

# Responsible criminal policy / Crime and criminal policy

K A U K O A R O M A A

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**Abstract.** Criminal policy may be assessed in a framework that is defined by the logical basic elements of crime. These are the motivated and able offender, the victim or target, and control. It is only in certain combinations of these three elements that a crime can take place, and criminal policy addresses one or several of these elements. The objectives of criminal policy are defined being fourfold: 1) to minimise the social costs of crime; 2) to minimise the costs of crime control; 3) to distribute these costs; and 4) to do this in a fair manner. It is such considerations that are to be accounted for if knowledge-based criminal policy is to be defined and implemented. In real-life terms, this is rarely being done comprehensively. Criminal policy is, in contrast, often simplistically understood as „fighting crime“, i.e. in terms of warfare.

Today, criminal policy requires careful consideration in particular because both crimes and their environment are undergoing rapid change. This puts decision-making in a particularly demanding situation and accentuates the need for valid knowledge of the situation. Therefore, there is great need of updated research on old and new forms of crime, and such research should address all central elements of crime.

The near future of criminal policy is much influenced by financial crisis. This creates high demands for a more consciously knowledge-based and better quality crime control. The near future may see both positive and negative developments, the negative ones being more likely if criminal policy is not made in a responsible and comprehensive manner. The alternative of a „positive“ criminal policy is suggested as a utopian but achievable goal.

**Key Words:** crime, criminal policy, future

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## 1. HOW TO DEAL WITH CRIME

Threatening potential offenders with punishment and punishing them in multiple ways has been and continues to be the most popular way of dealing with crime. When doing so, the criminal policy has been understood in a very narrow manner, such as “the fight against crime”, or deterring and preventing crime by relying on the criminal justice system. Furthermore, the criminal justice system as we know it has basically addressed the offender only.

To problematise this approach, we need to look at how ‘crimes’ come about.

## 2. THE LOGICAL BASIC ELEMENTS OF CRIME

Crime takes place in a specific temporal, geographical, social and legal framework that determines what people and legal persons are able to do, and which actions are defined as crimes in that particular framework.

Reform work and debate concerning the criminal justice system has often been about changing the legal framework: diversion, decriminalisation, decarceration, alternatives to prison, new sanctions, restorative justice, etc.

Given this framework, crime is a simple thing, as pointed out by Marcus Felson. It is composed of three logical elements that are required for a crime to take place: the perpetrator, target/victim, and insufficient control.



FIGURE 1. The motivated and able offender

The first element is the offender.

No crime can take place if there is no criminal will and capacity, i.e., no motivated and able offender. Research and policy alike have been mostly looking at this factor. Our criminal law and criminal justice systems are focused on the offender, and so is much of the existing empirical and theoretical work concerning crime. A large part of existing theory is about this element of crime: crime causation theories (biological, psychological, social) as the prime example.

This is not wrong as such. It is relevant and necessary to study offenders and offending behaviour. Criminal law is about wrongdoing, and criminal justice system deals with known wrongdoers and threatens potential ones.

The second element is the target/victim.

However motivated, skilful and able potential offenders may be, a crime cannot be committed if a suitable victim or target is not available. Awareness of targets and victims, and research to this end are essential if interventions are to be improved. Similarly, research that looks at the intersection of offender and target is essential for a better understanding of the situation. An improved understanding of the relevant mechanisms also gives rise to expanding the scope of the relevant legal and administrative systems designed for making interventions and to prevent and control crime.

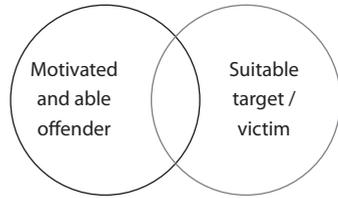


FIGURE 2. The target /victim



FIGURE 3. The third element: control

The third element is insufficient control.

Even when offender and target coincide in time and space, nothing will happen if the situation or opportunity is adequately controlled. Control is both formal and informal. It is external control. Self-control and internalisation of norms are another matter that would rather belong to the element of 'motivated and able offender'.

External control has not been researched too much, and neither is there much work on the interplay between the three basic logical elements of crime.

### 3. DISCUSSING AND DEFINING CRIME POLICY

Crime policy is often mistakenly conceived as 'the fight against crime'. This view is realistic in one respect only: crime is inside and part of the social and legal structure. In this sense, the fight against crime is legitimately possible to see as a matter of self-reflection of the system: what features of the system are involved when crime occurs?

