and order on the social level was explainable as the natural assimilation of values and norms and therefore as conformist behavior. As a consequence, theories of crime were conceived as explanations of pathological phenomena which occurred during association and socialization processes, or of the individual's inadequate or non-adjustment, which was supposed to be caused by structural social pathologies, unusual and unfavorable family conditions or specific personal or social deficits. Criminal policy strategies and programs logically grew out of the assumption that conformity and deviance could be directed and influenced through internal controls acquired through internalization of norms and values. The concepts of resocialization and rehabilitation, the treatment oriented approach to crime control assumed that the correctability of mistakes during socialization and the introduction of supplemental socialization could function to avoid deviance and crime and to support conformity.

But the failure of rehabilitation programs in producing clear positive results, rising crime rates, problems of white collar crime, crimes of the powerful on the one hand, rebellion and riots in American and European

societies of the 60ies and 70ies on the other raised serious doubts whether the consensus approach to a social theory on the micro and the macro level would be able to provide useful answers to actual social problems. Critics stressed the point that Western sociology thought was based on an "oversocialized conception" of man. The construction of this model of man was that of a "status-seeking phantom"⁶, a man driven by his aspirations for status in society. But if internalization and socialization are not or not the full answer to the question "how is social order possible?" or "how is conformity explainable?" then there are good reasons to give priority to this question again, instead of asking why do men deviate, commit crimes or are engaging in rebellion. The renewed interest in the conditions of conformity and order, the renewed interest in the so-called Hobbesian question, included also the role of social coercion and herewith the question "how does social coercion in terms of social and legal punishment contribute to conforming behavior and to social order?"

Questions like this become even more important in current times, when prophecies describe the decline of internal controls, the weakening of bonds between individual and society, the decline of all kinds of authorities including family and parents, teachers, church.⁷ By the way, prophecies already known in the work of Freud, forecasting a coming shift from internal to external controls of human behavior. At this point basic scientific questions and those of applied science and policy oriented research meet. We can observe a growing concern for the inclusion of variables like "fear of punishment" in theories of crime, assuming that fear of punishment or its absence may account for the explanation of criminal and conforming behavior to a considerable amount⁸ and thus is representing a missing link between theories of crime and theories of conformity.

4. THEORIES OF CRIME AND THEORIES OF CONFORMITY IN THE PERSPECTIVE OF GENERAL PREVENTION

The kind of scientific questions put forward by deterrence doctrines harmonizes well with economic theories of crime and crime control. Investigations regarding general prevention therefore were con-

⁶ D. H. Wrong: *The Oversocialized Conception of Man in Modern Sociology*, „American Sociological Review" 1961, 26, pp. 183—193.

⁷ Ch. Lasch: *Das Zeitalter des Narzismus*, München 1980.

⁸ W. W. Minor: *Deterrence Research: Problems of Theory and Method*, [In:] *Preventing Crime*, ed. J. A. Cramer, Beverly Hills-London 1978, pp. 21—45.

ducted to an overwhelming part on the basis of utilitarian theories. Bentham's classical theorem of "deterrence", which stressed the individual's hedonistic being, apparently still has lost none of its attractiveness. The concept of conformity and deviance as a function of utility was primarily the basis for the economic theories of deterrence.⁹ The economic theory basically assumes that an individual acts with the goal or motive of maximizing gains and minimizing pains and losses. Therefore, before he undertakes or does not undertake a certain activity, he rationally calculates the advantages and disadvantages that are likely to result therefrom. Since decision of this kind always includes several criteria which are either unknown or not known with absolute certainty, the negative consequences of the action, i.d., punishment, according to the economic deterrence model, must be increased in order to increase clearly the disadvantages of different actions.¹¹ Furthermore, it should be recognized of conformity.

Similarly constructed are a series of social psychological and sociological attempts to explain the effects of the threat of criminal law sanctions upon behavior, which, being derived from general behavioral theories, largely are based on the individual's rational calculation of his actions.¹⁰

The processes of calculating utility, however, are not yet explainable in these approaches. In this regard, it ought to be recognized that an exact empirical identification of deterrence is impossible until one can explain exactly how individuals regard utility, i.e., how they weigh the advantages of the action and thereby influence behavior in the direction that the kind of behavioral model we assume is limiting the range of the theory. Thus, theories which are based on rational calculation are limited to situations where rational calculation is occurring and must proceed to questions such as: When does rational calculation occur and which segments of society and behavior are more or less subjected to rational calculation. Another theory, which sought to explain the deterrent effect generated by the threat of criminal law sanctions and to incorporate this explanation in a general theory of criminality, is the control theory of crime.¹² Here, the attempt was made to integrate theoretically both,

⁹ I. Ehrlich: *Economic Approach to Crime — A Preliminary Assessment*, „Criminology Review Year Book" 1979, 1, pp. 25—36; *Economic Models of Criminal Behavior*, ed. J. H. Heineke, Amsterdam 1978; W. Vandaele: *Econometric Model of Auto-theft in the United States*, *ibid.*, pp. 12—21; W. M. Landes: *Economic Study of US Aircraft Hijacking 1961—1976*, Beverly Hills 1979.

