Facets of control:
Criminal justice regimes in analysis

Andrea Kretschmann in collaboration with Olga Galanova

»I´ll be right back.« These are the words Solon, ruler of Athens, wrote at the top of Athen's first comprehensive positive law. Around 594 B.C.—the traditional yet controversial date—he set his laws into writing. And then he left. The citizens had no other choice than to tackle the legal provisions on their own. For Solon had obtained a ten-year break from the Athenians in order to avoid the stampede of people who, when

> the laws of Solon [were] put into operation […] would come to him every day with praise or censure of them, or with advice to insert something into the documents, or take something out. *Very numerous, too, were those who came to him with inquiries and questions about them, urging him to teach and make clear to them the meaning and purpose of each several item.* (Plut. Sol. 25.4–5;[1] emphasis A.K.)

The law, as we learn from Plutarch´s biography of Solon, had to necessarily, if only preliminarily, be interpreted *by the citizens themselves* during the temporary absence of the lawmaker.

It is barely different from determining the relationship between the »force of law« (Derrida 1991) and that institution whose role it is to enforce penal law: the police. Legal norms are always abstract and require substantiation—whereby in contemporary constitutional systems, the police, it must be emphasized, has no competence at all in the further development of laws. A central insight of the Labeling Theory developed by social science oriented, self-proclaimed critical criminologists of the

---

1   See also http://perseus.uchicago.edu/perseus-cgi/citequery3.pl?dbname =GreekFeb2011&getid=1&query=Plut%20Sol.%2015, accessed April 18, 2013.

1970s and 1980s in the USA, Germany, and other countries was, however, to show that the police—regardless of the restraints of the separation of powers in a modern state—themselves have a share in the constitution of their subject matter (see, for example, Becker 1981; Sack 1979). If we reduce the subject matter of criminology to »law-making, law-breaking and reactions to law-breaking« (Sutherland and Cressey 1974, 21) then the »reactions to law-breaking« as a dependent variable were, from then on, called into question inasmuch as they were mere reactions. In continuation of this argument, researchers, especially those arguing from a post-structuralist perspective, stressed the fact that the police themselves contribute indirectly to the maintenance, genesis or transformation of criminal law, legal proceedings or also implementation of norms (see Hempel 2010; Krasmann 2008). This argument is based on the observation that police activity must always be described as a normative and standardizing activity. Every activity that checks and observes—the rough description of police work throughout history and today—refers to a rule which necessarily assumes a measure of evaluation. Without a norm, as Emile Durkheim showed early on ([1895] 1984, 141–64), there is no deviation and control becomes unfeasible. Thus there are certain ideas of norm and deviation—and of security and danger—which suggest either problems or, to the contrary, that everything is safe and corresponds to the intended order (Kretschmann 2012, 321–22). It was Michel Foucault who showed that (police) control always assumes knowledge—conceptions of people, for example, that lend information about »criminals«—in order to generate, in the same vein, permanent knowledge (Foucault 1977). The etymology of the concept of control is significant in this context. »Contra« (against) and »rolatus« (roll, register)—literally »against the roll,« or »against the register«—was the Latin term for a recording practice of double bookkeeping in the Middle Ages. By the end of the 12th century, it was translated as »contre-rôle« (Fr.) or »counter role« (Engl.), and indicated the person responsible for checking the records of the export and import of funds and goods (Kluge 2001, 525). The term refers to the creation and storage of information according to a certain pattern and entered into a register so that the information can later be retrieved for the purpose of comparison. In

short, it describes the creation of an archive. To this end, many historical and contemporary studies from the field of cultural science refer to the central importance of techniques and artefacts such as files, forms or databases as essential controlling and ordering techniques for modern societies (e.g. Becker 1990; 2002; 2005; Habermas 2008; Meßner 2010; Vismann 2000). Such material artefacts demand specific patterns of action on the part of the controllers and thus become an integral component of social practice. They therefore contribute to a practical sense (Bourdieu 1987) about the whether, when and how of police investigations and interventions, and their implementation.[2] Similar to Plutarch´s description of Solon, the lawmaker here appears to be temporarily absent, while its voice seems to echo loudly (see Vismann 2012, 30–40). The police (just as any other criminal justice actor) are not to be understood as »pure« legal addressees within the state administration, who merely enforce the law as laid down by the lawmakers. Rather, their activities are associated with the constitution of those laws which they think they are only following. Based on penal regulations, it is determined how to deal with »criminals,« while the police and/or criminal justice practice actually creates the law enforcement »needs« by means of their own activities. Although such »interpretations« by the police, in contrast to the situation of the ancient Greeks, may be determined by the courts, police control must in this respect, beyond the street level of police practice, be ascribed all meanings of the word: to dominate, to direct, to manage (cf. Boudon and Bourricaud 1991).

This mechanism seems to develop particular force during times in which police measures generate a certain focus on prevention, as we have been

---

2   A reservation must be added to »whether« here, since the principle of legality is in force for the police in some judicial systems. In Germany, for example, every initial suspicion held by the police *must* be pursued according to Section 152 of the German Code of Criminal Procedure (the StPO). But even in such countries, there is some leeway: for example socially marginalized groups such as immigrants are checked by the police far more often than are Germans (Mansel and Albrecht 2003). Another example is the police pragmatically looking the other way in matters of petty crimes in order to lessen their workload.

able to see in basically all Western countries for the last three decades or so. Along with profound transformations in law, statehood, and the understanding of (internal) security (Belina et al. 2012), more intensively than ever attempts are being made to recognize and prevent the arise of criminal activity (Edwards and Hughes 2005, 353)—of course with differences in intensity depending on the type of offence (Dollinger and Kretschmann 2013). According to Ulrich Bröckling (2008, 40), »(p)recautionary practices« may be »presumably as old as mankind.«[3] The systematization of precaution must however be classified as a phenomenon specific to modernity. It was not until the seventeenth century that populations could be counted with the aid of statistical surveys, which allowed the consideration of people as a social entity (Hacking 1990). A »sense of danger« surrounding the government of the people (Engell, Siegert and Vogl 2009) succeeded in breaking through in the nineteenth century, parallel to industrialization and the corresponding rise in population. From this point on the people, in keeping with the development of the concept of a welfare state, are assumed to be in need of support and protection.

Since the end of the 1970s and the beginning of the 1980s, however, this understanding of the social as ensuring the welfare of the populace has been subject to a transformation—as has, concomitantly, criminal policy. Social scientists describe this in terms of a detachment from the inclusive, welfare-state direction of the criminal justice system (for one example of many see Garland 2001).[4] If what is known as penal welfarism

---

3   Translations from the German by A.K. unless noted otherwise.

4   Criminal policy cannot be seen here as an isolated aspect. It »is bound to paradigms which are broadly anchored in culture and also characterize the dealings with other social problems, such as poverty or unemployment« (Dollinger and Kretschmann, forthcoming). Social and criminal policies in particular form a »single policy regime aimed at the governance of social marginality« (Beckett and Western 2001, 46). The development outlined here must therefore, regardless of the specifics of changes in different countries, be brought together with a more general development: that of the incipient reconstruction of the regime of the welfare state (see Lessenich 2009).

was aimed primarily at insuring individuals »against risks that society imposed upon them«—for example against the unequal distribution of resources—the need for the »defense of society against the individual who threatens it« has now moved to the foreground (Donzelot 1995, 54–55; see Selmini 2005, 309). The importance of individual diagnostics decreases; instead, monitoring gains relevance in (potentially) dangerous settings; of spaces or situations as well as of dangerous populations. In short, the concern for the individual yields to the primacy of the creation of security. Therefore, along with the regulation of the »objective« security situation, from the 80s onward, measures have emerged that are designed to deal with the population's feeling of security (see Peters 1998; Maillard and Rocheé 2004; Pauwels and Pleysie 2005; Massumi 2010). The expressed goal of such criminal policies is to create a social climate in which order and a trust in norms is rebuilt and in which no one feels unsafe. It is a criminal policy that puts much more than delinquency into the actors' field of vision: begging, idling at consume-oriented spaces without consuming anything, any behavior which could be considered »disorderly,« »noticeable« or »abnormal«—all become public or private policing tasks (for one example of many see Legnaro 1997). The criminal justice system increasingly operates in a regulatory manner through this focus on such »incivilities« (van Swaaningen 2005, 294).

The boundaries of the principle of police control seem to have blurred—temporally, spatially and even in terms of personnel. This becomes clear in expressions that act as prognoses and diagnoses of the present such as »security society« (Legnaro 1997; Singelstein and Stolle 2008) or »culture of control« (Garland 2001). The vision of the enlightened criminal law reformer Cesare Beccaria of a penal law that extends far beyond itself—understood as a power that should »follow every citizen as does a shadow the body« ([1966] 1988, 138) seems surprisingly contemporary. When criminal justice measures begin long before breaches of law take place or even function completely independently, judicial terms remain necessarily underdetermined due to the vagueness of policing activies, and are situatively variable as regards

the will of the lawmaker. One example is the figure of the potential offender (Gefährder, literally »endangerer«) in German criminal policy. Any person categorized as such may be put under observation without their knowledge, although there is no concrete threat or suspicion that would be relevant in a court of law. It is enough »when certain facts justify the assumption that they will commit a politically motivated serious criminal offence, especially as defined in Section 100a StPO,«[5] whereby Section 100a of the StPO, the German Code of Criminal Procedure names twenty different groups of criminal offences. In such cases, what is systematically missing in the law is a »clearer and more exact message and mediability,« as Larenz ([1960] 1991, 313) formulates in his juristic methodology for the interpretation of law—which makes the aspect of reference to extrajudicial norms even more central as regards police work.

Within the context of the impressions made by this—without a question—remarkable extension of the »police principle,« one current trend in research must be taken into account. Said tendency presents criminal policy developments in a peculiar coherence, so that the impression is created that crime and insecurity function permanently as a trump card that will always win in a securitized discourse (see Fuchs and Kretschmann 2012, 421). Especially in sociology, but also in history—of course always in reference to and in interaction with interdisciplinary and postdisciplinary research fields such as security studies, urban studies, migration studies or surveillance studies—in many scientific works, criminal policies and crime control appear to be relatively one-dimensional and self-contained. Not only are they depicted in relatively identical ways in different fields, but they also constantly and inevitably seem to amalgamate into the social (for a critical analysis of this trend see Fuchs and Kretschmann 2012; Kreissl and Ostermeier 2010; Rothe and Schmieder 2010; Wiedemann 2011; Zedner 2001). Such analyses, however, which in extreme cases transport, albeit with critical intentions, a narrative of a threatening world of total control, do not always do justice

---

5   *German Bundestag Document* 16/3965, December 22, 2006.

to the complexity of the developments in the field of criminal justice, including police work. Neither does the security society exist, and here we conform to the argumentation of the prognosticators and diagnosticians named above as regards content, nor is there a complete culture of control (see Kreissl and Ostermeier 2007). Not only is the resonating voice of the lawmaker hardly ever heard uniformly within police institutions; measures are not at all uniformly implemented, and there are always problems in implementation.

But how can this analytical tendency towards uniformity and dystopian visions be explained? Certainly not without a look at the favored theories and dynamics in this field of research; namely, a series of poststructuralistic approaches, at whose center lies an especially broad concept of power, as well as a special interest in, simply put, internalized forms of control.

Neither the theoretical approaches nor the research interests are problematic in themselves. For a long time they even served to fill a gap in social science criminology, and functioned for a while as a corrective, which is why they became so influential in this field and even, as in Germany, hegemonic. In this respect, in terms of the history of the discipline, they had an important function. First and foremost the Foucauldian concept of power as a strategic and productive resource went far beyond Max Weber's notion of the same. Functioning as a dynamic element within as well as outside of the state apparatus, power could be seen as an element »which is permanently created even in the smallest cells of society« (Schroer 2000, 113), power could be viewed initially as a strategic and productive resource. The focus was no longer only on how the actors of the state monopoly of violence enforce the state institutionalized »will, also against the resistance of others,« to use Max Weber's words (1980, 28), but rather how state and quasi-state institutions managed to norm bodies and identities (see Foucault 1977). The police and other criminal justice practitioners were from now on analyzable not only by means of negative sanctions, but could also be associated with subjects' embodiment of criminal justice specifications. Following the Foucault's late governmentality studies (for example Dean

1999; Rose and Miller 1992; Rose 1999; Lemke 2011), an equally broad but somewhat differently expressed concept of power moved into focus—namely governing as leading or managing people (Menschenführung). It was the strength of this broad concept of government that it could highlight »the connection between abstract political rationalities and the microtechniques of everyday life« (Lemke 2000, 40) as the correlation of external control and self-regulation. By shifting »the reciprocal constitution and systematic coupling of power techniques, forms of knowledge, and subjectification processes into the center of the investigation« (Lemke 2000, 31), it could be shown how policies and politics of crime and security were able to motivate actions on the micro-level in line with a specific governmental rationality. With this concept of a responsible readiness for self-normalization, which Niklas Rose famously designated »governing by freedom,« it was possible to analyze the way in which control undergoes an intensification by not only remaining effective far beyond the moment of controlling observation, but also by inciting independent assimilative actions in regard to permanently changing normalities. By the same token, it was possible to recognize and analyze, against this backdrop, how the logic of governing »through crime« (Simon 2007) or »security« (Valverde 2001) could surface in other areas of society, far from the fields originally associated with policing.

