

**ATTITUDES TOWARD PUNISHMENT:  
PUBLIC OPINION AND CRIMINAL JUSTICE**

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**S u m m a r y**

Since the 1980s, penal law in the West has grown more punitive. We document this sharp rise in punitivity in Germany and find its sources in an influx of foreigners, socialization to a distinctive tradition, and worsening social and economic conditions. Specifically, differences in punitivity in East and West Germany after reunification are examined, and though Eastern Germans suffered less serious crime, they were socialized under communism to a tradition of penal severity, and their living conditions were and are particularly stressful. They are also more punitive than Western Germans. In Western Germany, a sharp increase in crime since the early 1970s reflected mainly an influx of foreigners and the sharp rise in the imprisonment rate since then reflects their punishment. Since the 1970s, apart from the foreigners, West Germany has exhibited a high but steady crime rate.

**I. Introduction**

Questions by the people regarding offenders, the sanctioning methods of judges and the general level of punitivity have played a greater role in recent years throughout the West. As background to this concern looms the mounting burden of criminality as revealed through official police reports that prompt widespread interpretation and discussion in the media, but above all stand the European countries and their profound social transformation during the last ten years. These social changes have affected mainly the middle and eastern European communist countries that abandoned the socialist system in favour of a Western-style free democratic system as well as open borders that earlier were jealously guarded. One result in these Eastern countries was a pervasive sense of uneasiness. The old order was overthrown but a new order had not yet been firmly established. In the transition, however, countless instances of failures, insecurity and uneasiness occurred. In the midst of the changeover a new, well-organized criminality developed that took advantage of the open borders and moved easily throughout Europe.

But the former Eastern block countries had relatively slight criminality in comparison with the West, because of their rigorous official and unofficial social control measures and their politically strict orthodoxy. These same countries, however, today must deal with a

significant increase in criminality mainly because of a trepidation within their control bureaucracy (the police and courts in particular), and because after the collapse of communism they were viewed as part of the repressive regime that managed social life. To be sure, criminality in most eastern countries remains as before less than in West European industrial nations and in the United States (see Kury & Obergfell-Fuchs, 1996), but nevertheless the rapidly escalating increases in crime from earlier low levels provoked a massive sense of insecurity and above all a fear of crime. In addition, the press, which formerly had been controlled by the regime and reported little about crime, now was free and under growing competitive pressures, inevitably shifted to sex and crime reporting, according to the motto "report what sells". Crime and its development were one of the favourite themes, and crime "dramas" were reported nearly daily. These reports were often inaccurate and unreliable, but they fomented an even greater fear of crime. They inspired campaigns by the public for more police and more drastic measures by the state including harsher justice, but from the politicians came the same simple solutions. No wonder broad segments of the population have over-estimated the actual level of criminal activity and the risk of victimization. No wonder they pushed for sharper punishments for offenders on the assumption that the problem can be solved thereby. No wonder support for resocialization measures of offenders weakened.

## II. The Increase in Punitive Attitudes

In recent years, survey results indicate growing support for punitivity among broad segments of the population not only in Germany and other European countries but also in the United States where capital punishment has been used more and more frequently. At the same time, the number of prisoners has clearly increased. Strong support grew in the 1960s and the beginning of the 1970s for far-reaching treatment and resocialization programs, and more broadly a sanctioning philosophy that in the 1960s had unmistakable influence on Germany and other European countries in developing social therapeutic methods and creating treatment institutions. In the 1980s and 90s, however, in the name of deterrence and incapacitation, the attitude toward offenders grew stricter. Comparable developments occurred in Northern European nations, especially in Denmark and Sweden, which had also pioneered in treatment thinking 30 years ago.

In the United States it became increasingly necessary to take the punitive attitudes of the public into account, especially when judges handed down sentences in the courtroom. On this basis, the perspective of the people regarding punishment began to acquire broad political significance. Thus, Sharp and Otto (1990, 341) emphasized in the first empirical study of public opinion and punishment that:

*The popular attitude towards retribution as a basis for punishment by the state, and as a motive for inflicting loss or suffering by the individual, is a matter about which both the moralist and the student of political and social life need definite knowledge. Yet at present we have nothing better at our disposal than abstract and contradictory statements, the outcome of apparently mere impressions.*

With this focus on research today, we know much more regarding the punitive attitude of the people regarding punishment, but the basic problem of the connection between official punishments and the actual punitivity of the people remains (cf. Roberts 1992, 142). The level of punitivity is often, especially in the United States, measured by assessing the death penalty. In West European nations the death penalty has been broadly repudiated and, of course, not utilized. Nevertheless, in these nations a question dealing with the death penalty has been widely used in surveys both in assessing public opinion and in scientific investigations regarding punishment. In recent years, the death penalty has drawn increasing support from the public in the United States, according to Reid (1997, 515), who described a downright "fascination with details" about executions and the American Bar Association (1997, 9) commented about "... America's renewed enthusiasm for executions". Just as Roberts (1992, 148) clearly noted, the number of people who regard standard punishments

as too mild has grown since 1965 not only in the United States but also in Canada. Still, in Canada since the beginning 1980s punitivity has declined.

As might be expected in recent years' measurement problems and their accompanying distortions have cropped up in research. Public opinion surveys both in the classical literature as well as today asserts that the people are interested in stronger revenge toward offenders than is even allowed by the penal law. Ray (1982, 442), for example noted that: "There is very clearly a stark gap between actual sentencing practice and what the public see as appropriate sentencing practice ... the gap between the judiciary and the public is so large that nothing can disguise it". At the same time, Roberts (1992, 147) maintained in his very informative review of the status of legal research that these days the perspective of the scientific community differs sharply from those of legal scholars and penal law practitioners. The impression is gathered that conservative politicians in their campaign for "law and order" would – along with a broad segment of the people – favour harsher sentences and more rigorous conditions in confinement. Endorsements of severity by the people are most troubling when they are drawn from opinion surveys made by professional institutes using items that require broad judgements without specifics. Consider the following: "In your view are sentences too harsh, about right, and not harsh enough?" Roberts (1992, 147) emphasizes that "The question has never failed to generate the result that the majority of the public in all countries covered in this survey expressed their desire for harsher penalties. In fact, the question concerning sentencing severity generates a more consensual response than any other issue in criminal justice, including capital punishment". Surveys taken around 1989 show that 84 percent of Americans (Flanagan and Maguire 1990) and 62 percent of Canadians (Sacco and Johnson 1990) agree that imposed punishments are not harsh enough. Similar results were found in Australia as well: 76 percent agreed with stronger punishments for offenders (Indermaur 1987).

Measurements using death penalty items establish that the United States in comparison with Germany is clearly more punitive (cf. Savelsberg 1994, 929f). Altogether the population in the United States has traditionally endorsed a punitive approach to offenders (cf. Weigend 1990, 112). But in both nations punitivity has increased notably in recent years. Systematic surveys regarding the people's perspective toward punishment, the penal law, and conditions under which sentences were served began in Germany around the end of 1960s. To be sure, before the 1960s there were opinion surveys regarding the death penalty and punitivity among post-war Germans, and generally few felt that the death penalty should be reinstated. Kaiser (1996, 1044) points to "a steep increase of support [for capital punishment] during the high point of terrorism in 1976 and 1977". Kaupen and Rasehorn (1972, 21) claim in the early 1970s that, on the other hand, "there is little information regarding the public's attitudes toward these themes [penal law and penal conditions]". In the summer, of 1970, a group of legal sociologists from the University of Cologne surveyed 1,100 adults selected randomly from West Germany and found that 34 percent selected deterrence as the most important purpose of punishment, 23 percent chose education, 22 percent liked retribution, and 18 percent named protection of society. The authors pointed out that similar surveys in Norway and Poland had pointed to education as the primary purpose. They also established a clear basis for the deterrence perspective in socio-political variables. Those over 50 years, supporters of the CDU, i.e., the Conservative Party, members of the lower classes, and Catholics favoured deterrence. With members of the higher social classes on the other hand, protection of society and resocialization were more important. Nevertheless, 58 percent of all respondents agreed that criminal justice could well reduce criminality with harsher punishments (CDU supporters: 65 percent), and 39 percent believed that judges were too lenient.

Since the 1970s, along with the increasing importance of social research in criminology, opinion surveys have been carried out on the attitudes of the people toward the purposes of punishment, conditions of confinement, and punitivity (see Arzberger et al 1979; and more comprehensively Kaiser 1993, 626ff). Rosellen (1983, 810), for example, found in his research that respondents were more interested in compensation for those who have

suffered from criminality than punishment or other sanctions for offenders. Schwind (1988, 260, 265) and separately Pitsela (1986, 218f) found in the 1980s growing support for resocialization in Germany. In the 1980s and 90s, public discussions of the purposes of punishment and the development of alternative sanctions took place (see especially Schöch 1985, 1094f, Frehsee, 1987 103-7). Sessar (1992, 138) found in his 1984 Hamburg study that 25,2 percent of the respondents could be classified as (very) restitutive with the rest (74,8 percent) distributed evenly among the more or less punitive categories: 21,6 fell into the moderately punitive category; 28,4 percent were punitive; and 24,8 were very punitive. In 1992 Richter (1997 26, 33) administered a questionnaire to victims of serious crimes who were clients of the White Ring<sup>1</sup> in Baden-Wurtemberg. He selected German respondents who were at least 18 years old, whose victimization was at least six months old and had resulted in a criminal action. A random sample of 395 respondents who met these criteria was selected to receive questionnaires anonymously (response rate = 42,7 percent). The following item dealt with their attitudes toward sanctioning: "What as a victim do you think should have happened to the offender?" The following alternatives were preferred as sanctions: an indefinite sanction, restitution for the injury, community protection, deterrence, and resocialization. Respondents who strongly endorsed sanctions selected these alternatives: deterrence = 91,1 percent; general sanction = 83,2 percent; incapacitation (community protection) = 76,1 percent; restitution = 60,1 percent; and resocialization = 40,6 percent. Those respondents who endorsed sanctions only mildly selected the following: resocialization = 20,4 percent; restitution = 13,2 percent; general sanctions = 12,6 percent; incapacitation = 12,3 percent; and deterrence = 5,7 percent. If we combine those who definitely favoured a particular alternative with those who were only mildly in favour, we find that altogether 96,8 percent favoured deterrence; 95,8 percent were in favour of sanction; 88,4 percent chose isolation for the offender; 73,3 percent favoured restitution, and 61,0 percent voted for resocialization of the offender. At the same time, 39 percent of the respondents expressly rejected resocialization as sanction.