¹⁰ R. Peuckert: *Konformität, Erscheinungsform — Ursachen — Wirkungen*, Stuttgart 1975; G. Wiswede: *Soziologie konformen Verhaltens*, Stuttgart u. a. 1976.

¹¹ Andenaes: *op. cit.*, p. 14 f.

¹² T. Hirschi: *Causes of Delinquency*, Berkeley-Los Angeles 1969.

crime and deterrence theories. Three independent variables are included in control theory: "attachment to conventional others", "belief in legal legitimacy" and "fear of punishment". The intention here was to include the three essential, theoretically important dimensions of behavior. "Fear of punishment" represents rational, cognitive behavior; "belief in legal legitimacy" represents congruency between personal values and social demands; "attachment to conventional others" represents a measure of the degree of "social solidarity". Control theory has received considerable empirical support.¹³ The question put forward by control theory of crime is "why do men not deviate", thus reversing the problem of finding causes of delinquency to the problem of finding causes of conformity. The answer is that bonds between individual and society are required to create obstacles to criminal behavior. If bonds are lacking the individual will be free to engage in criminal or deviant activities.

5. METHODOLOGICAL PROBLEMS OF INVESTIGATION OF GENERAL PREVENTIVE EFFECTS

Besides theoretical problems of integrating theories of crime and theories of deterrence there exist serious methodological problems in determining the effects or the contribution of general prevention in its two dimensions on criminal behavior and crime rates, order and conflict, resulting from the nature of data we collect and the causal relationship we assume. However, it will not be possible to measure adequately effects of single sentences, which sometimes may be justified with general preventive needs. Research on general prevention and deterrence must deal with overall effects of different criminal policies. Multiple aggregate data on registered criminal offences have been used quite often in comparison of geographical units, which vary according to sanctioning practices, and of time periods, which vary according to changes in sanctioning practices. However, since the use of such data presents validity problems in terms of the darkfield problem, data from victimization surveys have been used increasingly in recent years to construct indicators of probability of prosecution, the probability of punishment and the frequency of criminal offences.¹⁴

¹³ D. C. Gibbons: *Explaining Juvenile Delinquency: Changing Theoretical Perspectives*, [In:] *Critical Issues in Juvenile Delinquency*, eds. D. Shichor, D. H. Kelly, Lexington-Toronto 1980, p. 18.

¹⁴ D. L. Smith: *The Use of Victimization Data to Measure Deterrence*, [In:] *Preventing Crime*, ed. J. A. Cramer, Beverly Hills-London 1978, p. 47-74; I. Goldberg: *Does Reporting Deter Burglars? — An Empirical Analysis of Risk and Return in Crime*, Stanford 1978.

A further attempt to measure the crime variable adequately, led to data collection through surveys on self-reported delinquency.¹⁵ Although validity problems exist also with respect to the use of data gathered in surveys of victims and offenders, these data are nevertheless more relevant here than those obtained from official crime reports.

A considerably greater problem is presented, however, regarding the criterion of "general prevention". Conventional "deterrence variables" generally have been defined in terms of the probability and severity of punishment. The probability of prosecution is a product of the relationship between criminal complaints, which were actually filed, and criminal actors, who were arrested for criminal acts. The probability of conviction is a product of the relationship between the number of crimes investigated and the number of individuals sentenced. The severity of punishment is a direct result of the severity of criminal sentences. The objection raised against the validity of official figures on investigation and sentencing, i.e. objective data, is based on the argument that deterrence, when defined as the production of fear, is a psychological process and, therefore, can be measured only through an individual's subjective assumption concerning the probability and severity of punishment, as well as his personal evaluation of the severity of the sanction. This argument is plausible, since official figures regarding the probability of prosecution or severity of sanction are usually not known to the public.¹⁶ We should conclude therefore that "deterrence" only exists when an individual refrains from engaging in an activity because he fears punishment. Deterrence, thereby, implies a decision against a particular action in response to a subjectively assumed risk of punishment.