The »discovery« of such »soft« forms of control in criminal justice shaped certain research interests for a long time and these aimed to identify this principle in all possible areas of society. At the same time, having established »ruling system(s) and counter-regime(s) on the same level« (van Dyk 2012, 206) clearly complicated the analysis of elements such as »not-control.« The assumption that programs and rationalities concerned with the creation of conformity incorporate themselves in individuals makes it nearly impossible »to (still) distinguish the active, self-determined subject from a socialized member of society« (Bröckling and Krasmann 2010, 31). It is almost as if the problem of the criminological theorists of social control in the 1970s and 1980s—the analytical delimitation of social control—is repeating itself; of course in a changed, updated form. At that time too, a theoretical innovation—the designa-

tion of people as criminals—caused stigmatizing effects and after-effects that harbor the danger of ultimately making us unable to distinguish social control from social order or social organization. Just which of the countless designation processes, including subsequent self-reinforcing tendencies, had control character and which did not could hardly be determined analytically. For this reason Stanley Cohen (1985, 2) criticized the concept of social control as an insignificant »Mickey Mouse concept« and, like many scientists of that time, insisted on discarding it completely as a sociological concept (see for example Lowman et al. 1987, 4).

Of course, neither critical criminology nor, before it, the sociology or history of deviance and social control can be reduced to the Labeling Theory. Nor can current related research within history and sociology be broken down into the various »Foucaults.« Nevertheless a certain tendency can be perceived, illustrated by the social science research on criminal and security policy outlined briefly above, and for the argumentative goals of this text this is the decisive point. For in light of this background, it can be shown that the broad Foucauldian understanding of power, at first so revolutionary for the results of research on crime and security, seems to have created a phenomenon that Thomas Lemke, in another context, termed »implicit finalism.« This denotes the problem of assuming »a continuous rationalization and making more effective« of (self-)control (Lemke 2000, 41), and thus suggesting an increasingly deterministic tendency in the character of strategies of (self)regulatory power. Additionally, in other studies police control and/or principles of police control seem to be reflected upon in the same way in various social fields or in regard to various social groups. Conversely, in the same manner these research-specific dynamics occasionally inspire works without any special theoretical implications »as long as the relevant scientific community accepts without question the particular problem-solution« (Kuhn [1962] 2012, 47), to put it with Kuhn in his early paradigm theory—especially when they are similar to common sense ideas or images presented by the media. The relevance of the analysis of »liberal« forms of control is at present undisputed; as

quite a lot of very important studies show. It does however seem that in certain dynamics its banalization has overshot its corrective function.

Counter-tendencies therefore prove the rule. In the past years, more and more attempts have been made to counteract this development—even inside of the above-mentioned theoretical paradigms—and many papers, even those by social scientists dedicated to this paradigm, were never part of the problem illustrated here. For in contrast to earlier conceptions of social control, subjects in the Foucauldian conception of power are not conceived as »reactive fools« (von Trotha 1977). In the words of Foucault, power, because it is ubiquitous and not tied to a certain class, is unimaginable without resistance (Foucault 1987, 255–56 and 259–61). In a similar manner, Judith Butler has shown that being »subjected« both subjugates and empowers individuals at the same time (2001, 17). It becomes clear against this backdrop that the »sur-veilled« individual, despite the controlling interrogation and observance carried out »from above« that the term appears to suggest, can be conceptualized not only as an object of control, but also as an active element in a complex context. On the one hand, this »subject« paradoxically practices social control him- or herself (sometimes by an individual interpretation of the law) and on the other hand the individual uses techniques that could expand his or her scope of action. Similarly, Andreas Reckwitz has shown that discursive and non-discursive patterns of order must remain hybrid in their constitution (2006). Contradictions, objections, and counter-projects, as well as quiet moments of refusal, rather form a part of the constitution of practices of control and of political programs. And contradictions exist not only between controller and those controlled, but also between and within controlling institutions and their actors. Capturing the plurality of criminal justice programs and measures and the willfulness of the subjects addressed by social control is therefore essential to providing information about the power of controlling activities, about problems in their execution or also the conditions of their »success.« Polyphonies are constitutive for the governing of crime and security in an agonistic way; rather than blocking one another, they enter into a mutual battle and mutual incitement (see Foucault 1987, 256;

O'Malley 1996). In execution as well as in resistance, control has many facets.

»The Politics of Control and Resistance« is therefore the topic of this special issue. With it, we wish to take a critical look at the analysis of internal and external losses of control, oppositions, resistances, etc. in empirical analyses of criminal justice systems and of police practice in particular. For tendencies—in the most extreme cases—of certain negative teleologies of control and progress in some analyses, or the standardizing identification of the implementation of the same control principle in different social areas, hold the danger of mirroring external conditions in the research instead of, as Heinz Steinert expressed it (2008, 162), using the perspective of research to reflect on what appears to be completely normalized or self-evident. That applies e.g. to »crime« or »criminals,« but also to non-articulations of certain aspects of criminal justice. In both cases, a requisite, object-related openness for perspectives, concepts, and categories is sometimes missing. Research activities in criminal justice are thus not constituted in a way that enables empirical data to oppose and irritate theory. The central question is therefore: how can an alternative picture be drawn that is capable of making visible the heterogeneity and/or the hybrid character of ideas, programs, and measures of control? And: How can we work on criminological topics without analytically obstructing spaces of possibility for resistance, opposition etc.?

The articles in this issue attempt to give answers to these questions. Some contributions have a strong theoretical focus, but articles are also included with a clearly empirical aim regarding the analysis of criminal justice regimes. The authors make allowance for the historical and current developments mentioned above when they ask how police or criminal justice control has been carried out historically and how it is carried out in the present. They investigate the consequences and effects of law enforcement beyond changes in laws and crimes; also taking into account the fact that (police) control always also comprises inconsistencies, contradictions and oppositions, just as it will always be confronted with covert or open resistance from different social sectors.

Just as interesting as analyses of the manner in which controlling measures and reflectivity function are investigations that focus on the malfunctioning or failure of controlling activities. Intended or unintended breakdowns of the controlling process, functional errors, inconsistencies, and overt or covert opposition constitute only a few examples. In all contributions, attention is paid to the reverberating voice of the lawmaker, with all of its ambivalence and inconsistencies.

The first article devotes itself to the topic in a mainly theoretical manner. **Matthias Rothe** refers to the interminability of sovereign control. His article therefore focuses on the critique of the concept of sovereignty of the kind that has evolved as a result of the reception of Carl Schmitt, Walter Benjamin and Giorgio Agamben. Within the field of analysis of the criminal justice system, this concept lies at the heart of a »critical sovereignty discourse,« wherein it is a key concept. Rothe shows that a crucial stage of the genealogy of this discourse is Kant's attempt to supplant the element of personal force, traditionally the hallmark of sovereignty, with the law. Borrowing from Jacques Derrida and late Michel Foucault, he therefore calls for a modification of the concept of sovereignty. He argues that the present »critical sovereignty discourse« would profit by applying the assumption of the ontological impossibility of sovereign power. Rothe illustrates this by taking two aspects of the US criminal justice system—prosecutorial discretion and mandatory sentencing—as an example. **Tiffany Bergin's** article shows how certain rationalities and practices can become dense. It critically assesses the reception and application of cost-benefit analysis (CBA) in penal and criminal justice in the Anglo-American countries, which have found a heightened relevance within the last three decades. Today, economic thinking plays an important role in the way cases in the criminal justice systems are handled—whether or not this happens on the basis of theory-led incentive programs or has other roots. Bergin begins with the history of CBA in different policy domains and deals in more depth with ways of applying CBA in criminal justice. In contrast to Bergin, problems of control are the point of departure of **Klaus Weinhauer's** historical contribution. He draws on police culture and police practice in West

Germany and England in the period from the 1960s to the 1980s. In his analysis, the author shows how police practices were assailed in the 1980s by local protests that had transformed into urban protest while tenacious police cultures made it impossible to rashly convert police tactics. The threat of a loss of control could be dealt with only at a very late stage. However, in the end, the case studies in Weinhauer's paper demonstrate the successful adjustment of police control tactics to social change. Weinhauer's comparative study enables him to mark differences between police cultures and practices, but also to show similarities. The contribution of **Andreas Glaeser**, in contrast, illustrates a process that in the end led to a collapse of control. His example is the secret police of the former GDR, known as the »Stasi.« As is well-known, in 1989 the civil rights movement released the crucial impulse that led to the fall of the GDR. Glaeser develops an understanding of institutions as being constituted through ongoing and dialogic, knowledge-based negotiations that can condense within a certain logic, but at the same time always stay polyphonic. Against this background, Glaeser can argue that the knowledge produced by the Stasi and the coercion it exercised did little to enhance the power of the ruling party. To the contrary, its actions helped to nourish a fantasy of control which ultimately undermined the party state's intelligence capabilities and aided the radicalization of dissidents.

References

Beccaria, Cesare. (1966) 1988. *Über Verbrechen und Strafen: Nach der Ausgabe von 1766 übersetzt und herausgegeben von Wilhelm Alff.* Reprint, Frankfurt am Main.

Becker, Howard S. 1981. *Außenseiter: Zur Soziologie abweichenden Verhaltens.* Frankfurt am Main.

Becker, Peter. 1990. *Leben und Lieben in einem kalten Land: Sexualität zwischen Ökonomie und Demographie; das Beispiel St. Lambrecht, Steiermark 1600–1850.* Studien zur Historischen Sozialwissenschaft 15. Frankfurt am Main.

— 2002. *Verderbnis und Entartung: Zur Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis.* Göttingen.

— 2005. *Dem Täter auf der Spur: Eine Geschichte der Kriminalistik.* Darmstadt.

Beckett, Katherine, and Bruce Western. 2001. »Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy.« In *Mass Imprisonment: Social Causes and Consequences*, edited by David Garland, 35–50. London.

Belina, Bernd, Lars Ostermeier, Andrea Kretschmann, and Reinhard Kreissl, eds. 2012. Introduction to *Kritische Kriminologie und Sicherheit, Staat und Gouvernementalität.* Weinheim.

Boudon, Raymond, and François Bourricaud. 1992. *Soziologische Stichworte.* Opladen.

Bourdieu, Pierre. 1987. *Sozialer Sinn: Kritik der theoretischen Vernunft.* Frankfurt am Main.

Bröckling, Ulrich. 2008. »Vorbeugen ist besser…Zur Soziologie der Prävention.« *Behemoth: A Journal on Civilisation* 1: 38–48.

Bröckling, Ulrich, and Susanne Kransmann. 2010. »Ni méthode, ni approche: Zur Forschungsperspektive der Gouvernementalitätsstudien—Mit einem Seitenblick auf Konvergenzen und Divergenzen zur Diskursforschung.« In *Diskursanalyse meets Gouvernementalitätsforschung: Perspektiven auf das Verhältnis von Subjekt, Sprache, Macht und Wissen*, edited by Johannes Angermüller and Silke van Dyk, 23–43. Frankfurt am Main.

Butler, Judith. 2001. *Psyche der Macht. Das Subjekt der Unterwerfung.* Frankfurt am Main.

Buzan, Barry, Ole Waever, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis.* Boulder.

Cohen, Stanely. 1985. *Visions of Social Control.* Cambridge.

Dean, Mitchell. 1999. *Governmentality. Power and Rule in Modern Society.* London.

Derrida, Jaques. 1991. *Gesetzeskraft: Der mystische Grund der Autorität.* Frankfurt am Main.

Dollinger, Bernd, and Andrea Kretschmann. 2013. »Contradictions in German Penal Practices: The Long Goodbye from the Rehabilitation Principle.« In *Punishment in Europe: A Critical Anatomy of Penal Systems*, edited by Vincenzo Ruggiero and Mick Ryan, 132–56. Basingstoke.

— Forthcoming. »Social Work and Criminal Justice.« In *European Social Work—A Compendium*, edited by Fabian Kessl, Walter Lorenz, and Hans-Uwe Otto. Opladen.

Donzelot, Jaques. 1995. »Wiederkehr des Sozialen—Von der passiven Sicherheit zur aktiven Solidarität.« In »Wissen und Macht: Die Krise des Regierens.« Special issue, *Tüte*: 54–59.

Durkheim, Émile. (1895) 1984. »Regeln zur Unterscheidung des Normalen und des Pathologischen.« In *Die Regeln der soziologischen Methode*, 141–64. Frankfurt am Main.

Dyk, Silke van. 2012. »Poststrukturalismus. Gesellschaft. Kritik: Über Potenziale, Probleme und Perspektiven.« *Prokla 167* 42 (2): 185–210.

Edwards, Adam, and Gordon Hughes. 2005. »Comparing the Governance of Safety in Europe: A Geo-historical Approach.« *Theoretical Criminology* 9 (3): 345–63.

Engell, Lorenz, Bernhard Siegert, and Joseph Vogl, eds. 2009. *Gefahrensinn.* Munich.

Foucault, Michel. 1977. *Überwachen und Strafen.* Frankfurt am Main.

Foucault, Michel. 1987. »Das Subjekt und die Macht.« Afterword to *Michel Foucault: Jenseits von Strukturalismus und Hermeneutik*, edited by Hubert L. Dreyfus and Paul Rabinow, 243–61. 2nd ed. Weinheim.

Fuchs, Walter and Andrea Kretschmann. 2012. »Datenschutzdiskurs und -recht in der Kritik.« *juridikum*, no. 2: 421–27.

Garland, David. 2001. *The Culture of Control.* Chicago.

Habermas, Rebecca. 2008. *Diebe vor Gericht: Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert.* Frankfurt am Main.

Hacking, Ian. 1990. *The Taming of Chance.* Cambridge.

Hempel, Leon. 2010. »Das Versprechen der Suchmaschinen: Der europäische Sicherheitsraum als Sichtbarkeitsregime.« In »Sichtbarkeitsregime: Überwachung, Sicherheit und Privatheit im 21. Jahrhundert,« edited by Leon Hempel, Susanne Krasmann, and Ulrich Bröckling. Special issue, *Leviathan*, no. 25: 124–42.

Kluge, Friedrich. (1983) 2001. *Etymologisches Wörterbuch der deutschen Sprache.* 24th ed. Revised and edited by Elmar Seebold. Berlin.

Krasmann, Susanne. 2008. »Outsourcing Torture: Zur Performanz von Rechtsstaatlichkeit.« In *Gouvernementalität und Sicherheit: Zeitdiagnostische Beiträge im Anschluss an Foucault*, edited by Patricia Purtschert, Katrin Meyer, and Yves Winter, 19–48. Bielefeld.