### III. Regional Differences

Since the attitudes of the public regarding sanctions is dependent on a great variety of social factors, it should come as no surprise that regional differences in punitivity are sharp and clear. These factors include, for example, an implicit bias in the media colouring their coverage of criminality, the perspective of important political figures, the general level of public information and sophistication, and the focus given to social and societal problems in the region, to name just a few. Borg (1997) compared the punitive perspective of the public among several American states in order to test whether the southern states showed a harsher attitude toward punishment. To this end she used data from the General Social Survey of 1990 and found interestingly that few differences as such existed between the Southern states and the rest. More directly however, several variables were significantly related to punitivity for all the states: racial prejudice, religiosity, political conservatism, and aggressiveness toward criminal offenders. Still, the extraordinarily high level of imprisonment in the Southern states speaks among other things for a high level of punitivity in this region.

Odegard et al (1996, 174ff) report a study of the punitive attitudes toward drug offenders in Scandinavia (Denmark, Finland, Norway and Sweden). As to whether punishments of drug offenders were too strong or too mild: 67 percent in Denmark, 65 percent in Sweden, 57 percent in Norway, 48 percent in Finland agreed that they were too mild<sup>2</sup>. Severe punishments for drug dealers were also endorsed by Danes at 87,7 percent, by Swedes at 65,7 percent, by Finns at 56,5 percent, and by Norwegians at 56,4 percent (Hakkarainen et al 1996, 146). To the question "Which is a greater problem in your country

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<sup>1</sup> The White Ring is a private organization for helping crime victims.

<sup>2</sup> Naturally, these results depend as well upon the level of punishment accorded drug offenders in each country.

illegal drugs or alcohol?" 29,0 percent of the Danes named alcohol and 30,0 percent chose illegal drugs, 19,3 percent of the Swedes named alcohol and 43,5 percent named illegal drugs, 45,6 percent of the Norwegians selected alcohol and 26,9 percent selected illegal drugs, and 59,3 percent of the Finns chose alcohol and 15,3 percent chose illegal drugs (Hakkarainen et al 1996, 155). Since respondents in Denmark and Sweden selected drugs as the greater problem, both countries (especially Sweden) reveal themselves as relatively punitive against drug offenders. Punitivity here is no doubt influenced as well by the size of the underlying problem as well as the sensibilities of the people regarding drugs.

A good opportunity to examine the punitive impulse in different countries is provided via the International Crime and Victimization Survey of 1989 (ICS; see van Dijk et al 1990; see also Kury et al 1996). The research was carried out with the same questionnaire, which had been translated into the language of the country, and the same methodology (i.e., telephone interviews, except in countries with few telephones, where face-to-face interviews were used). A representative sample of questionnaires was collected in each country. They were asked to judge a case involving a 21-year-old offender who committed two break-ins and stole a colour TV. They gave their answers in terms of a list of reselected sanctions (fines, imprisonment, community service, probation, and other punishments), and from their aggregated responses the punitivity of each country was determined. The results revealed clear differences among individual countries – for example, only 8,6 percent of the Swiss recommended imprisonment, 13,0 percent of the West Germans did the same, up to 52,7 percent of the Americans who recommended imprisonment, and in Surabaya, Indonesia 66,5 percent did the same. The authors point out that countries with a high level of imprisonment, which is one measure of punitivity, also have more respondents who recommend imprisonment. Community service was the most popular alternative in West Germany at 60 percent, 57 percent of the Swiss picked it, and in France it was selected 53 percent of the time. Thus, the public in countries in which this sanction has been used as an alternative to imprisonment in recent years also broadly supported it.

In 1992 the second ICS was completed using more countries but with the same methods and the same items measuring punitivity (cf. van Dijk and Mayhew 1993). Here the results fell along the same lines as the 1989 survey – in Switzerland, only 8,6 percent of the respondents selected imprisonment as the preferred sanction, 12,8 percent in France, 13,0 percent in Germany, 13,8 percent in Norway, 13,9 percent in Finland, over to 52,7 percent in the U.S.A. and 62,5 percent in Czechoslovakia. The ICS was carried out with the same methodological technique by Zvekic and Alvazzi del Frate (1995a) for numerous developing countries of the Third World, e.g., using only the major cities of these countries. Here too the case regarding the punishment of the 21-year-old recidivist, television thief was used. As expected Third World countries, i.e., inhabitants of their capitals, exhibited a greater punitivity against defendants. Imprisonment was endorsed by 38,6 percent of the respondents in Rio De Janeiro, a rather low level against more than 51,5 percent in Bombay, to 82,0 percent in Manila, and 83,2 percent in Beijing (cf. Zvekic and Alvazzi del Frate 1993, 73f). Overall, Zvekic and Alvazzi del Frate (1995b, 48) emphasized those Third World countries (e.g., in Sub-Saharan Africa, North Africa, Latin America, Asia, and the Asian Pacific Rim) favoured imprisonment for the television thief. "There is a high degree of agreement among the population in the developing world that the most appropriate sanction is imprisonment: More than 50 percent in all the regions, and even more than 70 percent in sub-Saharan Africa and Asia". Although in some countries punitivity is relatively less, we cannot blind ourselves to the fact that "... punitivity prevails in the developing world". Hongde et al (1995, 78f) suggested regarding China: "The results show that Beijing residents were highly punitive". Beijing residents also preferred very long prison sentences for the television thief – 67 percent voted for 1-5 years, 21 percent for longer than 5 years, and 5 percent for a life sentence. Only four percent recommended imprisonment for less than a year. The authors pointed out however, that since the value of a colour television set in China is much more than in other countries, the severe sanctions afforded such offenders may be understandable (Hongde et al 1995, 79). Accordingly, the other alternatives in China were infrequently chosen – 5 percent chose

community service, 3 percent selected a fine, and 2 percent took probation, and 4 percent chose other alternatives including the death sentence. Since all but the last are not generally available in China, it is not strange that so few chose them. Undoubtedly, the high level of punitivity in China is affected by their political system – by the state’s handling of prisoners, the state controlled information system and political organizations, i.e., the socialization of the citizen to the state’s political system.

A comparison of these developing countries with East and Central European developing and industrial nations shows clear differences insofar as punitivity is concerned. “Imprisonment is the most frequently chosen sentence in the developing and Eastern and Central European countries, with the exception of Poland and Ljubljana. In contrast with the stereotypical image of public demand for imprisonment, community service orders are seen in most industrialized countries as the most suitable punishment” (Zvekic & Alvazzi del Frate 1995b, 56).

The basis for stern punitivity in developing countries, i.e., for the recommendation of imprisonment instead of other alternatives, is seen by Zvekic and Alvazzi del Frate (1995b, 56) as stemming from the following conditions. First, few alternatives to imprisonment are available in these countries and it is politically difficult to develop such alternatives. Second, support for harsher punishments, in this case for lengthy imprisonment, is far stronger in countries with a serious crime problem – particularly, when no practicable alternatives are available. “However, certain factors related to cultural and socio-legal heritage also influence attitudes towards sentencing” (Zvekic and Alvazzi del Frate 1995b, 56).

The proposed explanation offered by the authors – that punitivity stems from a severe criminal problem – is probably not the whole answer. In the United States punitivity may rest partially at least on its relatively high crime rate. But as in China it also seems to reflect a perspective broadly supported in government as well as the media. Furthermore, Beijing as the capital of China displayed the highest level of punitivity with 83,2 percent recommending imprisonment. At the same time China and its capital, Beijing, in comparison with western European industrial countries has had a relatively slight crime problem, at least as officially measured. In Beijing the official measurement of crime is relatively low – probably for political reasons – but at the same time the dark figure of crime (i.e., the non-registered level of criminality) as shown by data from the International Crime Survey ICS also is low (cf. for example Kury 1997). In China, as in the United States punitivity also seems to reflect the bias of the media as much as anything else.

Similarly, before 1989 the official rate of criminality in former Eastern Block countries was much less than in West Germany, but after the political change in these countries a sizeable rise in criminality was seen. Today it has been established that the crime problem in the former German Democratic Republic came to about one-third that found in West Germany. Nevertheless, punitivity among the East Germans after the change was distinctly larger than in West Germany. A sharper influence on the perspective of the East Germans than the politicization of crime may have been the manner in which offenders were handled officially, and above all the press accounts of offenders which often foster biases and slant opinions. These press accounts may also mean that the people as a rule have a rather distorted picture of the actual crime problem in their country according to the biases implicit in the media (cf. Kury 1980). Kommer (1994) compared the dimensions of punitivity in several European countries in order to assess the sanctioning perspective behind the official levels of imprisonment, the aggressive prosecution of cases, and the ultimate forms of punishment. He found that the Netherlands were most lenient, followed by the Scandinavian countries and after them came France and Germany which were still relatively lenient.

#### **IV. East/West Germany**

The high level of punitivity in the former East European, socialist countries is relevant to the current situation in Germany. Nearly all the surveys conducted in East and West

Germany since the collapse of East Germany in 1989 have come to the same conclusion – former DDR residents exhibit more conservative and punitive attitudes than their West German cousins. Similarly, the first comparative victims studies of East and West Germany – the German-German victims study (DD'90), the 1990 study by the Max Planck Institute in Freiburg in co-operation with the German Criminal Bureau in Wiesbaden (BKA) (cf. Kury et al 1992), utilized the same question of the International Crime Surveys (ICS '89, '92, '96) regarding the 21-year-old offender who had committed two burglaries mentioned above along with the same pre-set answers (cf. Kury et al 1992, 529). With the political change in East Germany at first an enormous surge of optimism in both parts of Germany prevailed, but which later was transformed in East Germany into a growing sense of hopelessness and depression. These attitudes may help to explain why some West Germans today are slightly more favourable toward imprisonment than some East Germans. For example, 32,7 percent of West Germans favoured imprisonment for the 21-year-old burglar, but only 26,9 percent of the East Germans did the same (see Kury et al 1992, 310).