However, when "deterrence" is defined this way, it can no longer be discerned since one is forced to conclude from the absence of an activity that "deterrence" is the motive therefore.¹⁷ The argument that regardless of how the individual behaves, whether he does or does not engage in an activity, the motives for his behavior cannot be inter-

¹⁵ L. S. Anderson, T. G. Chiricos, G. P. Waldo: *Formal and Informal Sanctions: A Comparison of Deterrent Effects*, „Social Problems" 1977, 25, p. 103—114; D. Peck: *Belief, Deterrence and Marijuana Use*, London 1976; M. Silberman: *Toward a Theory of Criminal Deterrence*, „American Sociological Review" 1976, 41, pp. 442—461.

¹⁶ M. L. Erickson, J. P. Gibbs: *Objective and Perceptual Properties of Legal Punishment and the Deterrence Doctrine*, „Social Problems" 1977, 25, p. 254; J. Parker, H. G. Grasmick H. G.: *Linking Actual and Perceived Certainty of Punishment*, „Criminology" 1979, 17, pp. 366—379.

¹⁷ C. R. Jeffery: *Punishment and Deterrence: A Psycho-biological Statement*, [In:] *Biology and Crime*, ed. C. R. Jeffery, Beverly Hills-London 1979, p. 101.

puted conclusively resulting from "deterrence"¹⁸ leads to the following conclusion: if "deterrence" is conceivable only as a psychological process or condition, then "deterrence" must be investigated as a perception or attitude variable through interviews regarding the individual's estimation of the probability of being prosecuted and punished for committing a crime.

This approach would involve the collecting of data about: 1) the individual's knowledge of the criminal nature of an act, 2) the individual's knowledge of the punishment threatened for this act, 3) the individual's perception of punishment as being probable and severe, 3) the individual's actual behavior.

However, even if data were available on the above four factors, one still could not conclude that the non-occurrence of a deviant act is causally related to the assumed severity and probability of punishment, since it also could be a function of the personal recognition of the normative system or of a particular norm. Therefore, "deterrence" can be considered only as one part of a general behavioral theory. In other words, one must exclude theoretically that the non-commission of an act was caused by something other than fear of punishment and provide for the exclusion of alternative explanations. Such an examination of causality would be methodologically conceivable also in the form of a controlled experiment although rarely realizable.¹⁹ However, if an exclusion through controlled experimentation is impossible, then one can proceed only by introducing more variables essential to the determination of behavior in order to discover which causal relationships are plausible and which are not.

If the answer to the question "does punishment deter?," or "what type of sanction implementation produces 'fear?'" presupposes an eventual, identifiable, causal connection between sanctioning and the non-occurrence of deviant behavior, then the process of data collection must be rethought. Not only the validity problem, but also the argument that the assumed causal effect of judicial response on the number of reported crimes can be interpreted *inversely* are valid reasons not to rely on officially registered crimes in data collection.

¹⁸ J. P. Gibbs: *Crime, Punishment and Deterrence*, New York-Oxford-Amsterdam 1975, p. 12.

¹⁹ See in this regard the experiments conducted by W. Buikhuisen: *General Deterrence: Research and Theory*, „Abstr. Crim." 1974, 14, pp. 285—298; P. Tornudd: *The Preventive Effect of Fines for Drunkenness — A Controlled Experiment*, „Scandinavian Studies in Criminology" 1968, 2, p. 109—124; C. R. Tittie, A. R. Rowe: *Moral Appeal, Sanction Threat and Deviance: An Experimental Test*, „Social Problems" 1973, 20, pp. 488—498.

On the other hand, data collection through interviews concerning both the individual's subjectively assumed probability and severity of punishment for the commission of certain criminal offences as well as his actual commission thereof has been objected to as methodologically untenable since this form of investigation leads to a causal conclusion between a presently felt threat and past performed behavior.²⁰ The attempt to circumvent this problem by isolating those individuals influenced by the threat of sanction through their own responses that this threat was the reason for their conformity faces the objection of "shared misunderstanding". A motive given presently for past behavior can result from the individual's false interpretation of the reason for his actions.²¹ The attempted solution to this problem through recording past attitudes²² or perceptions of future behavioral intent²³ is also subject to objections since information available regarding the stability of a person's attitudes over an extended period of time reveals limitations on this type of approach²⁴. On the other hand, this method arranges the variables into a temporally suitable sequence of causality such that their application in cross-section studies appears feasible. The problems discussed here, however, indicate that the demand for complex longitudinal studies based on repeated surveys and time series analysis is justified.²⁵