Kreissl, Reinhard, and Lars Ostermeier. 2007. »Globale Trends und lokale Differenzen—Kontrolle und politische Steuerung in Hamburg und München.« In »Kontrollkulturen: Texte zur Kriminalpolitik im Anschluss an David Garland,« edited by Henner Hess, Lars Ostermeier, and Bettina Paul. Special issue, *Krim J: Kriminologisches Journal* 39 (9): 137–51.

— 2010. »Wer hat Angst vorm großen Bruder? Datenschutz und Identität im elektronischen Zeitalter.« In »Sichtbarkeitsregime: Überwachung, Sicherheit und Privatheit im 21. Jahrhundert,« edited by Leon Hempel, Susanne Krasmann, and Ulrich Bröckling. Special issue, *Leviathan*, no. 25: 27–52.

Kretschmann, Andrea. 2012. »Das Wuchern der Gefahr: Einige gesellschaftstheoretische Anmerkungen zur Novelle des Sicherheitspolizeigesetzes 2012.« *juridikum*, no. 3: 320–33.

Kuhn, Thomas S. (1962) 2012. *The Structure of Scientific Revolutions.* Chicago.

Larenz, Karl. (1960) 1991. *Methodenlehre der Rechtswissenschaft.* Vol. 6 of *Enzyklopädie der Rechts- und Staatswissenschaft.* 6th ed. Berlin.

Legnaro, Aldo. 1997. »Konturen der Sicherheitsgesellschaft: Eine polemisch-futurologische Skizze.« *Leviathan* 25 (2): 271–84.

Lemke, Thomas. 2011. *Foucault, Governmentality, and Critique: Cultural Politics and the Promise of Democracy.* Boulder.

Lessenich, Stefan. 2008. *Die Neuerfindung des Sozialen: Der Sozialstaat im flexiblen Kapitalismus.* Bielefeld.

Lowman, John, Robert J. Menzies, and T. S. Palys, eds. 1987. *Transcarceration: Essays in the Sociology of Social Control.* Aldershot.

Maillard, Jaques de, and Sebastian Roché. 2004. »Crime and Justice in France: Time Trends, Polices and Political Debate.« *European Journal of Criminology* 1 (1): 111–15.

Mansel, Jürgen, and Günter Albrecht. 2003. »Migration und das kriminalpolitische Handeln staatlicher Strafverfolgungsorgane: Ausländer als polizeilich Tatverdächtige und gerichtlich Abgeurteilte.« *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 55 (4): 679–715.

Massumi, Brian. 2010. »Angst (sagte die Farbskala).« In *Ontomacht: Kunst, Affekt und das Ereignis des Politischen.* Berlin.

Messner, Daniel. 2010. »Erkennungsdienstliche Behandlung verdächtiger Personen: Über technisierte Identifizierung durch Fotografie, Anthropometrie und Daktyloskopie.« In *Ermitteln, Fahnden und Strafen: Kriminalitätshistorische Studien vom 16. bis zum 19. Jahrhundert*, edited by Andrea Griesebner and Georg Tschannett, 225–49. Wien.

O'Malley, Pat. 1996. »Indigenous Governance.« *Economy and Society* 25 (3): 310–26.

Peters, Helge. 1998. »Die Inszenierung ›Innere Sicherheit‹: Zur Einleitung in das Thema.« In *Inszenierung: Innere Sicherheit; Daten und Diskurse*, edited by Ronald Hitzler and Helge Peters, 8–23. Opladen.

Pauwels, Lieven, and Stefaan Pleysier. 2005. »Assessing Cross-Cultural Validity of Fear of Crime Measures through Comparisons between Linguistic Communities in Belgium.« *European Journal of Criminology* 2 (2): 139–59.

Reckwitz, Andreas. 2006. *Das hybride Subjekt: Eine Theorie der Subjektkulturen von der bürgerlichen Moderne zur Postmoderne.* Weilerswist.

Rothe, Matthias, and Falko Schmieder. 2010. »Kein Ende der Souveränität? Zu einigen Tendenzen der (kritischen) akademischen Theorieproduktion.« In *Jenseits von Überwachung: Strategien der Kontrolle und ihre Kritik*, 5–18. Philosophische Gespräche 20. Berlin.

Rose, Nikolas. 1999. *Powers of Freedom: Refraiming Political Thought*. Cambridge.

Rose, Nikolas, and Peter Miller. 1992. »Political Power Beyond the State: Problematics of Government.« *British Journal of Sociology* 43 (2): 173–205.

Sack, Fritz. 1979. »Neue Perspektiven in der Kriminalsoziologie.« In *Kriminalsoziologie*, edited by Fritz Sack and René König, 431–77. 3rd ed. Frankfurt am Main.

Singelnstein, Tobias, and Peer Stolle. 2008. *Die Sicherheitsgesellschaft: Soziale Kontrolle im 21. Jahrhundert*. 2nd ed. Wiesbaden.

Schroer, Markus. 2000. *Das Individuum der Gesellschaft: Synchrone und diachrone Theorieperspektiven*. Frankfurt am Main.

Selmini, Rosella. 2005. »Towards Cittá Sicure? Political Action and Institutional Conflict in Contemporary Preventive and Safety Policies in Italy.« *Theoretical Criminology* 9 (3): 307–23.

Simon, Jonathan. 2007. *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York.

Steinert, Heinz. 2008. »Die Widerständigkeit der Theorie.« In *Das Elend der Universitäten: Neoliberalisierung deutscher Hochschulpolitik*, edited by Jens Sambale, Volker Eick, and Heike Walk, 155–70. Münster.

Sutherland, Edwin H., and Donald R. Cressey. 1974. *Criminology*. 9th ed. Philadelphia.

Swaaningen, René van. 2005. »Public Safety and the Management of Fear.« *Theoretical Criminology* 9 (3): 289–305.

Trotha, Trutz von. 1977. »Ethnomethodologie und abweichendes Handeln: Anmerkungen zum Konzept des ›Reaktionsdeppen.‹« *Kriminologisches Journal* 6: 98–115.

Valverde, Mariana. 2001. »Governing Security, Governing Through Security.« In *The Security of Freedom: Essays on Canada´s Ant-terrorism Bill*, edited by Ronald J. Daniels, Patrick Macklem, and Kent Riach, 83–92. Toronto.

Vismann, Cornelia. 2000. *Akten: Medientechnik und Recht*. Frankfurt am Main.

—   2012. *Das Schöne am Recht: Erweitert um die Trauerreden von Friedrich Knittler und Werner Hamacher*. Berlin.

Weber, Max. (1921) 1980. *Wirtschaft und Gesellschaft*. 5th ed. Tübingen.

Wiedemann, Gregor. 2011. *Regieren mit Datenschutz und Überwachung: Informationelle Selbstbestimmung zwischen Sicherheit und Freiheit*. Berlin.

Zedner, Lucia. 2010. »Dangers of Dystopia in Penal Theory.« *Oxford Journal of Legal Studies* 22 (2): 341–66.

Sovereignty unchained and chained: Theorizing control through »sovereignty«

Matthias Rothe

The sovereignty turn in critical theory

»A remarkably under-theorized paradigm shift has taken place in critical thought in recent years, and sovereignty […] has emerged as the concept of the moment,« Ronald C. Jennings has recently stated (Jennings 2011, 24).[6] A critique of control, it appears, cannot but take as point of departure some concept of sovereignty. This trend is all the more surprising as it coincides with a widespread admission of the end of state sovereignty in view of economic, social, legal and security concerns that, supposedly, can only be addressed transnationally and are progressively dealt with on the level of institutions that transcend the national state. The credit for saving sovereignty as an ultimate anchor-point for critical analysis, Jennings suggests, goes largely to Giorgio Agamben. Agamben has located sovereignty more deeply, so to speak, by extending its scope far beyond the state. He has reinvented the state beyond the state; through his readings of Walter Benjamin and Carl Schmitt, Jennings claims, sovereignty thinking has been established as a valuable modern tradition. Yet Agamben's rise to prominence would not have been possible without a receptive academic environment. The climate of the immediate post-Cold War period as well as institutional changes in universities contributed to the foundation of a variety of research and study programs concerned with questions of social control such as *governmentality studies*, *critical security studies* and *surveillance studies* (Rothe und Schmieder 2010, 13–16). Although these schools or programs legitimize

---

6   Only after the completion of this article was Daniel Loick's book *Kritik der Souveränität* (2012) brought to my attention. I could unfortunately not include this reference in my discussion anymore.

themselves by reference to a new transnational reality, their analyses have remained largely within the confines of a traditional understanding of sovereignty by reproducing narratives of total control. The implicit model is »control over space,« a primal dream of state sovereignty (ibid., 6–8). The prevalence of surveillance as an object of critical analysis along with a sustained interest in the visual are indicative of this (Rothe 2009). Sovereignty seems to have been transferred from the state to politics as such. Agamben then provides a coherent theoretical superstructure to these diverse new research agendas.

A factor not less important for the upswing of sovereignty theories à la Agamben was a particularly skillful rhetorical move. Agamben points to what is supposedly a blind spot of the authority of the field, that is Foucault. Foucault, he claims, dismissed far too hastily the concept of sovereignty as a point of departure for understanding modern power, instead turning to governmentality. Sovereign power and governmentality are not, however, mutually exclusive. In fact, Agamben continues, the concept of biopolitics—understood as *the* focus of governmentality[7] and as a kind of control that targets the population as well as the individual body insofar as they are both forms of biological life—would necessarily presuppose the existence of sovereignty (Agamben 2002, 15–16). These claims about the lasting relevance of sovereignty have meanwhile become commonplace. And the claim to have located Foucault's blind spot has turned into the mark of fulfilling his implicit legacy, of realizing the Foucauldian project and of being a legitimate heir. To this end, for example, Eric L. Santner remarks on Foucault's juxtaposition between monarchic sovereignty and the disciplines: »What I believe Foucault has drawn attention to here *without being fully able to name it* [my emphasis], is, precisely, the mutation of the King's Two Bodies into the People's Two Bodies« (Santner 2011, 10), that is, the survival of sovereignty after the king's death. Judith Butler likewise insists that »*what was not possible from his* [Foucault's; M. R.] *vantage point was to predict* […] that sovereignty […]

---

7   Judith Butler calls the focus on management of population »the hallmark of governmentality« (Butler 2004, 53).

under emergency conditions would reemerge in the context of govern-
mentality« (Butler 2004, 54; my emphasis). Such a reference to
emergency conditions, to the post-9/11 era, or alternatively to fascism—
which Foucault was not able to address, because, again, he did not suffi-
ciently work out the implicit potential of his own theory (Agamben 2002,
16)—is another frequent move, employed to underscore the urgency of a
return to sovereignty. The assumption is thereby taken for granted—and
imputed to Foucault—that such emergency conditions reveal the nature
of modern societies or even modernity.[8]

It might be worth noting that these strategies of appropriation are based
on a very selective use of Foucault's work, whether be it because of the
peculiarities of the publication history of his lecture courses,[9] or because
of a decision not to consider the broader context of his reflections.
Judith Butler, for example, develops her argument on the basis of a sin-
gle lecture taken from the original 1977/78 lecture series Sécurité,
territoire, population and published in isolation in 1991 under the title
»Governmentality«. Eric L. Santner exclusively uses Surveiller et punir
(1975) as well as the first volume of Histoire de la sexualité (1976; English
translation 1978), which introduces the concept of biopolitics. In
Foucault's oeuvre, however, the governmentality lecture and the first
volume of Histoire de la sexualité have an explicitly provisional and pro-
grammatic character. The concept of governmentality eventually ceases
to be a designation for a specific form of government, a government that
seeks to control and organize a population (biopolitics), and instead
becomes a tool for Foucault that allows for an analysis of monarchic,
liberal and neo-liberal regimes alike in the lectures that follow and in

---

8   Foucault discusses fascism and totalitarianism in *Il faut défendre la société*
     (1997, 213–61) as well as in *Naissance de la biopolitique* (2004a, 113–25), yet
     he seeks to understand them in their singularity. The debate to have with
     Foucault is thus less a moral one, focused on the question of denial, but
     a debate about the explanatory value of emergency conditions and
     regimes of violence.

9   The publication of Foucault's Collège de France courses only began in
     1999 and is still ongoing.

Naissance de la biopolitique (lecture series at the Collège de France 1978/79). Put differently, Foucault comes to understand each of these regimes in terms of governmentality, and each instance of governmentality represents a different form of the enactment of sovereign power. Thus, there is no need to argue for a combination of governmentality—or biopolitics—and sovereignty, since Foucault never dismissed the latter, but only shifted focus.[10] By drawing attention to the techniques, measures, and institutions of government and their reflections and justifications, he seeks to explore the weak points of political sovereignty. Each kind of governmentality is for him indicative of specific constraints on sovereignty; a defining constraint for modern sovereignty is the liberal economy. To the degree that the concept of governmentality becomes a generic and analytical term, biopolitical measures become measures among others and less a defining feature of an era.[11]

In a nutshell: Many protagonist of the *sovereignty turn* do not consider that Foucault's shift towards an understanding of political sovereignty through the techniques, measures and programs of government occurs precisely in order to trace the limits of sovereignty. Through these critics, Foucault's project is thereby reversed. Political sovereignty emerges no longer as a claim, as inexorably always already caught up in the vicissitudes of government, but it comes to precede every government, measure, law, and institution, and employs them strategically for its own preservation. This article, then, attempts a critique of such an—ultimately onto-

---

10   In the 1979/80 lecture series following Naissance de la biopolitique (1978/79), Foucault returns to the question of the source of sovereignty instead of pursuing the analysis of its enactment. He redefines his interest in sovereignty as an interest into the forms of truth by means of which sovereignty attempts to legitimate itself.