When we consider the length of imprisonment, however, the East Germans stand out as more punitive. To the question of the recidivist TV burglar described above 28,7 percent of the West Germans but only 23,3 percent of the East Germans endorsed imprisonment for up to 3 months; 34,2 percent of the West Germans but 35,9 percent of the East Germans selected 4-6 months; 28,8 percent of the West Germans but 30,4 percent of the East Germans were for 7-12 months imprisonment; 6,6 percent of the West Germans and 6,5 percent of the East Germans endorsed imprisonment for two years; 0,5 percent of the West and 1,7 percent of the East Germans chose 3 years; and 1,2 percent of the West Germans but 2,2 percent of the East Germans were for a punishment of more than 3 years in prison (Kury et al 1992, 317). The differences are not great here, but they are rather consistent.

To the question whether “punishment of offenders is a sensible means of controlling crime” 30,3 percent of the East Germans answered “strongly agree” but only 24,9 percent of the West Germans answered in the same way. At the same time, 60,0 percent of the East Germans and 60,5 percent of the West Germans agreed but not strongly (Kury et al 1992, 319). Bilsky et al (1993) administered a survey in 1992 in East and West Germany and confirmed a stronger preference among East Germans for imprisonment as a punishment than among the West Germans. Using a hypothetical case involving a 30-year-old burglar whom had never before been punished, 44 percent of the West Germans voted for imprisonment as a punishment, while in East Germany 51 percent did the same. The differences were even clearer when an example involving an offender who had been punished before was used. Here 48 percent voted for imprisonment in West Germany and in East Germany 64 percent did. Ludwig (1992) in co-operation with the Max Planck Institute for Penal Law in Freiburg carried out victims studies in Jena (East Germany) and Freiburg (West Germany) using identical instruments. In a sense Jena and Freiburg typify the differences between East and West Germany and as such they may indicate basic differences that exist between East and West Germany. She found that Jena’s respondents placed a heavy emphasis upon punishment. Using a case involving a pickpocket, a relatively small portion of the Jena’s respondents agreed with a sanction of restitution or reconciliation without further punishment (cf. Kury et al 1992).

Kreuzer et al (1993) carried out a comparative victim’s study of students from Giessen, Jena and Potsdam, and found among East German students a rather high level of punitivity. The questionnaire dealt with 15 crimes and asked the students to judge them in terms of their culpability (1 = very little; 10 = very much) (Kreuzer et al 1993, 220). The East Germans showed here a greater punitivity, especially with drug offences. The respondents were also asked, “How do you stand on the death penalty?” Males in West Germany were “decidedly for it” in 9,5 percent of the cases, but 14,4 percent of the males in East Germany were also “decidedly for it”. In West Germany 3,8 percent of the females were “decidedly for it” but in East Germany fully 9,7 percent of the women were (Kreuzer et al 1993, 231). According to the authors, a possible explanation of the well-known differences in the attitudes of East and West German students toward the death penalty may lie in the fact that no death penalty has

existed in West Germany for more than 45 years. As a result, a more humane attitude has emerged among the West Germans, especially toward the punishment of offenders (Kreuzer et al 1993, 233). Thus, after the abolition of the death penalty in 1949, growing support among the people for this step became evident. According to the Institute for Public Opinion (Institut für Demoskopie), in Allensbach in 1948 fully 74 percent of the West Germans favoured the death penalty, and in 1950 55 percent did. In 1986, however, only 22 percent still favoured the death penalty. Kreuzer et al (1993, 243) found among beginning students in Giessen growing support for the death penalty from 1976/7, especially among male students. In 1976/7 5,4 percent of the males and 4,5 percent females were for the death penalty; in 1984/5 8,9 percent of the males and 7,4 percent of the females favoured it; and in 1992/3 12,1 percent of the males but 3,8 percent of the females were for it. Further reasons for growth in support of the death penalty (see Kreuzer et al 1993, 233) include an accelerating increase in criminality after opening the borders in East Germany (see also Kury & Oberfell-Fuchs 1996) and especially the broad and often undocumented discussion of the death penalty in the media. At the same time they point out that a correlation "between the fear of crime and support for the death penalty at the individual level does not exist". Fear of crime is greatest in the cities, where support for the death penalty is weakest. In addition, it could be that the end of socialism in the DDR and the accompanying basic social and political transformations engendered a general sense of insecurity and punitivity. Finally, an undercurrent of right-wing radicalism and hatred of strangers in the East German states may have also strengthened punitivity.

According to Sessar (1993, 378), the attitudes of Eastern Germans are somewhat more rigid than in West Germany. According to Allbus (1991), 93,3 percent of the East Germans endorsed harsher punishment for law violators against 72,6 percent of the West Germans who felt the same way. The death penalty was endorsed by 42,5 percent of the East Germans but only by 30,9 percent of the West Germans for murder, (on the punitivity of east Germans see also Heitmeyer 1996, 140; Boers et al 1994; Jung & Roth 1992; and Infas 1992). Bommas and Matzinger (1995) established via personal interviews with 445 randomly selected adults of Freiburg that 67 percent believed state punishment should be harsher (male: 63,3 percent; female: 69,8 percent).

The differences in the perspective on sanctions may be traced, as mentioned above, especially to the differences in citizen socialization in the two states' systems over the last 50 years, but also in the different problems in the two halves of Germany after the change. Ewald et al (1994, 93f) explains the first aspect as follows: The DDR society was:

*designated as an authoritarian movement (Adler, 1991) that was imposed especially via formal social controls directed by the state and by the political organization of society. In dealing with social conflict, deviance, and criminality via coercion the states' leadership found its authoritarian character. Others however saw the state with its coercive leadership as patriarchal and socially concerned (Henrich, 1989). It actually depended however, on police repression, which also provided the people a feeling of protection.*

After the fall of the Berlin wall, this sense of security insured by the state evaporated and in its place a western, capitalist social system was installed with fierce competition and with greater freedom in which the citizen acted in behalf of his/her own interests. The result is well known. After reunification, the East Germans felt among other things much greater insecurity.

After the political transformation in East Germany, the clearly worsening situation meant growing crime, unemployment, and inflation and for most of the population frustration and disappointment, which in turn may have inspired a hardening toward deviants or "strangers". For example, Infratest-Burke Berlin (1996) surveyed in mid-1996 a random sample of 1,000 citizens from 16 to 24 years in both parts of Germany. The interviews were taken over the telephone (CATI) and revealed that the unemployed are more critical of the political system and society. But it must be remembered that the level of unemployment in East Germany is substantially higher than in West Germany. The unemployed is in large

measure sympathetic with authoritarian concepts. For example, 58 percent of them agreed with this statement – “Germany needs today a stronger hand at the top” but altogether only 45 percent agreed. “Unrest in East Germany is much more related to the political process than in West Germany” (Infratest Burke Berlin 1996, 24), and all in all 62 percent of the unemployed East Germans called for a “stronger hand” in politics but in West Germany only 40 percent did. It shouldn’t surprise us that a massive unemployment problem in East Germany leads to a worsening of the political climate. “The danger cannot be ruled out that the continuing economic problems in the east will pave the way for authoritarian, political solutions”. On the basis of its experience before and after 1989, this danger is clearly much greater in East Germany than in West Germany.

A new study by Shell (Jugendwerk der Deutschen Shell 1997, 11) found that the social crisis has also affected young people. Their research reveals that 45,3 percent of the young people named unemployment as their greatest problem; 36,4 percent selected drugs, 32,1 percent chose problems with others in the vicinity, 27,5 percent named a lack of apprenticeship opportunities, 27,1 percent described education and training problems, anxiety regarding the future/aimlessness was named by 20,9 percent; and violent, criminal gangs bothered 19,8 percent. Problems among the young in East Germany included a lack of apprenticeship opportunities (East Germany – 41,4 percent; in West Germany – 23,8 percent), limited leisure alternatives (30,2 percent versus 13,0 percent), and violent, criminal gangs (27,2 percent and 17,8 percent). Nearly half of all the young people (46,6 percent) estimated the outlook for life in their society as rather dismal, and for their own future 34,1 percent were rather confident and optimistic; 12,5 percent saw it as rather dismal; and 53,4 percent viewed it as uncertain.

It could be that growing pessimism about the future, their “concerns about education and training”, or about “survival in the work place” stems from greater competition and results in a harder and worsening social climate and less tolerance toward strangers and deviants, and ultimately in greater harshness in punishment. Here as well the press plays the roll of an interpreter and reporter.

## V. The Results of This Research

In the following only the essential results of our study focusing on the attitudes toward punishment in East and West Germany will be examined. This investigation in 1991/2 was one of the largest victims studies that permitted a comparison between the people of two German cities – Freiburg in West Germany and Jena in East Germany. Altogether 4,306 randomly selected citizens of fourteen years or over received a wide-ranging questionnaire that dealt among other things with their attitudes toward punishment. The 2,344 respondents in Freiburg returned their completed questionnaire for a rate of 39,5 percent, while Jena's 1,962 respondents returned theirs for a rate of 51,1 percent. The items measuring punitivity included an item dealing with a death sentence, and an extensive question with 21 items in which different serious crimes were identified along with 8 alternative responses geared to the severity of their reaction, for example, no reaction by the state, warning, restitution, discussion with the victim and restitution, community service, fine, probation without imprisonment, and imprisonment without probation.

A factor analysis showed that alternatives were grouped together into three factors – no reaction up to warning; restitution, discussion with the victim and restitution, and community service; and fine and imprisonment (with or without probation). On this basis, we defined a scale with three levels: 1 = slightly punitive, 3 = very punitive, and for each item we compared East and West Germany via their mean punitivity. Table 1 gives the results.

The differences between Freiburg and Jena are with one exception (attack on an asylum) highly significant. With the exception of abortion, rape in marriage, and house occupation the East Germans were consistently more punitive than the West Germans. They supported harsher punishments for minor offences as well as serious offences. With abortion they showed themselves as less punitive, but it must be stated that an abortion in the former DDR in contrast with the FRG was less severely punished. Thus, citizens in East Germany were socialized differently toward this act than the West Germans. Since reunification, the same law (West Germany's law) has been valid in all parts of Germany, and abortion, therefore, is allowed today only under close restrictions. Clearly, therefore, former East German citizens were expressing themselves according to their earlier attitudes. Today abortion is defined legally throughout Germany in the same way.