This is however, not the meaning in which ‘the fight against crime’ is usually applied. Normal usage refers to warfare, indicating that there is an outside or inside enemy, and that there is a permanent civil war going on.

Why it is necessary to have this discussion is because fundamental facts tend to be forgotten repeatedly because of (at least) three reasons:

- Generation shift: every generation learns its own way of looking at the world and explaining it. New generations tend to have new interpretations of problems and solutions that are often not based on historical perspective and continuity. Furthermore, ostensibly ‘new’ approaches also tend to be picked up by people of the earlier generations, also causing discontinuities.
- Professional backgrounds: the people thought of as criminologists are not a homogeneous group but of multiple backgrounds, often without sociological education or sophistication in policy-making issues. Thus, there is a lack of a shared paradigm concerning crime policy.
- The backlash phenomenon: the ideological pendulum is swinging rather than moving one way only. After periods of progress, there will often be a backlash.

A useful alternative definition of crime policy was coined by the Finnish crime policy philosopher Patrik Törnudd (1969, 1971). He does this by identifying its objective:

“Decision-making related to crime control – criminal policy or crime control policy – has two basic objectives: 1) to regulate/minimise the sum total of the social costs (including human suffering) caused by crime and by society’s response to crime (i.e., crime control); and 2) to distribute these costs fairly among the involved parties, i.e., offenders, crime victims, tax payers, etc.”

According to this definition, the objectives of crime policy are

- minimising the social costs of crime;
- minimising the costs of crime control;
- distributing the costs; and
- doing this in a ‘fair’ manner.

Knowledge-based responses to all of these require much research of a kind that is rarely done. The task is further complicated by the fact that our societies are undergoing constant change.

#### 4. EVERYTHING IS CHANGING

First, societies are changing. In the modern world, economy rules to an increasing degree. This is related to rapid globalisation and integration. Simultaneously, demographics are changing as populations grow older, and as a consequence of accelerating migration. Technological advancements influence the everyday heavily. Ideologies are changing and mixing. The media explosion is influencing cultures and people. Values shift, observable for example in the disappearance of solidarity, and in the atomisation of societies. The state is fading through privatisation tendencies. Social life disintegrates from tradition-steered into individual careers, as Max Weber foresaw already more than a hundred years ago. More recently, Zygmunt Baumann complemented this vision, observing that societies are liquidised under the pressure of globalisation.

Under such circumstances, the framework inside which crime takes place must be experiencing radical changes.

Second, crime and crime control are changing. In geographical terms, local is merging with global. Simultaneously, the physical and social environment of crime is changing rapidly. Crime opportunities have changed massively both in terms of quality and of quantity. The motivational dimension of crime has changed.

Furthermore, our understanding of what should constitute 'crime' undergoes constant change. Control technologies have emerged that will eventually allow total control. Simultaneously, traditional control mechanisms and techniques have become increasingly outdated as crime opportunities and modes of crime undergo radical changes.

#### 5. THE NEAR FUTURE: FINANCIAL CRISIS AND CRIME POLICY

Our societies have entered an era of financial crisis that may be of a long-lasting nature. It is often believed that because we see crisis as something bad, it can only have bad consequences. Thus, it is often believed that bad economic times must cause crime increases.

As a matter of fact, there is no simple or linear relationship between financial crisis and crime. The consequences of a recession in terms of criminal motivation, crime targets (opportunities, markets), and crime control are multiple, and need to be considered carefully. They may be of many kinds, positive, negative, and mixed.

## 6. A BEST CASE SCENARIO

In a best case scenario, we may envisage a future in which financial necessity may eventually succeed in doing what humanistically biased experts have failed to accomplish. Thus, it may happen that the scope of punishable behaviour is going to be diminished by large-scale decriminalisation (example: the narcotics prohibition will be reconsidered). At the same time, policing resources are to be cut significantly. Furthermore, waiving prosecution is going to be applied in a large scale in order to promote further savings.

As for punishments, conditional sentences are going to become the rule where at all possible. Parallel to this, criminal punishments, where possible, will be replaced by administrative sanctions. Furthermore, non-custodial sanctions such as community service are to be promoted, and constructive sanctions of the restorative justice tradition will be introduced in a large scale.

Early intervention combined with positive discrimination is to be applied generously; and no children are sent to prison any more.