11   Foucault's reconceptualization of biopolitics corresponds to Derrida's position in his seminars on sovereignty: »I am not saying that there is no ›new bio-power,‹ I am suggesting that ›bio-power‹ itself is not new« (Derrida 2011, 330). This assumption allows for an analysis of biopolitics in its specificity.

logical—model of sovereignty by exploring moments of its genealogy and by discussing its political implications. I will propose instead to make the ontological impossibility of sovereignty—understood as self-legitimizing, indivisible, self-determining and so on—the point of departure for critical thought. I will return to Foucault's multivalent concept of governmentality as well as discuss Derrida's idea of a »divisible sovereignty« (Derrida 2009, 77) to theorize this ontological impossibility of sovereign power. Although the last part of this article seeks to illustrate the argument by two key elements of the US criminal justice system (prosecutorial discretion and mandatory sentences), the paper as a whole remains first and foremost an intervention into a theoretical superstructure.

Sovereignty: A genealogical sketch

Personal rule and state rule

Jean Bodin (1530-96), commonly called the first modern philosopher of sovereignty, defines sovereignty as the right to command, specifically as »the power to make law« (Bodin, b. 1 ch. X). The ultimate *raisons d'être* for such authority, according to Bodin and his followers, are peace, security, and the general wellbeing (happiness) of the subjects. Already before Bodin, political sovereignty had been thought of as a necessary condition for both the existence and the preservation of the community. God's relation to all earthly affairs commonly served as a model.[12] Since

---

12   Physics before Newton, inspired by Aristotle's conception of God as an unmoved mover, conceptualized the relation between the sovereign and his subjects in terms of movements and their sources. Fourteenth-century impetus theory argues for the utter dependency of all movements on their source. For example, the trajectory of a projectile is understood as an imprint of force by a sovereign source (the weapon), which then gradually declines through the resistance of the air. Thus, the original cause can still be considered as present as long as the movement lasts, or, in other words, the assumption that a kind of self-preservation or innate potential for persistence is at play here can be avoided. Both in theology and in political theory. the idea of an ongoing necessary presence and of the activity of the source of a movement in order to

the right to command by enacting laws used to be bound to a prince or the pope or the emperor, Bodin painstakingly seeks to establish command as a pure constitutive power, rooted in an unconstrained personal decision. To be sovereign, he declares, »means exemption from all laws whatsoever« (ibid.). Yet in the course of his analysis he cannot avoid putting this into perspective. The sovereign ends up being »bound by the just covenants and promises he made« (ibid.), by all laws that concern questions of honor, and »by ›honour,‹« Bodin clarifies, »I mean that which conforms with what is natural and right« (ibid.). Thus the pure constitutive power of the sovereign seems from the outset to only be possible within the confines of tradition, custom or natural rights (however defined). It is immediately caught up in a logic of repetition. Yet the constitutive act also renews itself through a continuous rupture of this logic: »owing to the variety of circumstances, of places, and persons« that »cannot be comprehended in any law or ordinance,« the law has to be adjusted, or made anew from case to case—a power transferred from the sovereign to the magistrates who will perform it in his name, according to Bodin (ibid.). Bodin does not overlook this mutual dependency between personal force—for example in the form of discretion—and the law in its abstract regularity. Already in Bodin, therefore, two dangers of (and to) sovereignty emerge: a reduction of the moment of personal force in favor of routines, norms, and laws as well as a reduction of routines, norms and laws in favor of the moment of personal force. These reductions do not dissolve the interdependency of force and law. They only naturalize order, suggesting either quasi-natural rule or uncontrollable powers at work at the price of rendering this interdependency uncontrollable. Unchecked force becomes internally unstable and so law and force are almost unavoidably overburdened with the tasks at hand. What is commonly described as almightiness comes into view here as utmost impotence. This is not to say that the effects of rule cannot be terrible anymore. Spinoza observes that power turns into violence precisely when it exceeds its own capacities. Thus divisibility and justifiability,

---

sustain the same boiled down to the idea of a *creatio continua* (Blumenberg 1996, 176–81; Foucault 2004b, 264).

what Derrida calls effects of a force inscribed by iteration, are not defi-
ciencies to eliminate; they are defining features of every sovereign power.
»There is no intrinsic legitimacy of power«[13] (Foucault 2012, 76).

Such assumptions must change, then, the direction of analysis and cri-
tique: We must endeavor »to make the non-power, the non-acceptability
of power, not the end of the enterprise, but the point of departure«
(ibid., 77). Or, in Derrida's words: »The question is not that of sovereig-
nty or nonsovereignty but that of modalities of transfer and division of
sovereignty said to be indivisible« (Derrida 2009, 291).

That there is *in fact* no »intrinsic legitimacy« and no »indivisibility« was far
from unknown to most of the early theorists of the power to rule. What
was continuously negotiated and re-negotiated in their conceptions were
precisely the »modalities of transfer and division.« Political and juridical
conceptualizations of sovereign power could always be understood as
pure claims in the ongoing struggle between local lords, cities, princes,
bishops, the emperor, the pope and so on, or as mere rationalizations
post factum, or they emerged as compromises in the first place. The fief
system with its multiple and complex dependencies and obligations was
supported by a juridical understanding of the highest power to rule—the
term sovereignty only became common in the seventeenth century[14]—as
divisible and relative. The two-sword theory was a prominent attempt to
compromise and to affirm a shared sovereignty in practice, a division
between religious and worldly powers, on a unified foundation (God).
This foundation itself became the subject of severe dispute and further
relativizations. The common reference to a supposedly Roman *lex regia*
that prescribed the transference of power (*translatio imperii*) from the pe-
ople to the king had been used since the eleventh century to argue for

---

13   All quotations from non-English sources are translated by the author.

14   *Soverain* and *souvrainetez* appear first in French in the twelfth century and
      are already used in the thirteenth century to designate rule. However,
      until the seventeenth century, Latin expressions such as *summum
      imperium*, or *summa potesta* remain the most common terms (Boldt 2004,
      99–100).

the ultimate supremacy of the worldly powers and, consecutively, within the field of worldly powers to challenge the emperor himself in favor of the princes and the princes in favor of the Third Estate (Schliesky 2004).[15] Every claim to indivisibility and legitimacy had to meet with a »reality check« and ultimately could not be maintained. Theory formation happened closely along conflict lines.

Jean Bodin's contributions to the sovereignty debate—along with those of Thomas Hobbes—can be seen as affecting a double rupture, once with the mode of knowledge production and once with the frame of reference for sovereignty. Both men went through the scholarly practice of renaissance humanism and were philosophers with a much broader audience in mind—potentially all of mankind.[16] Their conceptions, although directly informed by the horrors of civil war, were not so much direct interventions. That is, they were more immune to the demands of contemporary situations and their point of reference was a relatively new political entity: the state. They fused the power to rule with state power, abstracted from personal relations, thus making sovereignty territorial and singular. It is undoubtedly true that sovereignty in Bodin and in Hobbes remains a political program and explicitly so (Jennings 2011, 30; Schliesky 2004, 51–52), as the state is still a program too. Yet notwithstanding the state's programmatic character, claims to sovereignty became more difficult to falsify through praxis with this new frame of reference.

Throughout the nineteenth and the beginning of the twentieth centuries—with the stabilization of the state itself—state and sovereignty become almost synonymous in political theory. The element of command or personal force, previously the anchor point for questions of legitimacy, progressively fades from prominence in discussions of sovereignty. Sovereignty is re-phrased as state sovereignty, in other words, it

---

15   Compare Boldt 2004 for a comprehensive overview.

16   Gavre points out that Hobbes' did not write merely for royalists, but appealed to »the new scientific mentality, the emerging commercial class, and the Puritan dissidents« (Gavre 1974, 1450).

becomes absorbed by the law. Hans Kelsen's (1934) concept of sovereignty of the law, or constitutional sovereignty, is only the most radical expression of this and »means […] an increase of positivism towards a neutral/value-free legal order and thereby towards a neutral state« (Schliesky 2004, 105). Walter Benjamin, Carl Schmitt and others finally rediscover the moment of personal force in their critique of liberalism, notably during the social unrests, *coups d'état* and constitutional crises of the Weimar Republic, when the lack of law or its arbitrary implementation becomes a daily experience. Schmitt does so with reference to Hobbes and Bodin, that is, he goes back to a moment in time when the prince or king was not yet entirely removed from the picture. Only for Benjamin and Schmitt this conception has once and for all ceased to be a program. They end up »revealing«—either critically or affirmatively—force as the ultimate law-giver and the only real power behind the law. How then has the idea of an actual existence of an indivisible force with no other legitimacy than its own strength become plausible?

The blueprint of a discourse (a micro-genealogy)

A passage from Kant's late work *Metaphysik der Sitten* ([1798] 1900; *The Metaphysics of Morals*) can serve to illustrate the becoming natural of the force in law, a naturalization to which Benjamin, Schmitt and Agamben eventually fall prey. Through his attempt to separate law and force, the unique from the iterative, Kant unwittingly invents all the themes of the critical sovereignty discourse to come: sovereign decision, state of exception, bare life. Kant's proceeding in this passage can be seen as reflecting a historical watershed moment in political thought. The background for his reflection is a widespread disappointment with the French Revolution. In the eyes of many, debates about the legitimacy and possible partitions of the power to rule led directly to excesses of violence. The French Revolution proved that the production of political knowledge was in need of much stricter control and could not be entrusted to political parties or »the people.« Kant begins the »general annotations« concerning constitutional law (*Staatsrecht*) with the followings remarks:

Der Ursprung der obersten Gewalt ist für das Volk, das unter derselben steht, in praktischer Hinsicht unerforschlich, d. i. der Untertan soll nicht über diesen Ursprung als ein noch in Ansehung des ihr schuldige Gehorsams zu bezweifelndes Recht (*ius controversum*) werktätig vernünfteln […] Ob nun ein wirklicher Vertrag […] vorher gegangen, oder ob die Gewalt vorherging, und das Gesetz nur hintennach gekommen sei […] das sind für das Volk ganz zweckleere und doch den Staat mit Gefahr bedrohende Vernünftelein; denn wollte der Untertan, der den letzteren Ursprung nun ergrübelt hätte, sich jener jetzt herrschenden Autorität widersetzen, so würde er nach den Gesetzen derselben, d. i. mit allem Recht bestraft, vertilgt, oder (als vogelfrei, exlex) ausgestoßen werden.—Ein Gesetz […] wird so vorgestellt, als ob es nicht von Menschen, aber doch von irgendeinem höchsten tadelfreien Gesetzgeber herkommen müsse, und das ist die Bedeutung der Satzes: »Alle Obrigkeit ist von Gott« (Kant 1900, 318–19).[17]

Kant seems to argue for the futility of all debates about the legitimacy of the highest power (*oberste Gewalt*)—a translation of »sovereign power.« His concern is solely for the consequences that such debates can have: revolution. It is notable that Kant understands—without hesitation— that these debates are about the »origin« of the highest power; power

---

17   »The origin of the highest power is for the people, who are subjected to it, in a practical sense inscrutable, that is the subject shall not engage into futile reasoning about this origin as if the duty of obedience in view of this power were a still disputable right (*ius controversum*) […] whether there was a real contract at origin […] or the power (die Gewalt) preceded and law only came after […] this is for the people an entirely purposeless and futile reasoning, which nevertheless poses a danger to the state; because if the subject who had finally by his futile reasoning arrived at the last(-mentioned) origin wanted to resist the presently ruling authority, he would, according to its laws, that is, justifiably/by means of the existing rights, be punished, eradicated or declared outlawed (as fair game, exlex) and thus expelled.—A law […] is conceived in such a way as if it had not come from human beings, but from a kind of superior faultless law giver, and that is the meaning of the phrase: ›All authority is from God.‹«

immediately becomes that which precedes the law (»law only comes af-ter«). It is not as if there are no alternatives to seeking legitimacy in ori-gin; it is a path opened up only by the juxtaposition of law and power. Only if »power« is stripped of its iterability does the question of origin emerge.

Kant states, rather than claims, that the origin of this highest power is inaccessible, though not without immediately restricting the generality of the statement: »in practical terms« and »for the people subjected to it.« A (relatively weak) epistemological statement—the origin *is* inscrutable—translates without delay into a normative statement, subjects »*shall not* reason about the origin.« He invests his authority as philosopher to offer a moral imperative as a straightforward deduction from the factual statement (»that is«), although in so doing performs a significant change of register. The only thing that we can be sure is not derivable here is not the origin of the highest power, but the normative claim that one shall not attempt to derive it. In issuing this moral imperative, Kant performs the kind of sovereign act—an act not supported by the laws (of logic), thus an act of force—which he, or this entire text, wishes to make im-possible to presuppose as the origin of law. The origin is set up with pure force as the object not to consider, and thus not only offered to consideration, but also almost identified as originating in force or violence.

Kant then explores further what this inscrutable origin could be—violating his own dictum, or rather once again proving himself to be above the law. He arrives at the impossibility to decide between power (*Gewalt*) and contract (*Vertrag*). The term power (*Gewalt*) is accompanied here by the definite article (*die Gewalt*), which makes it ambiguous. *Gewalt* is, on the one hand, a reference to *oberste Gewalt* in the neutral sense of (supreme) authority, but in its opposition to »contract,« it comes to mean »violence/pure force.« That this origin in violence is indeed the focal point is confirmed: *den letzteren Ursprung* does not designate »last origin,« but »last-mentioned origin.« It is an anaphoric reference to *Gewalt* (violence) as opposed to *Vertrag* (contract): »if the subject who had fi-nally, by his futile reasoning, arrived at the last-mentioned origin wanted

to resist the presently ruling authority […].« Thus Kant precisely defines the origin he does not want »the people« to consider: the highest power (*oberste Gewalt*) founded by the same power (*die Gewalt*)—which would be an origin in violence as the anaphoric reference emphasizes. That the subjects (*die Untertanen*) arrive at this conclusion—which is, after all, for them »in a practical sense« impossible to reach—is kept in subjunctive mood, not the existence of this origin itself, which has now, backhandedly, become the fact to be hidden. Kant recalls in detail the consequences of finding this origin. He does not thereby go through the effort of explaining why an origin of law in violence encourages resistance. His response is as immediate as the one that he is about to describe. In his description of the sovereign response, then, the origin of law in violence is affirmed. It turns into a reenactment of the founding event, and Kant speaks in the name of the highest power itself (»justifiably so«): a pure force emerges from behind the law, personalized in the form of »the presently [my emphasis] ruling authority.« The punishment »according to law« turns into a punishment »with the help of all laws«; the German term *mit allem Recht* means both »justifiably so« and »by means of the laws.« The addition of *allem* highlights this ambiguity. The subject accordingly will not simply be tried, but »punished, »eradicated,« and »expelled from the law.« It will be annihilated in its physical as well as in its social existence. *Vogelfrei* means »fair game,« an animal that anybody is allowed to kill. The law becomes an instrument for the self-preservation of the highest power, projected as outside of the law, as the mirror image of the subject that is »eradicated« or reduced to an animal-like existence.