The death penalty item clearly reflected a greater punitivity among the East Germans. While in Freiburg 33,6 percent recommended the death penalty for several serious crimes, in Jena 57,6 percent did the same (Chi-square = 244.72; df = 1;  $p < .001$ ). Further, we established that a punitive perspective was shaped by social position (see Table 2). In order to display the differences clearly, we compared the demographic characteristics of those people with extreme views, i.e., the ten percent who were the most or least punitive. In this way extreme groups were created and examined.

In both regions men were clearly more punitive than women, but the East Germans all together had the highest level of punitivity. Age had no consistent influence on punitivity. The very young (14-25 year's) as well as older groups (the 45-55-year-olds, and the 56-65-year-olds) were most punitive. The middle group (the 26-35-year-olds) and the oldest group (66+ year olds) were least punitive. In East Germany, no statistically meaningful differences were found, which suggests that broad similar socialization pressures affected different age groups in the same way. The effect of income on punitivity was similar in East and West Germany. In both regions those who received very little (< 750 DM or < \$ 420 per month) were also least punitive. Supporters of the death penalty were more punitive than those who were against it, but the relatively small difference in punitivity between them in East Germany suggests that this item is measuring a different dimension of punitivity. The relationship between education and punitivity in West Germany is clear. A rise in education produces an increase in punitivity, although the level of punitivity at the highest level of education turns downward (master craftsman / journeyman / in training / university graduate). In East Germany, no clear relationships were found just as with income.

Table 1: Sanctions for Common Crimes  
According to City

	Freiburg			Jena			
	n		s	n		s	
drunk driving	2,193	2,43	0,61	1,832	2,63	0,57	t=-10,85; df=3,972; p<.001
fare evasion	2,208	1,89	0,71	1,855	2,20	0,73	t=-13,94; df=3,898; p<.001
theft 500 DM (280 \$)	2,206	2,30	0,59	1,853	2,45	0,58	t=-8,44; df=3,948; p<.001
in co-operative with the police	2,179	2,04	0,79	1,845	2,28	0,82	t=-9,34; df=3,859; p<.001
smoking marijuana	2,187	1,76	0,78	1,806	2,22	0,85	t=-17,81; df=3,718; p<.001
burglary	2,201	2,71	0,47	1,853	2,80	0,42	t=-6,69; df=4,034; p<.001
graffiti	2,207	1,98	0,59	1,855	2,10	0,56	t=-6,81; df=4,003; p<.001
assault	2,203	2,64	0,50	1,854	2,80	0,41	t=-11,14; df=4,050; p<.001
theft 90 DM (50 \$)	2,205	1,98	0,63	1,850	2,11	0,66	t=-6,49; df=3,840; p<.001
heroin injection	2,140	2,13	0,78	1,788	2,36	0,81	t=-8,75; df=3,734; p<.001
house occupation	2,174	1,76	0,68	1,832	1,67	0,72	t=4,29; df=3,806; p<.001
forcible rape	2,201	2,91	0,27	1,857	2,95	0,21	t=-5,92; df=4,031; p<.001
sexual assault	2,196	2,78	0,46	1,850	2,85	0,45	t=-4,43; df=3,974; p<.001
pick pocketing	2,205	2,59	0,53	1,854	2,72	0,51	t=-7,62; df=3,986; p<.001
auto theft	2,199	2,75	0,44	1,852	2,82	0,40	t=-5,52; df=4,021; p<.001
injury with a weapon	2,197	2,91	0,28	1,853	2,95	0,21	t=-5,62; df=4,004; p<.001
child abuse	2,189	2,76	0,51	1,850	2,84	0,46	t=-5,82; df=4,023; p<.001
repeated burglary, theft of a television	2,199	2,79	0,41	1,851	2,86	0,38	t=-5,53; df=4,023; p<.001
rape in marriage	2,166	2,40	0,71	1,824	2,24	0,83	t=6,54; df=3,603; p<.001
abortion	2,070	1,34	0,68	1,778	1,19	0,55	t=7,56; df=3,832; p<.001
attacks on an asylum for foreigners	2,200	2,73	0,49	1,838	2,75	0,51	t=-1,33; df=3,856; p=.19
Total	2,209	49,16	5,57	1,857	51,39	5,14	t=-13,26; df=4,029; p<=.001

Table 2: Extreme (low vs. high) Attitudes toward Punishment in Freiburg and Jena

	Freiburg				Jena			
	low punitivity		high punitivity		low punitivity		high punitivity	
	n	%	n	%	n	%	n	%
male	94	45,2	114	54,8	67	40,9	97	59,1
female	119	57,5	88	42,5	108	54,5	90	45,5
chi <sup>2</sup>	chi <sup>2</sup> =6,28; df=1; p<.05				chi <sup>2</sup> =6,73; df=1; p<.01			
14-25 years	34	43,6	44	56,4	31	48,4	33	51,6
26-35 years	52	61,9	32	38,1	37	49,3	38	50,7
36-45 years	38	58,5	27	41,5	29	49,2	30	50,8
46-55 years	16	37,2	27	62,8	32	47,8	35	52,2
56-65 years	18	39,1	28	60,9	21	51,2	20	48,8
66 years and older	45	53,6	39	46,4	25	46,3	29	53,7
chi <sup>2</sup>	chi <sup>2</sup> =13,23; df=5; p<.05				chi <sup>2</sup> =0,27; df=5; p=1.0			
income in DM (\$)								
< 750 (< 420)	19	67,9	9	32,1	18	72,0	7	28,0
750 - < 1,500 (420 - < 830)	26	61,9	16	38,1	41	50,0	41	50,0
1,500 - < 2,500 (830 - < 1,390)	40	50,0	40	50,0	73	51,4	69	48,6
2,500 - < 4,000 (1,390 - < 2,220)	51	41,1	73	58,9	33	37,1	56	62,9
4,000 - < 5,000 (2,220 - < 2,780)	34	60,7	22	39,3	4	36,4	7	63,6
> 5,000 (> 2,780)	28	43,8	36	56,3	3	75,0	1	25,0
chi <sup>2</sup>	chi <sup>2</sup> =13,42; df=5; p<.05				chi <sup>2</sup> =12,49; df=5; p<.05			
death penalty "yes"	47	30,9	105	69,1	86	42,4	117	57,6
death penalty "no"	162	62,8	96	37,2	85	54,8	70	45,2
chi <sup>2</sup>	chi <sup>2</sup> =38,87; df=1; p<.001				chi <sup>2</sup> =5,48; df=1; p<.05			
no training/in training	59	59,0	41	41,0	21	44,7	26	55,3
apprentice	36	36,4	63	63,6	83	50,0	83	50,0
skilled labourer/semi-skilled labourer	11	34,4	21	65,6				
master craftsman/ journeyman/in training	25	42,4	34	57,6	44	46,8	50	53,2
university	71	64,5	39	35,5	26	49,1	27	50,9
chi <sup>2</sup>	chi <sup>2</sup> =24,37; df=4; p<.001				chi <sup>2</sup> =0,53; df=3; p=.91			

Table 3: Attitude to Death Penalty in Freiburg and Jena

	Freiburg				Jena			
	death penalty "yes"		death penalty "no"		death penalty "yes"		death penalty "no"	
	n	%	n	%	n	%	n	%
male	375	35,7	675	64,3	521	62,3	315	37,7
female	352	31,1	779	68,9	548	55,0	449	45,0
chi <sup>2</sup>	chi <sup>2</sup> =5,17; df=1; p<.05				chi <sup>2</sup> =10,12; df=1; p<.01			
14-25 years	130	26,9	354	73,1	173	52,0	160	48,0
26-35 years	136	25,7	393	74,3	223	58,5	158	41,5
36-45 years	91	30,1	211	69,9	214	60,3	141	39,7
46-55 years	95	33,9	185	66,1	213	60,0	142	40,0
56-65 years	95	43,6	123	56,4	129	61,1	82	38,9
66 years and older	160	52,3	146	47,7	108	59,7	73	40,3
chi <sup>2</sup>	chi <sup>2</sup> =84,13; df=5; p<.001				chi <sup>2</sup> =7,36; df=5; p=.20			
income in DM (\$)								
< 750 (< 420)	28	20,0	112	80,0	60	55,0	49	45,0
750 - < 1,500 (420 - < 830)	77	29,6	193	70,4	225	63,9	127	36,1
1,500 - < 2,500 (830 - < 1,390)	166	39,2	258	60,8	395	62,1	241	37,9
2,500 - < 4,000 (1,390 - < 2,220)	243	40,5	357	59,5	306	53,5	266	46,5
4,000 - < 5,000 (2,220 - < 2,780)	90	26,9	217	73,1	45	48,4	48	51,6
> 5,000 (> 2,780)	96	26,7	264	73,3	17	53,1	15	46,9
chi <sup>2</sup>	chi <sup>2</sup> =45,90; df=5; p<.001				chi <sup>2</sup> =18,39; df=5; p<.01			
no training/in training	155	30,0	362	70,0	105	50,2	104	49,8
apprentice	252	46,8	286	53,2	497	67,1	244	32,9
skilled labourer/semi- skilled labourer	82	61,2	52	38,8				
master craftsman/ journeyman/in training	125	36,0	222	64,0	288	57,7	211	42,3
university	89	15,1	500	84,9	178	46,8	202	53,2
chi <sup>2</sup>	chi <sup>2</sup> =183,37; df=4; p<.001				chi <sup>2</sup> =49,65; df=3; p<.001			
mailed questionnaires	mailed questionnaires only used in Freiburg				816	75,9	259	24,1
face-to-face interviews					511	66,6	256	33,4
chi <sup>2</sup>					chi <sup>2</sup> =19,15; df=1; p<.001			

Attitudes toward the death penalty (see Table 3) support these results broadly. In East and West Germany men favour the death penalty more than women, but a relationship with age is found only in Freiburg. With increasing age, support for the death penalty also increases. With increasing income, support for the death penalty also increases up to the middle income classes, whereupon it retreats again. In East Germany, the differences with increasing income are altogether slight, and the same is true for different age levels. Although in East Germany University graduates are slightly less in favour of the death penalty, in West Germany the differences in educational level are clearer. In Freiburg only 15,1 percent of university graduates supported the death penalty for the most serious offences, but their counterparts in Jena did so at the level of 46,8 percent.