6. RESULTS OF RESEARCH ON GENERAL PREVENTION AND DETERRENCE

Let us consider now the results of past research on the deterrence hypothesis. The deterrence hypothesis, in its narrow sense state: the greater the probability, severity and celerity of punishment for criminal acts, the less frequently such acts occur. We can classify the results according to an orientation model which involves: 1) those results concerning the type of norm or legal statute, 2) those results concerning the characteristics of deviant/criminal behavior, 3) those concerning the char-

²⁰ C. R. Tittle: *Sanctions and Social Deviance*, New York 1980, p. 35.

²¹ G. F. Jensen: *Crime Doesn't Pay: Correlates of Shared Misunderstanding*, „Social Problems” 1969, 17, pp. 189—201; Minor: *loc. cit.*

²² J. J. Teevan: *Deterrent Effects of Punishment — Subjective Measures Continued*, „Canadian Journal of Criminology and Corrections” 1976, 18, pp. 152—160.

²³ P. G. Erickson: *Deterrence and Deviance: The Example of Marijuana Prohibition*, „Journal of Criminal Law and Criminology” 1976, 67, pp. 222—232; C. H. M. Stewart, D. R. Hemsley: *Risk Perception and Likelihood of Action in Criminal Offenders*, „British Journal of Criminology” 1979, 19, pp. 105—119; Title: *loc. cit.*

²⁴ Anderson, Chiricos, Waldo: *loc. cit.*

²⁵ Minor: *loc. cit.*

acteristics of an offender/on-offender, 4) those concerning the characteristics of the punishment response.

The differentiation between behavior *mala per se* and behavior *mala quia prohibita*²⁶ must be considered in relation to the type of norm. This differentiation is the basis for the following assumption. In cases of congruency between legal and social norms (*mala per se*), formal law supports the moral values and social behavioral codes, or vice versa. Therefore, general prevention is not, or seldom, necessary. In the remaining cases (*mala quia prohibita*), norm compliance can be achieved only through the threat and imposition of sanctions since it is not, or at least not entirely, incorporated into the moral value system of society. Research here is inconsistent even in cases of similar or identical offences.²⁷ Furthermore, there is plenty of evidence from research on natural experimentation in the case of "drinking and driving" laws in Scandinavia and Great Britain that increasing certainty and severity of punishment may have short-term effects on the rate of drunken driving. But in the long run those effects are diminishing, resulting in the past level of drunken driving rates.²⁸ These short-term effects probably were due to big mass media campaigns which accompanied the introduction of more severe punishment and sharper controls through law reforms, producing a great exaggeration of the punishment risk in the public.

The differentiation between "instrumental" and "expressive" offences²⁹, must be considered in relation to behavioral characteristics. It does indicate which activities can be influenced through "deterrence", as is the hypothesis for "instrumental" acts, and which is not subjected to the influence of criminal law sanctions.³⁰ There is some evidence from research on this topic that instrumental acts (e.g. theft) are more deterrable than are expressives.

In a considerable part of past research, attempts were made to identify the characteristics of potential offenders for whom deterrence is required, and of conforming individuals, for whom deterrence

²⁶ J. Andenaes: *The General Preventive Effects of Punishment*, „University of Pennsylvania Law Review" 1966, 114, p. 957.

²⁷ Teevan: *loc. cit.*; G. P. Waldo, T. G. Chiricos: *Perceived Penal Sanction and Self-Reported Criminality*, [In:] *Perception in Criminology*, eds. R. L. Henshel, R. A. Silverman, New York 1975, pp. 121-145; Silverman: *loc. cit.*

²⁸ H. L. Ross: *Deterring the Drinking Driver, Legal Policy and Social Control*, Lexington-Toronto 1982.

²⁹ W. J. Chambliss: *The Deterrent Influence of Punishment*, "Crime and Delinquency" 1966, 12, p. 70-75.