In sum, Kant prohibits looking for an origin, disregards his own prohibition, determines the origin and finally identifies with the force that he assumes to be at this origin. Perhaps he has himself been this force all along. After all, that there is something to look for in the first place was nothing but the effect of the initial juxtaposition of law and force/power. Kant drifts towards what he himself is setting up as he goes along. It is this precedent of the speaking subject that becomes noticeable as the force exerted by Kant throughout the text. Put

differently, the text is ruled by a drive towards the substantialization of that which it seeks to make impossible to think: the origin of the sovereign power and thus of law in pure force. Kant is continuously haunted by that which does not exist because of his attempts to rule it out. When he returns to the law in order to propose it as final authority—Kant is at the threshold of a theory of constitutional sovereignty, a precursor to Hans Kelsen—the »as if« indicates the failure of his enterprise. Law has become the veil only covering a pure force behind it.

The critical sovereignty discourse

Internal instabilities (three theory sketches)

Brought to light then is what Kant conjures up in presupposing it as that which is to be avoided by any reasoning: a force founded only in itself, the power (that) precedes the law (Kant). Giorgio Agamben understands this power as the »primordial juridical fact« (Agamben 1998, 22), a force that is necessarily not only in the law, but also and simultaneously outside of the law and thus can suspend law and always »justifiably so« in view of those who »pose a danger to the state« (Kant). This possibility finds its most fervent advocate in Carl Schmitt. The suspension, »exlex,« makes the citizen animal-like, »fair game« (Kant), defined entirely by their physical existence. To speak with Benjamin: »the rule of law over the living ceases« and »mere life« comes into being (Benjamin 1996, 250), or, with Agamben again, in radicalizing Benjamin's thought: such a suspension—as it does not, strictly speaking, suspend the law but reconstitutes the condition for its application—rather marks »the inclusion of bare life in the juridico-political order« (Agamben 1998, 56). This inclusion of bare life, its availability as last reference point, becomes with Agamben the stake of governmentality as bio-politics and defines the dependency of the latter on sovereignty.[18] Yet these theorizations of the

---

18   Agamben's formulation »inclusion of bare life« implies its preexistence as if »bare life« were simply organic life or life defined by physiology. Yet his examples rather suggest that »bare life« is constituted through the withdrawal of law (as something to be included).

moment of personal force, its isolation, overgeneralization and juxtaposition with the law is not without paradoxes; it is internally as unstable as Kant's discourse.

Kant's claim that law only comes after power, for example, finds a poignant expression in Carl Schmitt's *Political Theology*:

> After all, every legal order is based on a decision, and also the concept of the legal order […] contains within it the contrast of the two distinct elements of the juridic—norm and decision. Like every other order, the legal order rests on a decision and not on a norm. (Schmitt 2005, 10)

The decision as the ultimate anchor-point of law becomes the hallmark of sovereignty. Schmitt goes to considerable effort to prove that this decision is indeed a final one, dependent upon nothing; a decision which cannot be described in any way anymore as externally enforced, but is grounded entirely in the subject of the sovereign. An unconstrained act of decision is conceivable, Schmitt claims, only if there are indeed no criteria or norms available that guide or determine it. Schmitt famously defines the state of exception as fulfilling this requirement: the state of exception is a state that »cannot be circumscribed factually« (ibid., 11), that »cannot be subsumed; it defies general codification« (ibid., 13), and so »it can at best be characterized as a case of extreme peril, a danger to the existence of the state« (ibid., 6). Such a state, Schmitt holds, »reveals […] the decision in absolute purity« (ibid., 13). That is, the decision on the measures to take *in* an emergency situation has no support in existing norms, but also and more importantly, the decision whether such a situation is present—»sovereign is he who decides on the exception« (ibid., 5)—cannot resort to any existing norms. The obvious circularity here— that the unconstrained decision is revealed by a state of exception, which is only effected or defined as such by the same decision—is far from a logical deficiency for Schmitt. On the contrary, Schmitt makes it the proof that the decision is, in fact, the ultimate authority. He does so at a price, since it ceases to be a decision and becomes a mere instinct in the presence of danger: »the power of real life breaks through the crust of a mechanism that has become torpid by repetition [the law; M. R.]« (ibid.,

15). Put differently, in order to prove the absolute purity of the sovereign decision, Schmitt is driven towards the point where this decision collapses into its opposite, an instinctive reaction.[19]

Benjamin calls »lawmaking« force (Benjamin 1996, 243) that which Schmitt conceives of as pure decision; presupposing likewise an act of foundation. Attempting to critique the idea that a law that only comes after power (Kant) could ever do justice to the individuals subjected to it, that is, emancipate itself from its origin, Benjamin shows the continuous reappearance of the original law positing force within what is commonly considered as a mere operation of preserving law. He illustrates this supposedly unavoidable contamination by pointing to the »ghostly presence« of the police (ibid., 243). Spectralization, however, as Derrida has convincingly argued, is best understood as the effect of establishing a strict opposition such as positing vs. preserving where in fact the relation is at the same time one of mutual inclusion (Derrida 1991, 90). In his pursuit of justice, Benjamin is thereby driven towards a conception of a force beyond the law. Force—instead of being instrumental—becomes an instantaneous expression of morality (*Sittlichkeit*). The precarity of this conception displays itself in the admission that instances of such divine force or violence »will (not) be recognizable with certainty« (Benjamin 1996, 252) as well as in the kind of examples that are evoked: striking educational measures (Benjamin 1965, 60), war, or the spontaneous action of a crowd against a criminal (ibid., 64). These cases »not recognizable with certainty« are also those in which the power Benjamin seeks to denounce commonly disguises and renews itself.

Agamben, then, draws his conclusion from the assumption that laws are subjected to a positing force. He reverses the relation between norm and exception. Political order does not begin with the imposition of law, but with its suspension; his founding fiction is the disruption of a *lex talionis*

---

19   Derrida sets up his own concept of decision against Schmitt's reasoning. The moment of blindness or openness that is part of the Derridian decision is not instinct, it derives from an absolute indecidability that presupposes a relation of simultaneous inclusion and exclusion between force and law (Derrida 1994, 85–87, 150–52).

(Agamben 1998, 22). However, if the production of bare life through the withdrawal of law is the birthmark of (any) sovereignty, what is the specificity of biopolitics, which Agamben describes as the »decisive event of modernity« (ibid., 10) His entire text is marked by the difficulty of defining a period for biopolitics. He fluctuates between making bare life and political existence »fundamental categorial pair of Western politics« and attributing it to the advent of the modern state marked by the French revolution (ibid., 12). Or, alternatively, the »modern state […] does nothing other than bring to light the secret tie uniting power and bare life« (ibid., 11), or, is defined by »the politization of bare life as such« (ibid., 10). What exactly is the difference, then, that »bare life as such« is supposed to designate?[20] A similar problem occurs in Agamben when it comes to defining acts of sovereign power. The fact that he comes to consider contemporary refugee policies, the treatment of coma patients and fascist extermination camps to be phenomena of the same kind should rather be seen as a failure, an inability to apply distinctions rather than a provocative strategy.

The establishment of force in terms of pure decision making as basis for the suspension of law, or the conception of a force ensuring justice beyond the law, or the specification of a time, a place and an impact of such a force—all of these pursuits suffer from the same deficiency. Once the moment of personal force is played off against the law, it becomes impossible to qualify it. Force is nothing but force. What was conceived as a decision or as justice becomes drive, eruption and outburst, is reduced to energetic qualities. What was intended to mark out a specific event comes to be an event of always the same kind, resulting from the same monotone determination. These enterprises turn into whatever they stood up against or intended to avoid.

---

20   Compare Derrida 2012, 315–34 for a discussion of this indeterminacy in
      Agamben.

Political implications

Of a more urgent concern than the theoretical fragilities are the perspectives which the critical sovereignty discourse opens up for empirical research and political action. I will list some trends in critical thought that seem to me at least encouraged by the conception of political power at issue here:

- Critics position themselves as the counterparts of sovereign power. The painstaking work by Foucault and others of his generation to develop forms of critique that acknowledge and take as their point of departure their own complicity with power is potentially disregarded. Critics reproduce the form of unquestionable self-legitimacy that they attack.

- Resistance under any and all circumstances sees itself as confronting the whole—the system, the regime, modernity and so on—and so is largely left to confirm its own powerlessness.

- Those in whose name the critics raise their voice are likely to be conceived as absolute victims, mirror-images of absolute power, or, in other words, »bare life.« Once again all the intricacies of representing others, to which post-colonial approaches, for example, unceasingly refer, are elided.

- To depart from the assumption of the possibility of sovereignty in a strict sense gives, as already pointed out, preference to a spatial understanding of power. This occurs not only because ever since sovereignty was fused with state power, rule has been conceived of as territorial, but also because total domination is imaginable only in a space (cf. Agamben: the camp as bio-political paradigm of modernity). The execution of power, however, and in particular emergency politics involves complicated decision-making processes and step-by-step procedures, and hence can only be properly understood in a temporal dimension (Feldman 2010, 138).

- Psychologization and de-economization are often in the tow-line of the sovereignty discourse. This is at work, for example, in Butler's *Pre-*

carious Life; she shifts with great ease between individual psychology and analysis of sovereign power, and indiscriminately applies concepts such as mourning, fear and anger to both levels. »President Bush,« Butler writes, »announced on September 21 that we have finished grieving and that *now* is the time for resolute action.« To this she objects: »when grieving is something to be feared, our fears can give rise to the impulse to dissolve it quickly« (Butler 2004, 29). Is this the level then on which the Afghanistan war can be best understood? And how come President Bush's »we« translates here so seamlessly into »our«? At the same time, and this holds true for Agamben's *Homo Sacer* as well, economy as an explanatory factor in the functioning of power either falls out of the picture entirely, or obtains a precarious status. That is, it becomes a strategy of sovereignty to be dropped or pursued at will.[21]

• Perhaps the most problematic implication of the critical sovereignty discourse is the utopia it proposes. Tracy MacNulty has rightly pointed out that it departs from unease with representation. Laws are seen as fundamentally deficient; they can never do justice to the individual case, represent the individual as such. In Benjamin's words, they have the status of fate for individuals, imposed by a sovereign and from the outside (Benjamin 1965, 58). There is »a gap in the law« (McNulty 2008, 1), allowing the sovereign to impose himself by means of the laws and to re-affirm his power in every instance of discretion. What is envisioned accordingly as the escape from sovereign force is in one form or another an end of representation. This is the function of divine violence in Benjamin, which ends the »dialectical rising and falling in the lawmaking and law-preserving forms of

---

21 The precarious status of the economic is evident in Carl Schmitt's critique of liberalism. He defines liberalism as a movement which seeks to hide its political nature by translating the political into supposedly neutral economic categories. »That way the political term ›struggle/fight‹ turns into competition […] within liberal thought« (Schmitt 2009, 62). Yet the political will finally catch up to the economy and re-politicize it (ibid., 71). Thus, it will be revealed as just one strategy within the political.

violence« (Benjamin 1996, 251) by a »law-destroying« act (*rechtsvernich-tend*) (ibid., 249). This is also the defining feature of Agamben's envisioned community, where each thing is grounded in itself without relation to something else or without representation, because relation to something else always already means to be represented. Without relation, things happen as that which they immanently are (Agamben 2003, 19).[22] Every form of dissatisfaction can feel empowering when the truth of immediacy and expression is pitted against the corruption of discourse and representation, and every means is justified as long as it can pass itself off as an authentic manifestation.

Sovereign power broken down (two descriptive sketches)

What does it mean to make the ontological impossibility of sovereignty the point of departure for critical analysis? First, it means refusing to take claims of sovereignty for granted, tracing instead the historically specific conditions of the impossibility of a sovereign power »said to be indivisible« (Derrida 2009, 291).

With reference to Derrida, the assumption has to be brought into play that force is necessarily inscribed and constrained by the possibility of repetition, by the iterative, and derives from this possibility in the first place. Put differently, force is subject to laws, routines, habits, and so on, preconceives an other and is thus always caught up in divisions. The critical move, then, consists in reintroducing the iterative where it claims to be pure, or the moment of force at which procedure and law pretend to be self-sufficient. Reintroduction not in technical sense, as a repair on the spot, but in an analysis meant to show that wherever force or iteration are dismissed, they come to haunt the operation at hand in an uncontrollable way; in the very same way Kant's discourse or the critical sovereignty discourse à la Benjamin are haunted by what they exclude.

With reference to Foucault's concept of governmentality, it is not the context-specific form of this ontological impossibility which come into

---

22   Compare for a critique of this conception from the perspective of
      Adorno's negative dialectic, Bartonek 2011, 226–27.

view, but its overall logic or the frame within which the unique (force) and the iterative (law) unfold their interdependency as well as the materiality in which they are caught up—a materiality that simultaneously becomes defined and substantiated by this interplay. This perspective allows it, after all, to say that a state of exception indicates the failure of sovereignty and not its almightiness.