The last category in Table 3 suggests an essentially methodological problem. In East Germany some (N = 511) respondents were given face-to-face interviews, and not, as with the rest, mailed questionnaires. The questionnaire was, however, identical with the interview. Nevertheless, very significant differences in the attitude toward the death penalty appeared between the two methods. Among those who received the mailed questionnaire, 75,9 percent agreed with the death penalty, but of those who were interviewed only 66,6 percent approved of it. It could be that those who returned the questionnaire were more conservative than those who did not. At the same time it could also be that social acceptability was affecting the results of the interviews, so that those who agreed with the death penalty felt freer to express their true opinions via anonymous questionnaires.

## **VI. Penal Measures and Punitivity**

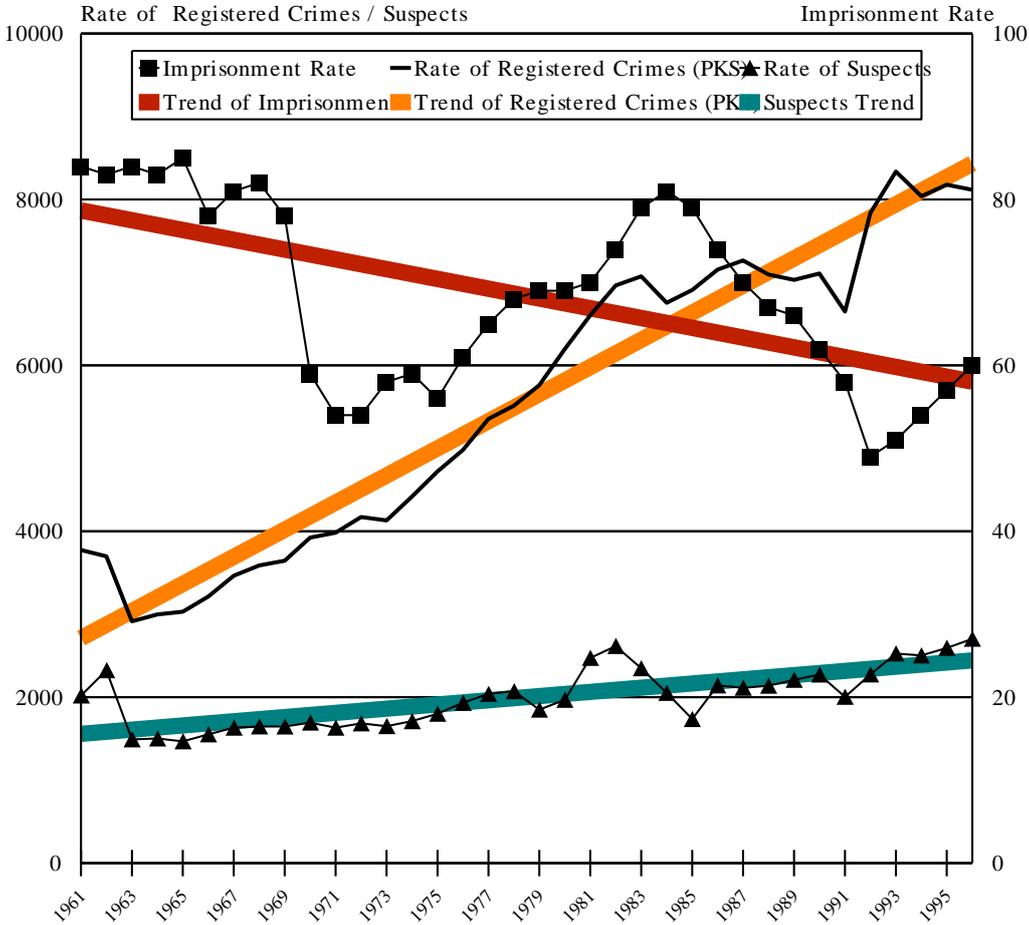
The punitivity of a society can be measured not only by administering scientific surveys to the people but also by analyses of the penal system; especially punishments handed down by judges and the utilization of imprisonment. Changes in the use of imprisonment over time offers an index of changes in punitivity in a society. Thus, in the United States in recent years a sharp increase in punitivity has been established not only via opinion surveys of random populations, but also by increasing use of the death penalty (see above) and since the mid-1970s in a steadily rising rate of imprisonment. On June 30, 1996, for example, 1,630,940 persons were under custody in prison or jail in the United States, or 615 per 100,000 residents (SOURCEBOOK, 1997 Table 6.11, p. 510). And the punitivity of the former socialist/communist bloc in eastern Europe is expressed not only in increasingly punitive attitudes toward offenders among the public, but also in high imprisonment rates (compared to those in the West) despite their relatively low official crime rates. The same is true of Asian countries such as Japan, which in comparison with the United States has a low imprisonment rate along with a very low crime rate. In 1985 Japan had an imprisonment rate of 233,3 per 100,000 residents (see Shikita & Tsuchiya 1992, Tables 1, 6, and Figure 27, pp. 355, 367, and 182 respectively). Their low crime rate, however, is accompanied by a frequent use of prison sentences. In 1985 Japan sentenced 12,9 percent of those convicted of Penal Code offences (excluding professional negligence) and Special Law offences (excluding road traffic violations) crimes to custody (see Shikita & Tsuchiya 1992, Table 26, p. 367 and Figure 27, p. 182).

In Germany, in recent years those sentenced by the court to a non-suspended imprisonment comprised only 5 to 6 percent of all those sentenced (see below; also Kaiser 1996, 986; Jehle 1997, 9). Clearly, the policy regarding punishment and especially imprisonment depends heavily on the correctional system and legal custom, and in turn both are dependent on the public's attitude toward sanctioning, i.e., its view regarding the legal definitions of punishment (see Melossi 1995). The actual outcome in most cases depends upon complex interactions among public opinion, correctional capability, and the penal law.

In this section we shall examine whether the results from opinion surveys, which suggest a growing punitivity among the public in Germany, have also been accompanied in recent years by a growing punitivity in Germany's penal system. To this end we shall take

into account both the rate of imprisonment (per 100,000 inhabitants) for each year and the level of criminality as assessed by the police statistics (per 100,000). Between 1961 and 1996, the number of prisoners was clearly declining (see Figure 1). The prison population in 1961 stood at 84 per 100,000, but it tended downward overall to nearly 60 per 100,000 in the mid-1990s. The retreat from 1960 to the early 1970s resulted mainly from changes in the penal law (“Erstes Strafrechtsreformgesetz”) – an important reform in which short-term imprisonment was abolished. An important consideration here was also overcrowding in the prisons (see Kaiser 1992, 70). Since 1975, further reforms in the penal law (“Zweites Strafrechtsreformgesetz”) have affected the size of prison populations. Reducing the number of short-term prison sentences and improving prison conditions have led to a clear decline in the number of prisoners. In this regard Kerner (1992, 373) suggests that the German penal reforms of 1969, which limited short-term prison sentences, contributed to a reduction in the prison populations to 1971. After 1971, the relative number of prison admissions declined, even though the number of convicted offenders continued to rise.

Figure 1: Officially Registered Crimes, Suspects, and Prisoners in Germany 1961-1996



**Rates:** All rates are per 100,000 residents rounded to the nearest whole figure.  
**Trend:** mean trend of the curve.  
**Sources:** Prisoner statistics: for 1961-1970: Bevölkerung und Kultur, Reihe 9, Rechtspflege; since 1971: Rechtspflege, Reihe 4, Strafvollzug; Officially Registered Crimes: PKS (Polizeiliche Kriminalstatistik) for each year; Population: Statistical Yearbook for each year.  
 Registered crimes and suspects: From 1991 to the present, East and West Germany were combined.  
 Prisoners: From 1992 to the present, East and West Germany were combined. Qualification Regarding **PKS** Data:  
 Up to and including 1962, registered crimes included offences against the state and traffic offences. Up to 1970, officially registered offences were defined as all offences made known to the police, but in 1971 the definition was changed to all offences brought by the police to the prosecutor. Due to difficulties in gathering the data, PKS

data for the new eastern states 1991 and 1992 were so thin that comparisons with succeeding years are not advisable. Measurement difficulties in Baden-Württemberg led to inaccurate reporting in which the rate of increase of crime in Germany was under-reported by about 2 percent in 1984 and in 1985 it was over-reported by about 1,7 percent.

*Suspects:* The numbers for 1983 are not comparable to other years because several states used individual methods for compiling suspects data. For example, in several German states a suspect registered many times for the same offence in a given period was counted only once from 1983 onwards. Before 1983, such a suspect was counted for each registered offence. This adjustment however, led to slight distorted figures for that year and made accurate comparisons with earlier years difficult. If an offender is registered for several different kinds of crimes, he will be counted for each offence as opposed to being counted only once for all of them. The number of suspects of specific offences therefore, will not equal the total number of suspects (PKS 1995, 11).

*Offences:* Violent offences included murder (up to and including 1970 manslaughter was included here as well), + robbery and extortion (up to 1963 included also highway robbery). Sexual offences up to 1973 included crimes against morality ("Sittlichkeitsdelikte" resp. "Straftaten wider die Sittlichkeit").

**Prisoners:**

Status as of March 31. Since 1971, prisoners in protective security (Sicherungsverwahrte) have been included. In Germany, prisoners who seem likely by expert advisors to commit further crimes can be held in protective security until their outlook improves. Before 1977 drug offence prisoners and before 1971 foreign or stateless prisoners were not differentiated.