³⁰ C. W. Thomas, J. S. Williams: *Actors, Actions and Deterrence — A Reformulation of Chambliss's Typology of Deterrence*, Columbus 1977.

is not required. Research results support conclusions that women differ significantly from men in their evaluation of perceived "costs" of criminal behavior, i.e., costs of punishment³¹, that aged people differ from younger population groups in the perception of probability of prosecution. Furthermore, the following variables were identified as empirically relevant: the degree of "attachment to the conventional value system", and, contrarily "attachment to deviant/delinquent value systems", as well as, strength of motivation to deviate.³² It could also be shown that dispositions of rational calculation as a necessary condition for deterrence are dependent on the amount of deprivation, an individual is experiencing: the more an individual is deprived of social or economic benefits, the more he is subjected to a rational calculation of his actions, but on the other hand criminal sanctions are losing their deterrent properties, either.³³

But the most consistent results are available regarding the characteristics of sentencing strategies. In an overwhelming number of past empirical investigations, a negative correlation was found between the objective, or individually perceived probability of prosecution and the officially documented or self-reported frequency of criminal acts. In other words, the greater the likelihood of prosecution, the less the likelihood of criminal behavior occurring. It was also established with a certain consistency that this correlation is not dependent on the severity of the sanction, especially if the probability of punishment is low. This finding is not surprising because it seems plausible that the severity of a threat will not affect behavior if the risk of being punished is zero or near zero.

Regarding time-series analysis of aggregate crime data which found a negative correlation between crime rates and the probability of sanctions it must be taken into account that this relationship may also be attributed to incapacitative effects of sentencing. Reductions in crime rates might be effects of incapacitating career criminals. The real dilemma of deterrence research based on those studies is that we have no credible way to separate the confounded effects of deterrence and incapacitation, because there is a lack of knowledge which may enable us to predict the number of crimes an individual would have committed

³¹ L. S. Anderson: *Longitudinal Study of the Deterrence Model*, Ann Arbor 1977; Title: *loc. cit.*

³² See the investigation by Hirschi: *loc. cit.*; M. J. Hindelang: *Causes of Delinquency: A Partial Replication and Extension*, „Social Problems” 1973, 20, pp. 471—487; Silberman: *loc. cit.*; R. F. Meier: *Correlates of Deterrence — Problems of Theory and Method*, „Journal of Criminal Justice” 1979, 7, pp. 11—20.

³³ B. Blinkert: *Benachteiligte Jugendliche — Lernen oder kriminell werden*, „Soziale Welt” 1981, 32, pp. 86—118.

while being incarcerated. Furthermore, it is evident that crime control effects crime rates and is itself affected by the crime level. The rise of crime in certain areas may also have the effect that the population or parts of it change the view of what is criminal and redefine criminal actions as acceptable or even normal, leading thus to changes in the crime control intensity.

Another important issue concerns the fact that crime control is not only exercised formally by the judiciary system but also informally by family, peer groups, school etc. Investigations of the influence of those extralegal factors on crime and deviance revealed that perceptions and attitudes towards informal control mechanisms are important and relevant inhibitors of crime. There are serious considerations derived from these investigations however, that the threat of informal sanctions meted out by family members, friends, neighbours or other so-called relevant others may be far more relevant for the prevention of crime than is formal control and formal sentencing. Such reasoning takes into account that punishment is not only depriving in terms of freedom, liberty or money, but also affects social status, professional career, acceptance by friends.

Summarizing the results of previous research on the deterrence hypothesis we can conclude the following:

1. Deterrent and preventive properties of legal norms and sanctions have only marginal effects on crime rates.

2. A substantial part of conforming behavior is a function of extra-legal factors such as the belief in the legitimacy of norms, the non-existence of opportunities to commit crimes or the informal control of behavior.

3. Comparing the effects of extra-legal and legal factors on crime and deviance we are able to conclude that extra-legal factors are far more important in the prevention process.

4. In the absence of effective informal controls a deterrent or even terrorist strategy based on the law may have effects, especially if probabilities of punishment are high. But in the whole there seems to exist an effect only in the short run.

5. We do not know yet how formal and informal controls are related to each other, especially there is a lack of knowledge to what degree informal controls are dependent on the degree of formal controls and how the severity of informal punishment affects and is affected by severity of formal punishment.

6. Nothing is known about the moralizing or educative effects of penal law, about the possibility to influence the normative climate of a so-

ciety by means of penal law. This problem must lead beyond the question of general prevention towards a general assessment of the relationship between social change and law.

7. CONCLUDING REMARKS

Empirical evidence that deterrent strategies may work to some degree is certainly not a sufficient prerequisite to introduce and to rely on deterrent policy strategies. That is where we have to return to the introducing remarks about the normative context of general prevention and general deterrence. Any strategy in criminal justice must have political and public support. There are restrictions of criminal policy which arise from the dialectic nature of the crime control process and can be described as follows:

1. If maximizing deterrent effects means maximizing the probability of punishment, there remains the question, which costs of crime control are accepted by the public, which costs in terms of submission to formal control and which financial costs spent for police, police prosecution and judiciary? Even in Orwell's famous description of "1984", although economically not feasible, rebellion against total control remained.