In short: With Derrida it becomes possible to explore the inside of sovereign power in operation and with Foucault to describe it from the outside, to frame it. Yet their approaches have in common that they show sovereignty in its necessary and historically-specific divisions and dismiss a point of reference that is usually taken for granted: the state, Bodin's and Hobbes's famous abstraction. These moves can, at the very least, encourage resistance by localizing a problem without making it a local problem. If historically-specific conditions of impossibility represent weak points and possible targets for interventions, these operations make institutions and practices visible through the contingencies of their becoming, and thus evoke alternatives.

By way of conclusion then, I will sketch out an application of Foucault's and Derrida's insights to the analysis of two particularities of the US criminal justice system: prosecutorial discretion and mandatory sentencing guidelines. These elements can be seen as representing the very dangers of *and* to sovereign power that I have previously identified: the overemphasis of force, the lack of its integration into rules and routines, and thus checks and balances, on the one hand, and a reduction of the moment of force to routine, an automation, on the other. Critical theory, then, should not take for granted that these elements represent sovereignty at the height of its capacities, working with full force and thereby reconfirming and reproducing its claims. Foucault's and Derrida's insights suggest that sovereign power has to be undone from within.

Prosecutorial discretion

Prosecutorial discretion is de facto unlimited in the US criminal justice system. It is up to the prosecution to decide to charge or not to charge as well as to decide on the kind of charges. The prosecution can offer plea

bargains, revisit charges, and dismiss or alter them. Dismissing charges is possible even in view of sufficient evidence; decisions to charge are informed only by the vague and weak criterion of »probable cause,« which is very easy to meet.[23]

This is accompanied by largely non-existent accountability. No personal liability exists, for example, for violations of the Brady rules—after the 1963 landmark case *Brady v. Maryland*—which oblige the prosecution to disclose all evidence pertinent to guilt or innocence of a defendant in a criminal trial. The criminal prosecution of a violation is in theory possible, but does not happen in practice. For the first time in 1999, a case of prosecutorial misconduct reached verdict stage (and ended with the acquittal of everybody involved). The authors of a 2011 study of the efficacy of existing disciplinary mechanisms claim that a misconduct or a violation is most likely classified as a »technical error« since willfulness is difficult to substantiate in the absence of rules and criteria (Keenan et al. 2011, 217–18). The path of municipal liability was likewise and very recently foreclosed by a 2011 Supreme Court decision. This ruling puts the burden on the defendant to prove that the violation in question is part of coherent patterns of misconduct in the office concerned.[24] Finally, bar

---

23   A comparison with the German criminal justice system might help to highlight the American peculiarities: The so-called *Legalitätsprinzip* legally obliges the prosecution of any crime in the face of sufficient evidence. To be sure, the notion of sufficient evidence itself as well as the so-called *Opportunitätsprinzip* determining the threshold of triviality allow for some discretion. There is nevertheless more supervision in place; the definition of what counts as sufficient evidence is stricter, the kind of charges are not determined by the prosecution alone, and defendants can enforce prosecution through a *Klageerzwingungsverfahren* (proceeding to force criminal prosecution) (Damaska 1981).

24   In 2011 the Supreme Court overturned a decision that had granted $14 million in compensation to John Thompson, who was on death row for fourteen years, because the attorney's office had willfully withheld exculpatory blood evidence. Even though it could be shown that the prosecutors involved were largely inexperienced and had never received additional training as required, the Supreme Court decided that a single

discipline, that is, an internal discipline mechanism, is guided by weak ethical criteria only, suffering from the same lack of accountability, and is thus similarly rare and inefficient (ibid., 205–6).

The scope of prosecutorial misconduct therefore is difficult to verify. It usually comes to light only in retrials, and the common practice of plea-bargaining (inciting defendants to plead guilty even though they are innocent)[25] further diminishes the already weak chances of a retrial. There are nevertheless some indications of the extent of prosecutorial violations. Keenan et al. cite surveys that show 381 homicide cases involving prosecutorial misconduct in 1999 alone, and 2012 appellate cases between 1970 and 2003 that led to dismissals, sentence alterations, or complete reversals (220–21). From time to time, cases surface that manifest racial biases among prosecution offices or display the self-serving nature of charging practices and so highlight the consequences of a lack of accountability. The trial against the government agents who intervened in the Attica Prison riot in 1971 and killed 32 inmates, for example, gained worldwide attention. All charges were dismissed. This happened more recently with torture cases in Abu Ghraib that led to the death of Gul Rahman and Manadel Al Jamida (Yin 2012).

It is very tempting to see the state here as positing power through right, exerting sovereign force in a strict sense. Yet each sovereign decision has a becoming. Prosecutors are publicly elected and prosecutorial positions are important career stages. Thus there is always political influence, especially since crime and criminal justice have become widely mediatized (Garland 2001a, 85–87; Mathiesen 2001, 28–34). Furthermore, many state attorneys' offices employ an internal division of labor. Melilli calls the system of labor division a »horizontal-case-assignment-system« (Melilli 1992, 688).

---

violation does not prove that the lack of training was a decisive factor in the misconduct (Keenan et al. 2011, 217–18).

25   Prosecutors, in order to obtain a conviction, often strategically overcharge in order to bring the defendant to admit to minor guilt (Melilli 1992, 700–701).

> Certain line assistants may be assigned, for a period of time, exclu-
> sively to the presentation of cases to the grand jury for indictment,
> while other line assistants may be assigned exclusively to the trials
> of those same cases. (Ibid.)

Not only can a decision be made with less care under these circum-
stances—this mostly concerns the decision to charge—because every-
body involved knows that the case will still be seen by others, but, what
is more, information that could have raised doubts at one stage might
not be available anymore at a later one, or is simply used differently from
the perspective of the new tasks. Another moment prone to influence
the decision-making process is the fact that prosecutors deal directly
almost exclusively with police and victims, not, however, with de-
fendants, and often develop quite personal relations with the police
officers assigned to their cases (Melilli 1992, 689). Last, initial decisions
to charge usually have to be made on the spot under considerable time
pressure and often by inexperienced junior attorneys.

What I call *influences* here are specific conditions of the impossibility of
sovereign decisions in a strict sense and—put into a Derridian perspec-
tive—they are visitations of the excluded: the iterative, beyond control.
This is not to say that the dynamic of force and law is controllable—that
attempt would be itself a sovereign act doomed to fail—but the uncon-
trollable is not necessarily as beyond control as it is here. Already at base
level, sovereignty is exerted rather in the form of a »strategy without a
strategist« (Foucault 2001b, 308). The concept of governmentality could
then highlight the rationality of the irrational, and it can be applied on
very different levels and help to recognize the logic or rationale which
these influences nevertheless follow.

Firstly, all the elements mentioned, for example, work within a system
that is driven towards conviction. Prosecutors are absorbed by and
caught up in an adversarial and competitive justice system, where con-
viction defines success. »Law schools generally emphasize litigation, cre-
ating a focus on victory as a professional goal« (Melilli 1992, 688). Addi-
tionally, there are economic constraints that shape every decision from
the beginning. Selective charging is less a pure and arbitrary act than a

necessity in the face of limited resources, and as such a sign of impotence. Put differently, it is embedded in an economic logic, which could be worked out by adapting a Foucauldian perspective.

The Foucauldian notion of governmentality can significantly broaden the picture and make the institution within the field of other institutions the subject of exploration. This could include not only the identification of an overall government rationality, but also a revisiting of the moments that define the becoming of the institution (a genealogy), a becoming that is always marked by a rationality of government. To reconstruct the contexts in which prosecutorial accountability was diminished and to work out the constellations of forces involved, for example, makes the results appear as what they are: provisional; battle lines that can be reactivated.[26]

Mandatory sentences

Mandatory sentencing guidelines might appear to be counterparts to unchecked prosecutorial power. They reduce discretion significantly. According to these guidelines, sentences have to be calculated by factoring in the criminal history of a defendant and the gravity of the offense. Differences in each category are translated into points, and the number of points decide on the sentence, conveniently provided in the form of a table or a manual. The sentencing guidelines—operative on federal as well as on state level—determine minimum sentences and state reasons for departures.[27] The consideration of mitigating factors such as age, mental, emotional and physical condition, and individual life history are largely excluded; either prohibited outright or discouraged by the policy

---

26   The expansion of absolute judicial immunity to prosecutors, for example, goes back to a relatively recent ruling (*Imbler v. Pachtman*, 1976) that at the time was highly contentious (Keenan et al. 2011, 2014–15). Compare also the detailed presentation of the battles surrounding this ruling by Public.Ressource.Org, a nonprofit organization: https://bulk.resource.org/courts.gov/c/US/424/424.US.409.74-5435 .html, accessed February 24, 2013.

27   The term *departure* is taken here and in the following from legal language.

papers ruling the application of the guidelines (Baron-Evans and Coffin 2010, i). The guidelines are supposed to already reflect these mitigating factors. The commission charged with producing them »calculated the average time served for each class of crime, analyzing data from over 10,000 sentencing reports and 100,000 federal convictions« (Boone 2007, 1084). The application itself is subject to strict review by a higher authority. The so-called three-strikes law is part of the mandatory sentencing rational. It requires judges in many states to impose sentences of twenty-five years to life for the third serious felony, whereby the understanding of »serious« ranges widely: it can cover shoplifting or possession of drugs as well as rape and murder. The results are destructive. Many critics see mandatory sentencing guidelines as the most decisive factor leading to the phenomenon of mass imprisonment in the US,[28] which threatens the social fabric of communities and imposes a heavy economic burden, to say the least (Garland 2001a, 105; Haley 2006, 149–50; Mauer 2001, 4–15).

Is the state machinery set to sure-fire success and the law entirely automated here? The moment of force in law does not disappear, it is not dissolved, as little as iteration could be removed from prosecutorial discretion; it is only pushed into the uncontrollable. It returns, for example, when it comes to determine the gravity of the offense in advance. This category remains fundamentally unstable, ranging within the federal guidelines system from previously 360 to currently 43 different levels of gravity. The authoritarian role that the sentencing commission inherits—its policy papers obtain the status of decrees—can be understood as a highly dysfunctional moment. More importantly, discretionary power resorts to departures instead of playing out through variances.[29] Judges

---

28   According to 2010 figures, the imprisonment rate is 500 prisoners per 100,000 residents. In total numbers there are 1.6 million prisoners in the US. Blacks, and especially young black males (18 to 34) are incarcerated disproportionally: one in three black men go to prison. The US incarceration rate is the highest in the world (Tsai and Scommegna 2012; Guerino, Harrison, and Sabol 2010; Halley 2006).

29   Departures add to or subtract from the guideline sentence according to fixed criteria; variances are traditional discretionary changes, depending

typically go on independent fact-finding missions about the defendant's conduct in order to compensate for the lack of precision (Boone 2007, 1086–87). These departures are—because mitigating factors cannot easily be brought into consideration—overwhelmingly upward departures (Boone 2007; Baron-Evans and Coffin 2010; Glass 2001).

It is still possible then to see desired goals of sovereign power in the effects of an automated law—such as mass incarceration or sentences that contradict any sense of justice, including that of the judges (Tierney 2012). With Foucault, however, these effects would be largely unintended, or, again, the results of »strategies without strategists« (Foucault 2001b, 308), and remain vulnerable to interventions. The chances for resistance are currently not bad. A battlefield has been reopened, for example, by a Supreme Court ruling that deprives the federal sentencing guidelines of their mandatory status (*United States v. Booker*, 2005).[30] The court agreed on their unconstitutionality pointing to the discrepancy between sentences potentially deriving from the jury's verdict and sentences passed by judges using upward departures. This discrepancy, the court explained, limits a defendant's right to a jury trial. Yet this ruling has not yet arrived on the ground. Baron-Evans and Coffin (2011) show in their analysis of recent policy papers that traditional discretion in forms of variances is still far from encouraged, relegated instead to the status of an »afterthought« (ibid., 10). Although the policy papers of the sentencing commission are no longer obligating, they still traditionally guide judges' decisions. Hence, there is a need to support alternative

---

on the point of view of the judge. Both entail not only different review processes, but also imply a different use of the evidence involved. Compare the discussion on http://circuit3.blogspot.de/2009/08/departure-or-variance-that-is-question.html, accessed February 12, 2013.

30   The Attorney General Eric Holder recently announced his intention the overhaul the criminal justices system. He especially targeted mandatory minimum sentences, evoking their »destabilizing effect on particular communities, largely poor and of color.« (Eric Holder quoted in: *Huffington Post*, August 14, 2013, http://www.huffingtonpost.com/2013/08/12/eric-holder-mandatory-minimum_n_3744575.html, accessed August 14, 2013).

policies by renewing old frontlines and recruiting allies. Genealogies or the perspective of governmentality can be very useful tools for such an enterprise.

It might be worth, for example, revising the contexts of the introduction of the federal mandatory sentencing guideline in 1984, rediscovering it as a bipartisan effort, supported both by many activists on the left as well as critical criminologists, out of concern for a lack of fairness and transparency attached to the indeterminate sentencing system (Boone 2007, 1084–85; Garland 2001a, 61). The history of the sentencing commission's appointments and workings will unavoidably reveal struggle, compromise, and dissatisfaction (Breyer 1988). The method of survey and analysis of cases that provided the basis for the sentence calculation can become an object of investigation: the first sentencing commission characterized its empirical approach as »imperfect« and »impressionistic« and proceeded under the assumption that the results were provisional and would be corrected through further monitoring (Baron-Evans and Coffins 2011, 32–33) and so on.