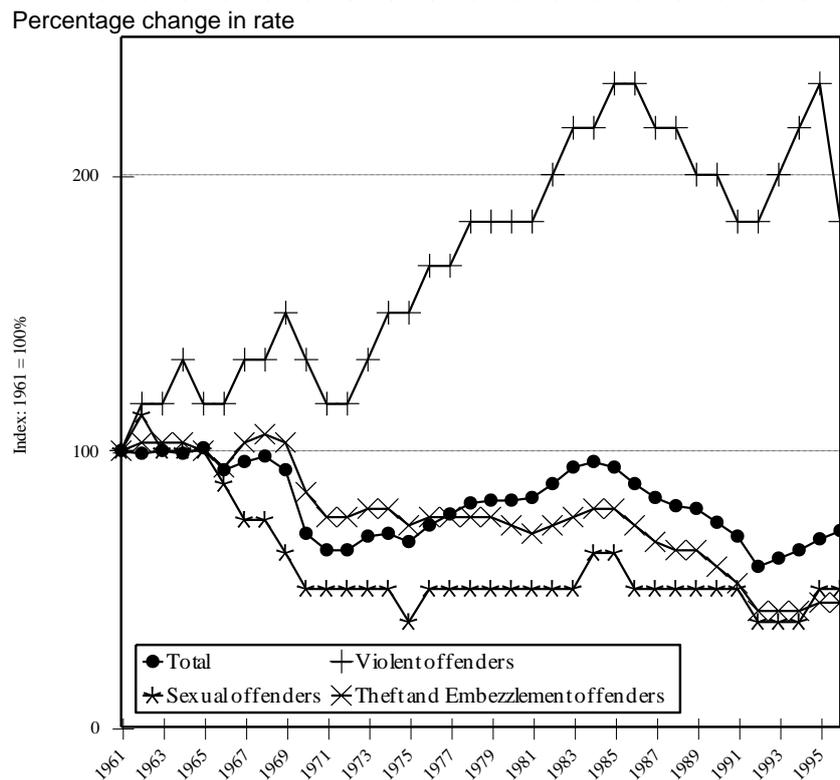
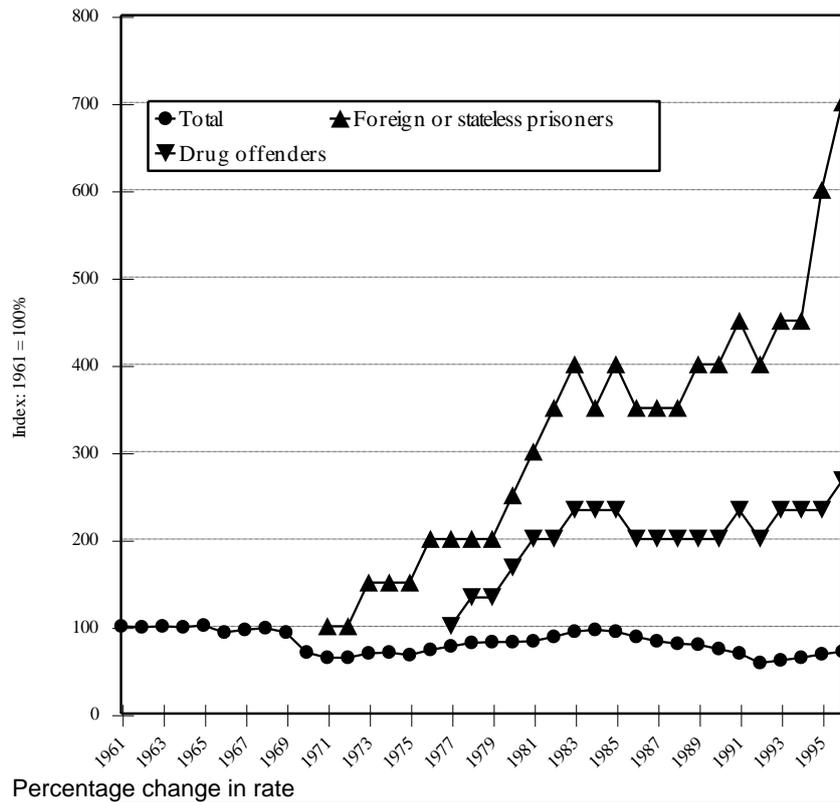
Prisoners were clearly serving longer sentences. Specifically, in 1961 the number of convicted defendants was 578,355, the number of prison admissions was 159,801 and the number of prisoners stood at 47,391 on March 31. By 1967 the number of convicted offenders had climbed to 632,060, but prison admissions had declined to 140,911 and the prison population had risen to 48,026. In 1970 the number of convicted offenders increased again to 643,285. But the number of prison admissions dropped sharply to 59,544 and the prison population declined to 35,927. By 1979, the number of convicted offenders had risen to 718,779, and prison admissions had shrunk to 53,642. Prison population, however, increased this time to 42,229. According to Kerner (1992, 373), "By 1973 and thereafter two factors began to affect the criminal justice system. On the one hand, a gradual increase in the length of time served in prison took hold, and, on the other, an apparent growing use of custody during investigations increased the number of prisoners".

As Figure 1 shows, the relative number of inmates in prison increased sharply from the early 1970s to the mid-1980s, but at that point up to 1991 the relative number of inmates decreased. After 1992, however, the relative number of prisoners began to rise again. At the same time criminality in Germany according to the formal crime-rate (see Police Report – Polizeiliche Kriminalstatistik PKS) has shown a steady increase since the 1960s. Thus, judges apparently reacted to the rise in criminality by turning increasingly to alternative/intermediate sanctions. It could be too that discussions of diversion have had some affect (see Kury & Lerchenmüller 1981; Bundesministerium der Justiz 1989; Heinz 1998). The issue is clearly complex, since many defendants are being sentenced to diversion programs and not to prison, but those who are sentenced to prison are staying longer. The well established increase in punitivity in Germany since the beginning of the 1990s seems also to express itself in longer prison terms for serious offenders.

To explore this issue further, let us examine whether distinctive sentences were, indeed, meted out to different kinds of defendants. Figure 2 shows percentage changes in the rate of imprisonment for different kinds of offenders since 1961 with the 1961 numbers taken as 100 percent. Since foreign and stateless inmates were first separated out in 1971 and drug offenders in 1977, we consider the numbers of these offenders in 1971 and 1977 respectively as 100 percent and compute succeeding years accordingly. The results show sharp increases in the imprisonment of foreign prisoners as well as drug and violent offenders. These increases however, may also reflect a growing crime problem in society and not just greater punitivity.

Figure 2: **Prisoners in Germany 1961-1996\***

Percentage change in rate

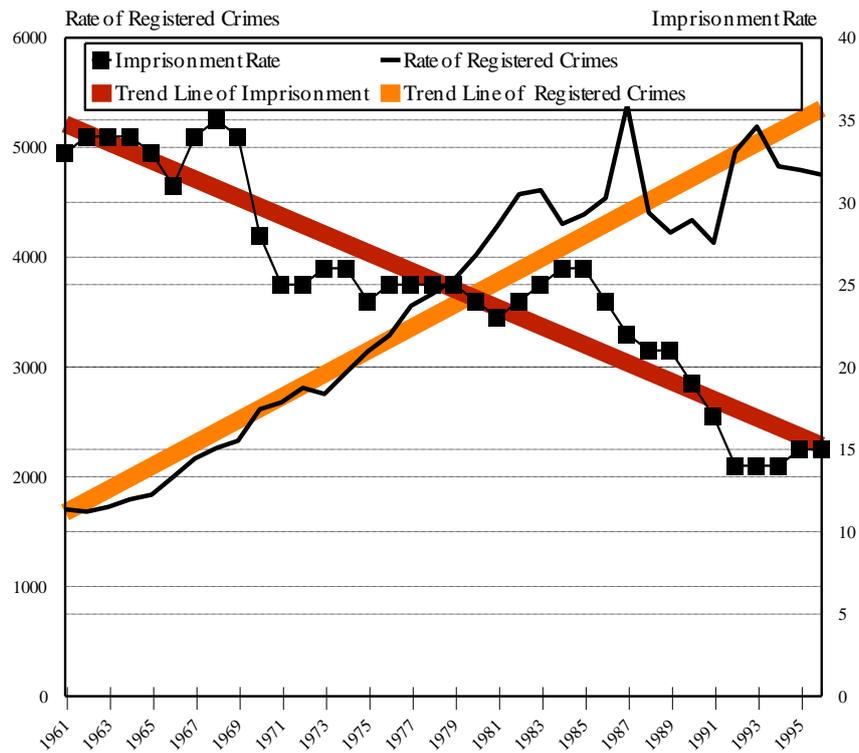


\* See footnotes Figure 1.

Let us examine the largest offence category, theft and embezzlement, because it provides by its size a good indication of what is happening. According to Figure 3, the imprisonment rate for these offenders has declined more or less regularly since 1961, while the relative number of offences in this same period has clearly increased. Thus, the use of imprisonment for these offences has steadily declined in the last 36 years (see Figure 3), and instead, diversion and alternative sanctions such as fines have been applied. Violent

offences (homicide with attempts, robbery, and blackmail) however, present a different picture (see Figure 4). The relative number of offences in this category has grown substantially in the last 36 years and the same is true of its imprisonment-rate. But a glance at Figure 4 shows that the increase in the relative number of offences has accelerated faster than the imprisonment rate, suggesting that longer prison sentences have not been responsible for the growth in the imprisonment rate for this category.

Figure 3: Officially Registered Crimes and Prisoners Convicted of Theft or Embezzlement in Germany 1961-1996\*



\* See footnotes Figure 1.

A rather different picture is presented for sexual offences (see Figures 5 and 6). The relative number of offences and the imprisonment rate here have both declined during the last 36 years with the relative number of sex offences declining slightly faster than the imprisonment-rate at least up to the beginning of the 1990s, suggesting that the imprisonment-rate for sex offenders has grown in recent years. And if we consider Figure 6, which presents the data for complaints to the police and imprisonment since 1971, an increased use of imprisonment for sexual offenders is clear beginning with the 1970s. Critical discussions about sexual crimes, which have become more intense in recent years, may have been a factor in the increased use of imprisonments. In Germany, each year harsh punishments have been pushed by the media against serious sexual offences, especially those involving children as victims. All of this led at the beginning of 1998 to a change in the law such that imprisonment was more severe for these offenders (see the “law against sexual offences and other dangerous crimes – Gesetz zur Bekämpfung von Sexualdelikten und anderen gefährlichen Straftaten”).