2. Maximizing the probability of punishment can result in undesired side-effects. Crime and deviance are defined as rare events. This property and its function to serve as an integrative mechanism may be destroyed if there is an over-control and an over-production of deviance and crime. If there are too many who are punished, deviance loses its character as a rare event. It is becoming normal behavior, a process which was shown in studies about the functions of the dark-field of crime.³⁴

3. The limits of a criminal sanction in terms of its probability of application and its severity are not to be set by its ability to deter alone but by its appropriateness to serve as a just and fair response to individual crime. Justice is, as psychological and sociological research has shown an important guideline to individual and collective behavior. If punishment is felt to be unjust, cruel or unusual, it may provoke the opposite of the desired effect, that is anger, rebellion, hate and disbelief in the rule of law. What might be introduced as deterrent and preventive measures to secure order and conforming behavior is limited therefore also by normative frameworks of society. It follows that general prevention and general deterrence are not static mechanisms but subjected to social change.

³⁴ H. Popitz: *Über die Präventivwirkung des Nichtwissens, Dunkelziffer, Norm und Strafe*, Tübingen 1968.

Looking back to history we can observe that legal punishment has lost a lot of its intensity and cruelty over time. But what was the cause for this development? Life in modern industrialized societies is characterized by creating more and more dependencies. The individual has lost its social autonomy in many respects. People are dependent on each other as well as on various social institutions which provide and guarantee economic, social and cultural well-being. This development has brought a lot of advances but it brought also highly interdependent social structures making individuals vulnerable and responsive for even minor threats. The process of civilization itself has modified the inner structure of human beings, pacifying the individual and society, but allowing thus to reduce the intensity of threat and punishment³⁵ Although there will probably always be necessities of social and legal coercion in some way, the level of its amount and the way it is executed should always be subject to change towards minimizing those necessities and reducing the pain people have to suffer in favour of social order.

STRESZCZENIE

W artykule omawia się prewencję ogólną oraz społeczną kontrolę. Renesans tej problematyki dał się zaobserwować w zachodniej kryminologii od końca lat sześćdziesiątych. W tym czasie nastąpiły także odpowiednie zmiany w polityce karnej i kryminalnej. W krajach anglo-amerykańskich obserwujemy odrodzenie klasycznej doktryny odstraszenia. Natomiast rozwój polityki karnej i prawa karnego w krajach Europy kontynentalnej wykazuje o wiele bardziej umiarkowane przesunięcie w kierunku prewencji ogólnej, akcentujące edukacyjne i integracyjne funkcje prawa i kary. Zmiana w filozofii karnej od rehabilitacji i prewencji indywidualnej do prewencji ogólnej oraz kary „sprawiedliwej i zasłużonej” stymulowała wiele badań empirycznych.

Omówiono szczegółowo tematykę zasad wymiaru kary z uwzględnieniem dyrektywy prewencji ogólnej, prawnego przymusu, a także teorii kryminologicznej, teorii przestępstwa i teorii konformizmu w perspektywie prewencji ogólnej oraz metodologiczne problemy badań efektów prewencji ogólnej i wyniki badań nad prewencją ogólną i odstraszeniem.

РЕЗЮМЕ

В статье рассматривается проблематика общей превенции и общественного контроля. Возрождение интереса к этой проблематике в западной криминологии наблюдается в конце 60-х годов. В это же время произошли соответствующие изменения в уголовной и криминальной политике. В Англии и США наблюдаем возрождение классической доктрины отпугивания. В то же время

³⁵ N. Elias: *Über den Prozess der Zivilisation, Soziogenetische und psychogenetische Untersuchungen*, Bd. 1, 2, Frankfurt 1976.

развитие уголовной политики и уголовного права в странах континентальной Европы идет в направлении общей превенции, причем большое внимание уделяется интегрирующей и отпугивающей роли права и наказания. Изменения, происшедшие в уголовной философии,— от реабилитации и индивидуальной превенции к общей превенции и „справедливому и заслуженному” наказанию — послужили стимулом для многих эмпирических исследований.

Подробно анализирует автор принципы назначения наказания, учитывая при этом директивы общей превенции, правового принуждения и криминологической теории, теории преступления и теории конформизма в перспективе общей превенции, а также методологические исследования результатов общей превенции и эффекты исследований над общей превенцией и отпугиванием.