Yet again it is also possible to broaden the view by considering the situation in terms of governmentality. David Garland, for example, subscribing to Foucault's approach, analyzes the overall change that the US criminal justice system has gone through since the early 1970s. He defines it as a shift away from a penal welfarism oriented towards education and reintegration of the individual towards a management of crime guided by the goals of control and containment (Garland 2001a). Within this context, rehabilitation obtains the status of a targeted intervention, like hot spot policing. Yet Garland described these transitions as adaptive responses (or as failures of adaption): sovereign power is confronted with a society in which the possibilities of control are de facto limited. With the dissolution of traditional family structures and neighborhoods (suburban developments) social control is largely non-existent. At the same time, individual mobility (cars), the overall availability of valuable goods (consumption opportunities), and the existence of mass media allowing for continual comparisons provide incentives to criminal behavior, especially in times of rising poverty levels. Thus outsourcing of

control tasks in the form of public-private partnerships or a purely administrative approach as represented by mandatory sentencing come to appear as self-restraints (ibid., 82–89). By employing criteria such as adaption or denial, Garland cannot help but restore what he claims has long ceased to exist (ibid., 205): sovereign state agency, potentially even in control of the uncontrollable.

With Foucault, by contrast, the conditions, or rather the identification of socio-economic conditions that demand adaption, are—as well as the logic of adaption itself—already part of a governmentality and not a given. They are also effects of self-reflections and proceedings. Put differently, governmentalities can be distinguished through the kind of uncontrollability that they presuppose, affect, and sustain as well as through their attempts to control it. Uncontrollability itself has a history—and is unavoidable. This, after all, is what deprives the exercise of sovereignty of its claimed naturalness. If sovereignty is identified through governmentality in the latter sense, that is, as singular and historically contingent, it becomes conceivable that it can be otherwise. That it must be otherwise, however, is not something that academic theory can prescribe; it is rather prescribed by what Foucault called »the knowledge of the people« (Foucault 1997, 8), that is, by what prisoners, judges, lawyers, defendants, or prosecutors, what everybody involved in juridical proceedings knows. And the ultimate norm or drive thereby could well be justice in a Derridian sense: a critique of every calculation in the name of the particularity of the other (Derrida 1991, 41), or, put differently, a concern for keeping the interplay of force and iteration continuous and open, and therefore completely unpredictable.

References

Agamben, Giorgio. 1998. *Homo Sacer: Sovereignty and Bare Life.* Stanford.

—   2002. *Homo Sacer: Die Souveränität und das nackte Leben.* Frankfurt am Main.

—   2003. *Die kommende Gemeinschaft.* Berlin.

Baron-Evans, Amy, and Jennifer Niles Coffin. 2011. »No More Math Without Subtraction: Deconstructing the Guidelines' Prohibitions and Restrictions on Mitigating Factors.« Paper presented at the National Seminar for Federal Defenders: i–202, Baltimore, June 2011.

Bartonek, Anders. 2011. *Philosophie im Konjunktiv: Nichtidentität als Ort der Möglichkeit des Utopischen in der negativen Dialektik Theodor W. Adornos.* Würzburg.

Benjamin, Walter. 1965. *Zur Kritik der Gewalt und andere Aufsätze.* Frankfurt am Main.

—   1996. »Critique of Violence.« In *Selected Writings.* Vol. 1, edited by Marcus Bullock and Michael W. Jennings, 236–52. Cambridge.

Bigo, Didier. 2006. »Globalized (in)Security: The field and the Ban-opticon.« Accessed February 13. http://www.people.fas.harvard.edu/~ces/conferences/muslims/Bigo.pdf.

Blumenberg, Hans. 1996. »Selbsterhaltung und Beharrung: Zur Konstitution neuzeitlicher Rationalität.« In *Subjektivität und Selbsterhaltung,* edited by Hand Ebeling, 144–207. Frankfurt am Main.

Boldt, Hans. 2004. »Staat und Souveränität.« In *Geschichtliche Grundbegriffe.* Vol. 6, edited by Otto Brunner, Werner Conze, and Hans Koselleck, 1–154. Stuttgart.

Boon, Robert L. 2007. »Booker Defined: Examining the Application of United States v. Booker in the Nation's Most Divergent Circuit Courts.« *California Law Review* 95 (4): 1079–114.

Bodin, Jean. 1955. *Six Books of the Commonwealth.* Oxford. Accessed February 13. http://www.constitution.org/bodin/bodin_.htm.

Breyer, Stephen. 1988. »The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest.« *Hofstra Law Review* 17 (1): 1–28.

Butler, Judith. 2004. *Precarious Life*. London.

Damaska, Mirjan R. 1981. »The Reality of Prosecutorial Discretion: Comments on a German Monograph.« *Faculty Scholarship Series*. Paper 1586.

Derrida, Jacques. 1991. *Gesetzeskraft: Der »mythische Grund der Autorität.«* Frankfurt am Main.

—— 1994. *Politiques de l'amitié*. Paris.

—— 2009. *The Beast and the Sovereign*. Vol. 1. Chicago.

Feldman, Leonard C. 2010. »The Banality of Emergency: On the Time and Space of ›Political necessity.«« In *Sovereignty, Emergency, Legality*, edited by Austin Sarat, 137–64. Cambridge.

Foucault, Michel. 1997. *Il faut défendre la société: Cours au Collège de France, 1976*. Paris.

—— 2001a. *Dits et écrits II, 1976–1988*. Paris.

—— 2001b. *L'Herméneutique du sujet: Cours au Collège de France, 1981–1982*. Paris.

—— 2004a. *Naissance de la biopolitique: Cours au Collège de France, 1978–1979*. Paris.

—— 2004b. *Sécurité, territoire, population: Cours au Collège de France, 1977–1978*. Paris.

—— 2010. *Le courage de la vérité: Cours au Collège de France, 1984*. Paris.

—— 2012. *Du gouvernement des vivants: Cours au Collège de France, 1979–1980*. Paris.

Garland, David. 2001a. *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford.

Garland, David. 2001b. »The Meaning of Mass Imprisonment.« In *Mass Imprisonment: Social Causes and Consequences*, edited by David Garland, 1–3. London.

Gavre, Mark. 1974. »Hobbes and His Audience: The Dynamics of Theorizing.« *American Political Science Review* 68 (4): 1542–56.

Glass, Ethan. 2001. »Whatever Happened to the Trial by Jury? The Unconstitutionality of upwards Departures under the United States Sentencing Guidelines.« *Gonzage Law Review* 37 (2): 343–75.

Guerino, Paul, Paige M. Harrison, and William J. Sabol. 2010. »Prisoners in 2010.« US Department of Justice. NCJ 236096. Accessed February 13. http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf.

Hallet, Michael A. 2006. *A Critical Race Perspective: Private Prisons in America.* Chicago.

Jennings, Ronald C. 2011. »Sovereignty and Political Modernity: A Genealogy of Agamben's Critique of Sovereignty.« *Anthropological Theory* 11 (1): 23–61.

Kant, Immanuel. 1900. *Metaphysik der Sitten.* Vol. 6. Berlin.

Keenan, David, Deborah J. Cooper, David Lebowitz, and Tamar Lerer. 2011. »The Myth of Prosecutorial Accountability After Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct." *Yale Law Journal Online*: 203–65. Accessed February 13. http://www.yalelawjournal.org.

Kelsen, Hans. 1934. *Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik.* Leipzig.

MacNulty, Tracy. 2008. »The Gap in the Law and the Border-Breaching Function of the Exception.« *Konturen* 1: 1–26.

Mathiesen, Thomas. 2001. »Television, Public Space and Prison Population: A Commentary on Mauer and Simon.« In *Mass Imprisonment: Social Causes and Consequences*, edited by David Garland. London.

Mauer, Marc. 2001. »The Causes and Consequences of Prison Growth in the United States.« In *Mass Imprisonment: Social Causes and Consequences*, edited by David Garland. London.

Melilli, Kenneth J. 1992. »Prosecutorial Discretion in an Adversary System.« *Brigham Young University Law Review*: 669–704.

Rothe, Matthias. 2009. »Um die Überwachung geht es nicht.« In *Kontrollverluste: Interventionen gegen Überwachung*, edited by Leipziger Camera. Münster.

Rothe, Matthias and Falko Schmieder. 2010. »Kein Ende der Souveränität? Zu einigen Tendenzen in der (kritischen) akademischen Theorieproduktion.« In *Jenseits von Überwachung*, edited by Helle Panke e.V. Berlin.

Santner, Eric L. 2011. *The Royal Remains: The People's Two Bodies and the Endgames of Sovereignty.* Chicago.

Schliesky, Utz. 2004. *Souveränität und Legitimität von Herrschaftsgewalt.* Tübingen.

Schmitt, Carl. 2005. *Political Theology.* Chicago.

—— 2009. *Der Begriff des Politischen.* Berlin.

Tierney, John. 2012. »Life Without Parole: Four Inmates' Stories.« *New York Times*, December 12.

Tsai, Tyen, and Paola Scommegna. 2012. »US Has World Highest Incarceration Rate.« Population Reference Bureau. Accessed February 13. http://www.prb.org/Articles/2012/us-incarceration.aspx.

Yin, Tung. 2012. »Eric Holder: Prosecutorial Discretion and Extrajudicial Deaths." JURIST Forum. Accessed February 13. http://jurist.org /forum/2012/09/tung-yin-holder-discretion.php.

***

Dr. Matthias Rothe, Assistant Professor, Department of German, Scandinavian, and Dutch, University of Minnesota (Minneapolis).

mrothe@umn.edu

Markets for suspicion:
Assessing cost-benefit analysis
in criminal justice

Tiffany Bergin

Introduction

Across the industrialized world, cost-benefit analysis (CBA)—the systematic weighing-up of the economic and social costs and benefits of a particular program, project, or policy, and assigning to them a monetary value—has gained increasing prominence in public-sector decision-making. Long applied to environmental policies, in recent years CBA has been used with ever-greater frequency in criminal justice policy decisions.

The application of CBA to the realm of criminal justice is perhaps most pronounced in the United States, where examples of the utilization of this technique can be found at both the national and state levels. For example, the National Institute of Justice (2008) has employed CBA to determine the value of new criminal justice policies or procedures, such as using forensic evidence to solve property crimes. CBA has also been used to evaluate state-level criminal justice policies (Roman et al. 2007). Indeed, in 2012, the National Conference of State Legislatures reported that state governments were increasingly using CBA to inform their juvenile justice policies (Brown 2012, 13), while state Supreme Court judges have also emphasized the importance of CBA in the criminal justice system (Price 2012). In addition to these governmental applications, a substantial proportion of the scholarship on CBA's applications to crime and criminal justice has been produced by US-based scholars (Byford et al. 2010, 48). Indeed, the US-based criminal justice research organization the Vera Institute of Justice (2012) has created a »knowledge bank« of research on CBA and criminal justice.

The US, however, is not the only country that has employed CBA in criminal justice policymaking. The United Kingdom's Home Office has required evaluators of a major crime reduction initiative to use CBA and has even issued guidance documents to ensure rigor and consistency among evaluators' CBA approaches (Farrell, Bowers, and Johnson 2005). In 2003, the European Commission issued a call for tenders for a review of research into cost benefit analysis and crime prevention strategies in European Union member states (van Soomeren et al. 2005, 5). In New Zealand, a discussion paper examining CBA and estimating the costs of crime was produced under the auspices of the Ministry of Justice (MacCallum 1997). Although this article focuses on the US and the UK, this interest from the European Commission and the New Zealand government indicates that the issue of CBA in criminal justice decision-making has wider geographic relevance.

CBA's increasing use in criminal justice policymaking is an important development that deserves greater attention. This article adds to a growing body of literature on this and related topics (see, for example: Cohen 2005; Albertson and Fox 2012) by offering an overview of CBA's history and its potential benefits and limitations in criminal justice. Such an overview—and, more broadly, a considered debate about the merits and consequences of using CBA—is urgently needed, given CBA's prominence in criminal justice policy decisions. By analyzing key critiques that have been levelled at CBA, this article has practical relevance for the increasing number of criminal justice scholars who use CBA in their evaluations and research. By applying theoretical frameworks to critically evaluate CBA and situate its rise within its historical, economic and political contexts, the article also has scholarly relevance for readers interested in linkages between CBA and models of »actuarial« crime and justice (Feeley and Simon 1992), as well as ideas regarding the »risk society« (Giddens 1999; Beck 1992).

In addition to a critical assessment of major critiques of CBA both in criminal justice and in other policy fields, this article also examines the question of whether the same critiques that have been leveled at the application of CBA in other policy domains *also* apply to criminal justice

policies. The article concludes with a discussion of the future implications of the application of CBA in criminal justice policymaking—and why such applications will likely only increase in the future.

A brief history of CBA

Before critically evaluating CBA, it is essential to first examine the history and content of this technique. CBA's lineage can be traced to the 19th-century utilitarian philosopher Jeremy Bentham, who proposed a methodology to precisely measure the pain against the pleasure or benefits of various choices and activities (Skousen 2009, 122). In Bentham's view, logical individuals endeavor to make choices that increase their pleasure and decrease their pain, meaning that they are forever making calculations about the benefits and harms or drawbacks of various acts (Clear, Cole, and Reisig 2011, 38). This focus on calculation and the measurement of seemingly intangible constructs prefigured later developments in the use of CBA in criminal justice. In the early 20th century, Vilfredo Pareto, John Hicks, and Nicholas Kaldor's work in welfare economics helped lay the groundwork for later CBA techniques (Pearce, Atkinson, and Mourato 2006, 32). The notion of Pareto superiority posits that a policy or project that does not harm anyone, but does benefit someone should be adopted, while the Kaldor-Hicks criterion argues that even if some are harmed by a policy, the policy should be adopted if those who benefit gain enough that they are able to fully compensate those who are harmed (Fuguitt and Wilcox 1999, 39). The weighting of costs and benefits to different stakeholders in the Pareto and Kaldor-Hicks models is redolent of CBA ideas, although these concepts typically measure welfare or utility rather than money, which is central to CBA calculations (Adler and Posner 2006).