Figure 4: Officially Registered Crimes and Prisoners Convicted of Violent Crimes in Germany 1961-1996\*

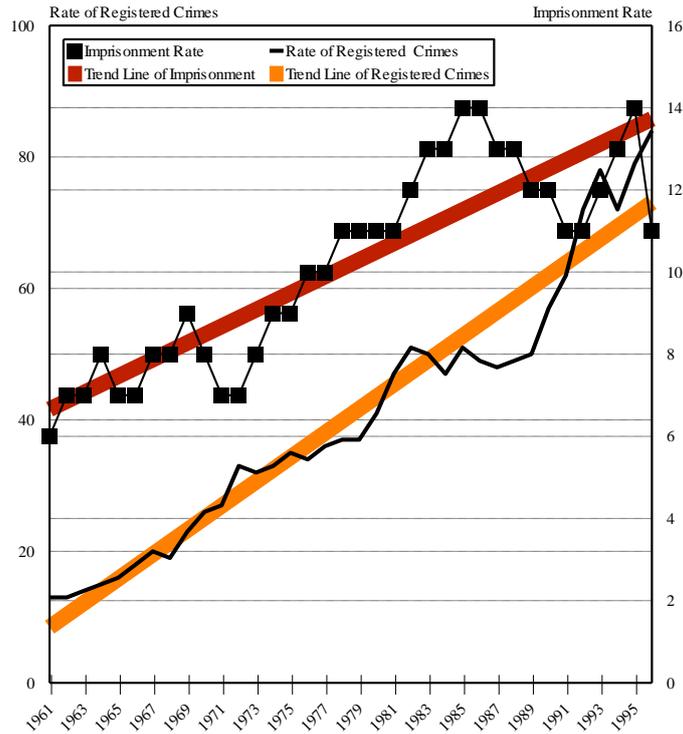
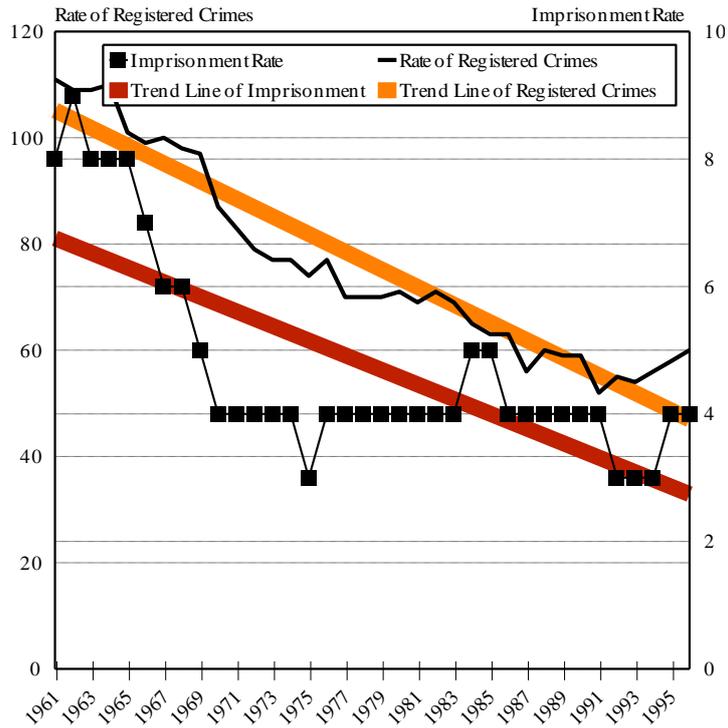
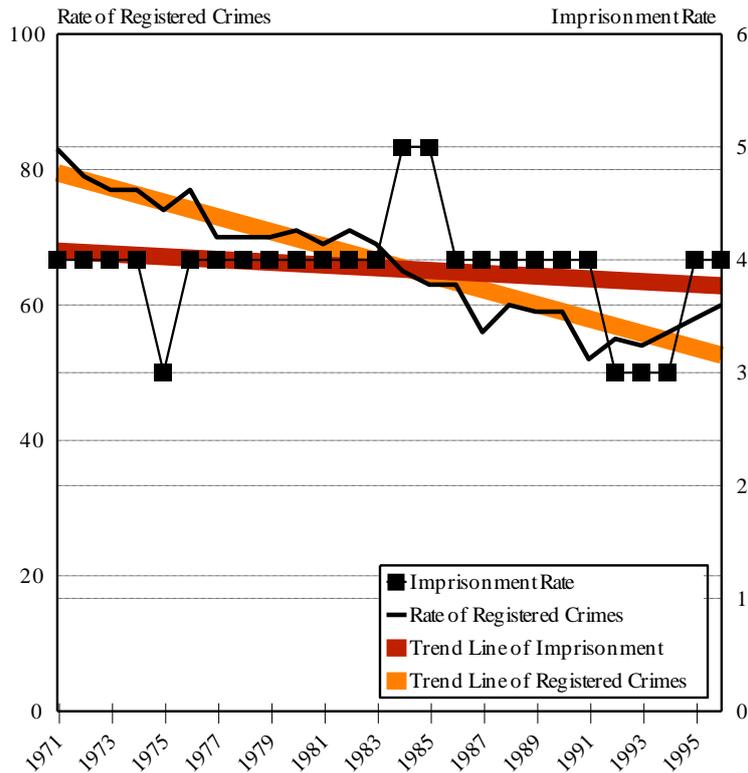


Figure 5: Officially Registered Crimes and Prisoners Convicted of Sex Offences in Germany 1961-1996\*



\* See footnotes Figure 1.

Figure 6: Officially Registered Crimes and Prisoners Convicted of Sex Offences in Germany 1971-1996\*



\* See footnotes Figure 1.

Figure 7 indicates clearly that the relative number of drug offences and the imprisonment-rate have both increased since 1977. A close examination of Figure 7 however, shows that since 1994 the relative number of drug offences has gone up faster than the rate of imprisonment, suggesting that punishments have not worsened. The steeply rising curves suggest both a sharp increase in the drug problem as well as a major repressive effort to contain it.

In Figure 8 we see that the relative number of foreign and stateless prisoners has increased dramatically in recent years, and accordingly these two groups alone, i.e., drug offenders and foreign/stateless offenders, have made substantial contributions to Germany's prison population. While suspects and imprisonment of foreigners have grown nearly tenfold since 1971, the relative number of German prisoners has declined (see Figure 8). Figure 9 further clarifies this issue. In the last 26 years, i.e., since 1971, the total population of Germany has increased only slightly and the same is true of German prisoners. But sharp differences between the imprisonment of German and foreign citizens can be found in Figure 9. The number of German prisoners has grown slightly since the beginning of the 1990s, and as might be expected the tendencies in both East and West Germany were very similar. But both the relative number of foreigners in Germany and the relative number of foreign prisoners, especially since the end of the 1980s have shown a substantial rise. The expanded use of imprisonment in Germany since 1971 represents to a large extent the impact of foreigners on Germany's correctional system.

Figure 7: **Officially Registered Crimes and Prisoners Convicted of Drug Offences in Germany 1977-1996\***

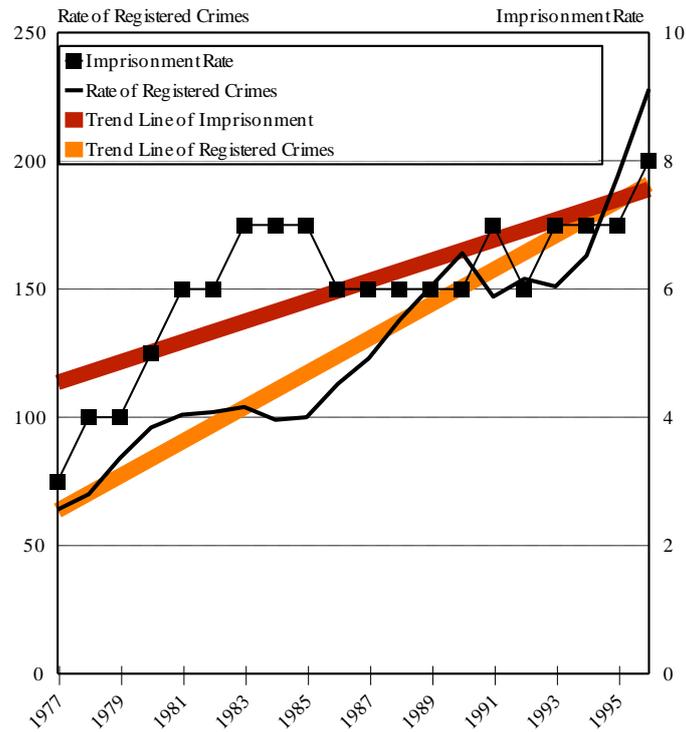
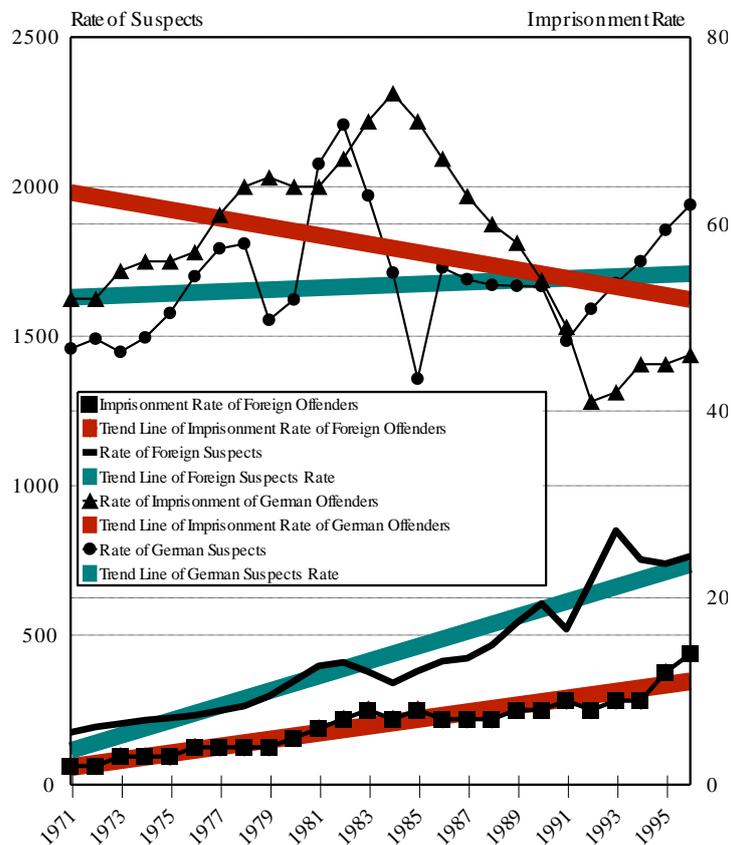
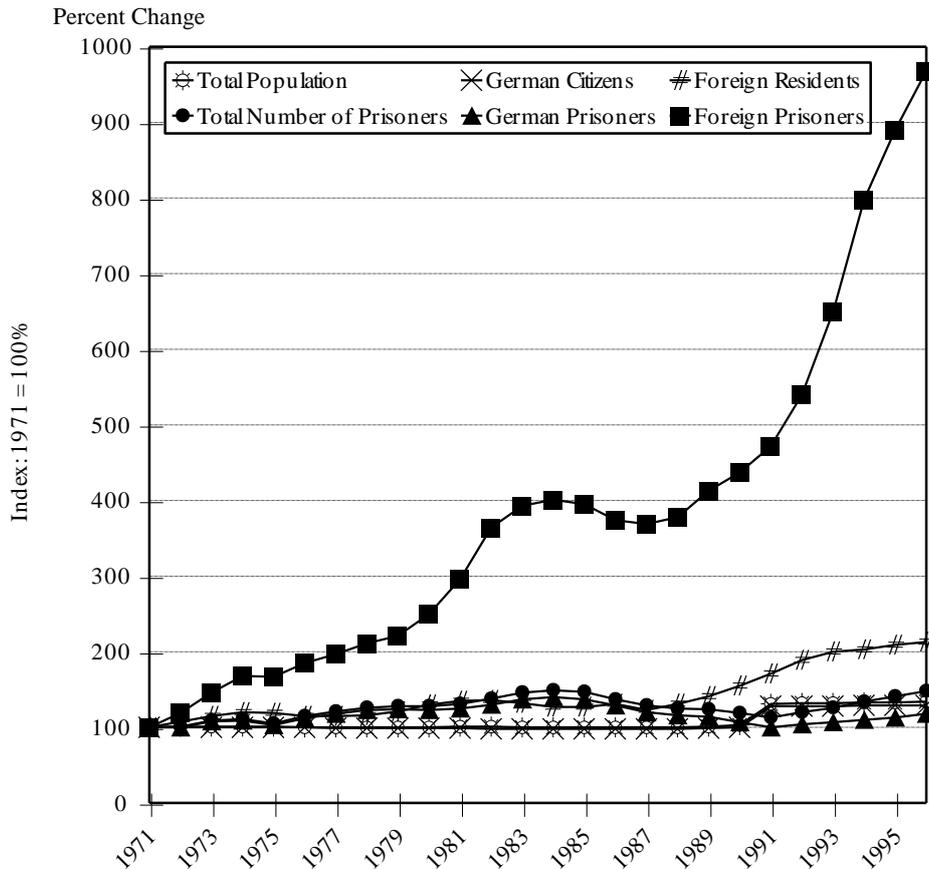