Offenders are being received and reintegrated back into society, involving NGOs, civil society, family and peer networks, and this way, the currently sub-standard aftercare of ex-convicts is going to be greatly improved.

Electronic monitoring is going to be applied consistently and pervasively. Simultaneously, restraining or protection orders are going to be applied generously and enforced effectively, i.e., by an effective electronic monitoring system.

The future may however, also become very different. Historical evidence tends to suggest that financial crisis is more likely accompanied by a tough-minded criminal policy that believes in repression rather than integration.

## 7. ANOTHER ALTERNATIVE (‘WORST CASE SCENARIO’)

Financial crisis, in particular if it appears to become long-lasting, could have significant consequences for crime control approaches in particular.

Control will be enhanced by creating incentives for people to inform on each other, and endowing them with enforcement powers. Voluntary work is thus recruited to compensate for the lack of police resources. Vigilantism is being supported.

Parallel to such innovations, those parts of the criminal sanctions system will be privatised in which private enterprise can make a profit – either supported by public subventions or under free market conditions, providing security for those who can afford it. Those less well off will need to accept a low-standard public service. Hirsch called this the night-watch state.

At the same time, voluntary work (NGOs) is made responsible for the implementation of less profitable and maybe new kinds of sanctions. New types of cheap punishments based on shaming, and physical and confiscatory punishments may be introduced. Such kinds of punishments are known from earlier times.

Total monitoring is to be imposed on ‘the dangerous classes’ that are created by the ever-increasing inequality and income differences, and the downgrading of social welfare services.

## 8. A REFLECTION: CRIME POLICY IS LIKE GARDENING

Crime policy and gardening share common features. Both need to be cultivated systematically, or they will perish. Gardens are pieces of art, constructed with much effort from the wilderness to resemble the paradise lost, The Garden of Eden. To modify forest wilderness into a garden might have taken a millennium. If the garden is abandoned, it will be ruined rapidly, sustainability will be lost, and the garden will soon deteriorate into wilderness again.

The garden represents an attempt to return to Eden from which Adam and Eve were expelled: to a world without sin/crime. In the garden, one is, in his thoughts, able to return to the innocence of Paradise that is not troubled by

everyday sorrows and duties. This is what an emancipated crime policy also wishes to achieve ultimately, albeit that it is simultaneously understood that this is just a utopian objective. Thus, while we have to strive for the Garden of Eden, we must also accept that in real life, only a pale approximation may be possible to reach.

## 9. NEW APPROACHES: POSITIVE CRIMINAL POLICY AND RESEARCH TO SUPPORT THIS

Even if the future does not look promising, we do not need to promote a negative crime policy. It could still be possible to develop a positive crime policy that embraces and enhances the positive elements of our society: civil society, NGOs, the welfare state, family, societal policy in broad terms, and trust. Research to this end is a must.

Also, NGOs involvement is a must, not for their free resources, but for both theoretical and pragmatic reasons: compared to authorities, the third sector is more capable of creating bonds and trust that are necessary for confidence-based co-operation with outcasts and for civic actions. If von Liszt dared to maintain that 'Good social policy is the best crime policy', we could be slightly more modern and replace 'social' with 'societal'. This means that the welfare state must be protected. It is good for everyone, also for the privileged. Or put the other way round, increased polarisation is eventually against everybody's long-term interest.

In such a situation, punishment should play a role that is proportional to the role of the perpetrator in the creation of crime. Also, if unavoidable, punishment should be linked with constructive elements that help to find ways out of the unpleasant situation, rather than making it worse. In this connection, positive sanctions should be studied seriously.

Trust-based approaches should be promoted because without the cooperation and participation of the general public, including potential offenders, authorities left on their own are quite helpless. Overall, trust in the legitimacy of the system is becoming a central objective of social development. In a democratic society, force and repression are not readily acceptable, and Durkheim's 'organic solidarity' to reign requires rules that are shared and accepted by all.

The requirement of fair and equal treatment, as accepted for suspects, must also extend to crime victims – satisfied victims play an important role in how the legitimacy of the system is created and maintained. Similarly, minorities must be taken on board rather than confronted and discriminated against as ‘the good enemy’. They must be provided fair chances to receive their share of the good things offered by the society.

If this does not happen, there are also no ethical grounds to expect and require from them loyalty to the system.

Trying to develop a positive criminal policy is to take seriously Mohandas Gandhi’s thesis: “With an eye for an eye, eventually we all are going to be blind”.

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