Figure 8: **German and Foreign or Stateless Suspects and, German and Foreign or Stateless Prisoners 1971-1996\***



\* See footnotes Figure 1.

Figure 9: **Population and Prisoners in Germany 1971-1996\***  
**Absolute Numbers**



\* See footnotes Figure 1.

These data make clear that a growing punitivity in Germany has not focused evenly on all types of criminals. Certain kinds of offenders, i.e., in recent years violent, drug, and foreign offenders, have contributed substantially to the crime problem and have been discussed thoroughly by the media and the public. Evidence also indicates those sexual offenders, and to some extent drug offenders have been subjected to a more stringent sanction – i.e., lengthy imprisonment. The “get tough on crime” effort seems not to have affected property crimes, which are no more likely to receive lengthy prison terms than formerly. Thus, punitivity in recent years has been applied selectively to just foreigners and to those offences that are targeted by the public – i.e., sex offences (especially against children), and to some extent drug offences. Punitivity in the courts seems to echo punitivity in the media and in public opinion but especially with specific crimes.

## VII. Discussion

Western industrial countries in recent years have witnessed a more or less clear increase in punitivity. This is true especially in the United States, but also in Canada and in European countries such as Germany. These increases favouring harsher punishments are based on changes in social conditions that must be taken into account in discussions about criminal development and fear of crime. In many European countries but above all in Germany since the end of the 1980s, basic socio-political changes have added to numerous fears and insecurities among the people. The opening of the borders, freedom of the press,

mass movements of populations, and along with these changes came increases in crime, mainly in the former Eastern block but also though less so in the Western industrial nations. The sharp increase in crime levels, even though they are still smaller than in Western countries, a rise of unemployment, inflation, and financial problems both among private individuals and in states, provoked a considerable sense of insecurity. On this basis, it is no wonder that broad segments of the population also favour a harsher treatment of deviants, above all since politicians offer solutions involving legal and punitive “reforms”.

As to why the hardening of attitudes toward punishment has occurred, we must also look to the socialization of the citizen as the comparisons between East and West Germany has shown. The East Germans were subjected in the former DDR to a socialistic society in which closed boundaries, a state controlled economy and mass media, and a powerful state apparatus socialized the people in different ways than in the West. In the FRG after WWII, a free press, free travels, and freedom of opinion all existed, and the FRG evolved into a Western, industrial power. These differences influenced the perspective on punishment in both parts of Germany but were softened somewhat by the social problems attending reunification, that indeed were greater in East Germany but affected West Germany as well. In response, the East Germans clearly showed greater punitivity than the West Germans. During the last 50 years, however, an open social discussion has been held in the West often in sharp terms regarding alternatives to punishment for those who have been found guilty of crimes. This discussion, however, rarely penetrated to the East Germans.

Punitive ideas depend heavily on the social conditions in a region or nation, just as crime itself does. And yet the methods of measuring punitivity also shape the results of an investigation. This has recently been demonstrated in an experiment in which very small adjustments in a data collection instrument affected the results of a survey generally (see Kury 1995). Several studies have confirmed in recent years that attitudes about punishment depend upon how well informed people are. The more information available on a given criminal case, the more mild the recommended punishment. Further, Hough and Roberts (1998) were able to show that punitive attitudes among people did not deviate from those of the judges when both had the same information. Another point here is the influence of a range of sanctions used in assessing punitivity. The citizen has learned that a harsh reaction to crime, i.e., imprisonment, is “normal” though maybe not “optimal”, and that this “tough” perspective is reiterated by many political leaders as well as the press. Yet in recent years the number of alternatives to traditional methods of sanctioning has multiplied even though people still have little knowledge of them, e.g., victim/offender mediation. Nevertheless, studies have increasingly shown willingness by people to accept these recent alternatives.

Data regarding the growth of criminality and arrest-rates over the last 36 years show that a growing punitivity among people measured by means of public opinion surveys is reflected as expected at the penal level in criminal justice. The relatively mild opinion of the public toward the punishment of offenders in the 1970s and up to the mid-1980s gave rise to alternatives to imprisonment and to an expansion of resocialization measures within the correctional system, both of which may have contributed to a contemporaneous decline in the arrest-rate. Similarly, at the end of the 1980s when the public registered a higher level of punitivity, arrest-rates began to rise.

This analysis has shown, moreover, that the growing severity in criminal justice is crime-specific. While sexual offenders – mainly within the last decade – and drug offenders – mainly with foreign offenders – have been punished more severely, but with theft and embezzlement this was not the case. This pattern probably arises as a result of public discussions of specific offences, which emphasize the public’s concern and interest in official steps to resolve the problem.

The research on punitive attitudes must be strengthened and broadened. Roberts (1992, 159) has suggested in this connection that “The emphasis in polls on crime seriousness and punishments is understandable. These topics [*pique*] the interest of the media and the public alike. Nevertheless, we have little clear idea about public opinion in other, less well-illuminated areas of criminal justice. What do the public know and think about

topics such as diversion, electronic monitoring, the treatment of inmates [or] community based policing, to name but a few”.

The significance of this theme is clear. Public opinion has considerable influence on the politics of crime, and the reverse is true as well. Political leaders often further themselves by passing harsh laws in accordance with public opinion. This perspective, however, often serves as little more than an excuse for pushing their own Law-and-Order perspective. In this connection, Roberts (1992, 162) correctly observes that “Public opinion may well exercise an important, although indirect, influence on the criminal justice system”.

Punitivity in people depends, as mentioned, on socialization in society but also on the information available on criminality and its development. But this information unfortunately is often misunderstood. The media report nearly always spectacular cases, but, not the minor cases, and politicians over-react to bothersome crime (cf. Kury 1980). Public discussion of criminality, therefore, focuses mostly on serious crimes, which clearly represent only a small minority of all crimes. It is no surprise that people when confronted with a survey on punitivity immediately think about serious crimes. On this basis, Hough and Roberts (1998) press for more objective information for people about criminality and its development. Nevertheless, Roberts (1992, 164) asserts “But as long as news media stories remain the public’s primary source of information, dissatisfaction will be rampant ... The existence of an uninformed and frequently hostile public poses an important problem for the criminal justice system and also raises questions about the democratic nature of our legal institutions.” New surveys have clearly revealed that people are open-minded about alternative reactions to criminality, more sometimes than criminal justice officials such as judges or prosecutors (cf. M. Kaiser 1992), who often stick to traditional methods and even interfere with reforms in order to appeal to a broad segment of people.

□□□

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***Bausmė: viešoji nuomonė ir baudžiamasis teisingumas***

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**SANTRAUKA**

*Devintajame dešimtmetyje Vakarų šalių baudžiamoji teisė nuolat griežtėjo. Vokietijoje bausmės taip pat griežtėja. Tai daryti skatina didėjantis nusikalstamumas. Jo ištakos – imigrantų srautai, prisitaikymo prie skirtingų tradicijų sunkumai ir blogėjančios socialinės bei ekonominės sąlygos. Autoriai analizuoja baudžiamosios teisės skirtumus Rytų ir Vakarų Vokietijoje po susivienijimo. Nepaisant to, kad Rytų Vokietijoje buvo padaroma mažiau nusikaltimų, Rytų vokiečiai gyveno komunistinėje sistemoje. Jai būdingas bausmių griežtumas. Rytų vokiečių gyvenimo sąlygos buvo ir yra ypač sunkios ir jie pritaria griežtesnėms bausmėms nei vakariečiai. Vakarų Vokietijoje staigus nusikalstamumo augimas nuo 8-ojo dešimtmečio pradžios susijęs su atsikėlusiais imigrantais, o kalinamųjų skaičius atspindi bausmių skyrimo sistemą. Nuo 8-ojo dešimtmečio pradžios Vakarų Vokietijoje (jei neminėsime užsieniečių) nusikalstamumas nors ir didelis, bet pastovus.*