CBA was explicitly used to guide policy decisions as early as the 1930s in the US, when it was applied to decisions about environmental projects (Kula 1992, 217). During this period, CBA was applied in particular to policy choices regarding water resources, to ensure that public management projects delivered value to citizens. This governmental interest in CBA encouraged academic research in this area (Hanley and Spash 1993,

4). Adler and Posner (1999, 169) have linked the emergence of CBA in governmental decision-making in the 1930s to the expansion of the federal government that occurred during this same period as a result of President Franklin Roosevelt's New Deal.

After the Second World War, CBA's prominence grew as demands for cost-effective government programs increased (Pearce, Atkinson, and Mourato 2006, 16). By the 1960s, CBA principles were applied to assess the potential effects of some American decisions about environmental policies (see examples in Carlin 2005) as well as of British decisions about transportation projects (Fuguitt and Wilcox 1999, 7). A decade later, CBA was endorsed in a landmark publication for the World Bank (Squire and Van der Tak 1975). Today in the US, all federal government environmental regulations must still be subjected to CBA before they can be implemented (Brent 2006, 13), whilst the 1995 Environment Act promoted the inclusion of CBA in UK policymaking (Vergano and Nunes 2007, 3393). Among European countries, by the mid-2000s the UK had developed the widest body of research on CBA (van Soomeren et al. 2005, 7).

The application of CBA-like techniques to criminal justice issues was first undertaken primarily by economists. Most famously, in 1968 the economist Gary Becker theorized that some criminal behavior can be understood through a rational choice perspective in which individuals weigh the costs and benefits of committing crimes. According to Becker's theory, societies could therefore reduce crime by increasing the potential costs of crime to offenders—for example, by increasing criminals' likelihood of getting caught and by imposing stiffer penalties for crime.

In addition to this use of CBA to help explain criminal behavior, CBA has also been used more broadly to inform American and British criminal justice policy decisions—although the technique has yet to be fully applied to all aspects of criminal justice policymaking. Farrell and Roman (2010, 165 and 167), for example, have noted that CBA has only been sporadically applied to the area of victimology. Additionally, Brown (2004, 372) has argued that CBA has not been comprehensively applied

to American criminal law, but could be used more widely to improve criminal law's efficiency and effectiveness. These findings illustrate that CBA is not applied universally in criminal justice policymaking, and its use should not be overstated.

Although the full range of specific measures that have been used to perform CBA cannot be discussed in detail in this chapter, one widely-used measure that was originally developed in public health is quality-adjusted life years (QALYs) (Prieto and Sacristán 2003). When applied to the realm of criminal justice, this technique assumes that more serious crimes involve greater losses of QALYs, although measuring the precise loss from various crimes can be extraordinarily difficult (Farrell and Roman 2010, 165–66), a limitation discussed in more detail in the next section. Another key measure within CBA, willingness-to-pay, measures costs based upon how much an individual would pay to avoid those costs or to reduce the risk of incurring such costs (Weimer 2008). The obvious difficulties of adapting this measure to the criminal justice context, and assigning monetary values to instances of crime, are discussed in the next section.

In addition to CBA, several related techniques have also been used in medicine and public health to quantitatively assess programs or decisions. Such techniques include cost-comparison analysis (Grosse 2009) and cost-consequence analysis (Mauskopf 2009). A third, related, technique, cost-effectiveness analysis (CEA), is similar to CBA in that it also involves considering costs and benefits of various alternatives; however, unlike CBA it focuses only on achieving an outcome at the lowest possible expense and does not consider whether a policy is worthwhile—or whether its benefits outweigh its costs (see, for example, Loisel et al. 2002). Given the techniques' similarities, some scholars have posited that CEA should be considered a sub-technique within CBA (Johannesson 1995) although it is essential to remember that, unlike CBA, CEA does not endeavor to monetize a program's impacts (Swaray, Bowles, and Pradiptyo 2005, 143). Despite CEA's limitations, the use of this alternative technique in some evaluations shows that CBA is not the only prevalent method for evaluating policies economically. Although this article

focuses on CBA as it has achieved the greatest prominence in the literature, it is important to remember that alternative techniques also exist. Indeed, CEA has been used in some studies when the goal is to uncover the relative cost-effectiveness of criminal justice programs (Griffith et al. 1999).

The rationale for employing CBA

A key rationale for employing CBA in policymaking is the innate clarity of its results. CBA can produce findings that are simple to interpret and provide a straightforward answer to the question of whether a policy decision is economically »worthwhile.« One CBA-oriented study of the US state of Washington, for example, found that adult drug courts could produce $1.74 in benefits for every $1 spent, as they could reduce expenditures in other parts of the criminal justice system through lower recidivism rates (Washington State Institute for Public Policy 2003). This finding is easy to interpret and, for non-specialists at least, would likely have a greater intuitive appeal than a complex list of regression coefficients and significance levels.

A second rationale for employing CBA is that the technique requires policymakers or bureaucrats to think through a policy's potential outcomes and consequences (Brown 2004, 335). Such close scrutiny of a policy's effects could produce better policymaking. Indeed, as Pearce, Atkinson, and Mourato (2006, 34–35) have argued, CBA encourages decision-makers to think about who will benefit and who will be harmed as a result of a decision and, since CBA takes into account all costs and benefits, it requires decision-makers to adopt a broader perspective regarding a decision's impact. In other words, performing CBA calculations makes it more difficult for policymakers to ignore that certain citizens might be harmed by a policy.

A third rationale is that CBA could help save taxpayer dollars—and indeed CBA is often specifically employed to achieve this purpose. Escalating costs are of particular concern in the criminal justice realm since, even after taking into account inflation, criminal justice spending in the US has increased dramatically over the past several decades, with steep

rises especially in the area of corrections (Brux 2008, 30). These increases—and the related desire to curb these costs—have likely helped drive the increased application of CBA to criminal justice policymaking.

A fourth and final rationale is that CBA can contribute additional information that other evaluations of criminal justice policies' effectiveness cannot convey. Marsh, Chalfin, and Roman (2008) found that, across numerous studies of criminal justice interventions, effect size (indicating the intervention's impact) and net benefit (indicating the benefits of the intervention minus its costs) were not strongly related. Thus evaluations and CBA do not always produce similar results—in fact, they could actually lead policymakers to endorse different policies. CBA thus has the potential to contribute unique and important information to policy decisions that is not available through other sources.

Although these four rationales do not encompass all of the varied reasons for CBA's appeal, they show that CBA offers a range of potential advantages. On the other hand, aspects of CBA have also been subjected to numerous critiques. These criticisms are explored in detail in the next section.

Methodological, ethical, and other critiques

CBA's main critiques can be divided into two categories: practical criticisms of how CBA is conducted, and more fundamental critiques of its theoretical foundations. This section reviews both criticisms that have been advanced about CBA in *criminal justice* policymaking, as well as more general critiques of CBA in other policy realms. These more general critiques must also be examined to determine whether they might likewise apply to CBA in criminal justice.

Practical criticisms

Despite the recent increased interest in exploring the costs and benefits of criminal justice policies, Marsh (2010, 3–4) has noted that relatively few *rigorous* economic analyses have been conducted in this area. Indeed, in their comprehensive 2005 review of attempts to apply economic analysis to criminal justice policies and practices, Swaray, Bowles, and

Pradiptyo (2005, 141) only found 10 studies produced post-1979 that had applied »rigorous« economic analysis methods—a discovery that underlines the need for more methodologically-advanced work in this area. Using CBA in criminal justice studies can present many methodological problems and challenges (Roman 2004).

A key cause for some of these problems is the difficulty of measuring crime's costs and crime prevention's benefits. Precisely calculating each of these figures is essential for accurately conducting cost-benefit analysis (Kania and Davis 2012, 142). Yet these calculations' complexities have prompted numerous debates among experts; indeed, scholars have long disagreed about how to best calculate the costs that crime poses to society (Czabański 2008). More direct losses resulting from crime (such as revenue losses for a store owner who has been a victim of theft, or the costs of hospital treatment for an assault victim) are often easier to conceptualize monetarily than the likely intangible costs (for example the psychological trauma experienced by victims) (Farrell and Roman 2010, 165). However such intangible costs can be immense. In addition to the obvious difficulty of attaching monetary values to such unquantifiable harms, calculating these costs is further complicated by the fact that such harms can often be prolonged—indeed, trauma suffered by victims can be lifelong (Byford et al. 2010). How can one adequately predict, and account for, the lasting nature of such impacts? When indirect and intangible costs are added together, the costs of a single, serious violent crime are often, unsurprisingly, very large. The scale of these costs imposes an additional difficulty—namely, that the rare occurrence of a single, serious violent crime can sharply affect CBA estimates and therefore lead to very different policy recommendations (Roman 2004; Farrell, Bowers, and Johnson 2005). The sensitivity of CBA calculations to such rare occurrences is an important issue to consider.

Further difficulties are encountered if, in addition to the costs to victims, one also attempts to take into account the costs that crime poses to society in general—which most CBA schema aim to do (Czabański 2008, 10). Such costs include the money that is spent prosecuting and punishing offenders, and the public and private effort that is devoted to avoi-

ding crime by, for example, purchasing locks. Although calculating such costs might be simpler than calculating the intangible costs of trauma to victims, it is still not straightforward. One key issue, as Austin (2010, 55) has observed, is that, when measuring the costs of punishing offenders, researchers sometimes assume that correctional spending increases or decreases in direct response to changes in the number of individuals in prison or under community supervision. However, in reality, decreases in the incarceration rate do not always result in equivalent decreases in correctional budgets, due to institutional overheads and other costs. If researchers make this mistaken assumption they risk, as Austin has pointed out, overstating a policy's potential cost savings.

Taking into account the costs that crime poses to society in general also requires analysts to make difficult decisions about how (or even if) the costs borne by future generations will be included—a question that is central not only to CBA in criminal justice policymaking, but to CBA in all other policy areas as well (Trumbull 1990). Indeed, nearly five decades ago, this general issue of considering the future was discussed by Prest and Turvey (1965), illustrating the persistence and breadth of this question. In criminal justice, the problem of how to calculate and consider the costs borne by future generations would emerge if policymakers were, for example, thinking about public borrowing to build a new prison that would be paid off over many decades. Such a decision would have cost ramifications for future generations. This example is just one of many that could be cited in the criminal justice arena.

Finally, as discussed in the previous section, CBA is often conducted in concert with impact evaluations—or studies that aim to uncover the effectiveness of a policy or program in achieving a potential outcome (such as reduced recidivism or lower crime rates). As already outlined, one of the main advantages of CBA is that it can provide extra information not found in impact evaluations alone (Marsh, Chalfin, and Roman 2008). Yet CBA's connection to impact evaluations means that its accuracy depends upon the rigor of those underlying evaluations (Roman and DeStefano 2004, 129). CBA calculations based upon poorly-conducted impact evaluations hold little value. The dependence of some CBA cal-

culations on rigorous impact evaluations is thus another practical limitation to keep in mind.

All of these challenges are essential to consider because, if the costs and benefits of a program or policy are not calculated accurately in CBA, then the entire utility of the CBA exercise must be called into question. The mis-estimation of these costs due to the issues discussed in the previous paragraphs is thus a serious concern. Another serious problem is the mis-estimation of these costs by interested parties. The observation by a leading environmental policy scholar that—in the environmental field, at least—industries sometimes overestimate the future costs of regulations, could potentially also apply to crime policies (Uhlmann 2012). Like environmental policymaking, criminal justice policymaking can also be influenced by various stakeholders' economic and political interests. Such political interests could include policymakers' desires to appear »tough« on crime to appeal to voters. The potential for such interests to influence estimates of the costs and benefits of criminal justice policies by these stakeholders thus should not be ignored.

Theoretical critiques

The criticisms discussed so far have all focused on practical issues related to the execution of CBA, and whether (and how) to monetize and take into account various kinds of costs and benefits. In addition to these criticisms, however, much more comprehensive attacks have been leveled at the technique's theoretical premises.

The first of these major critiques posits that a market-based approach cannot fully appreciate the true value of non-market-based harms and benefits. This critique has often been applied to the use of CBA in environmental policymaking, with critics arguing that the benefits of unpolluted air and other non-market-based consequences cannot be captured through monetary measures alone (Uhlmann 2012; see also: Pearce, Atkinson, and Mourato 2006, 31). More broadly, the American political scientist Charles E. Lindblom (2001) has described that the market system has limitations when it comes to valuing non-economic concerns—an important limitation to consider when examining criminal justice

policymaking since non-economic concerns (such as the freedom to walk around a city at night without fear of being attacked) are central to many criminal justice policy decisions.

A second critique applies specifically to CBA in criminal justice policy-making. Going beyond the more practical criticism that calculating the harms that crime imposes on victims is difficult and complex; it has been argued that the entire premise of attempting to monetize the value of a person's life is morally unacceptable (see, for example: Office of Technology Assessment 1981, 197). Of course, as Farrell and Roman (2010, 167) have explained, monetary values are typically used to represent »utility« in such calculations; yet even the use of money as a stand-in for utility when considering crime's impacts would strike many as callous. Additionally, using money as a proxy could potentially distract from the crime problem itself. As Zimring and Hawkins (1995) have explained, focusing on costs shifts the focus of attention from the number of crimes averted to the amount of money saved; it is therefore important to consider whether cost savings might surpass crime prevention in policymakers' minds as the ultimate goal of criminal justice policies.

A related issue is whether, and how, to incorporate the tangible and intangible (i.e., psychological) gains that criminals can receive from the crimes they commit (Trumbull 1990). If policies are introduced that prevent or reduce these crimes, these gains are lost. Whether to take into account these lost gains is a particularly fraught question in criminal justice. As Whittington and MacRae (1986) have pointed out, the consideration of losses due to committing fewer crimes would likely disturb many citizens. Indeed, arguing that criminals gain *any* »benefits« from murders or rapes would strike many as deeply sickening—a further example of the sense of moral unacceptability described in the previous paragraph. Yet in a famous 1981 study of a program aimed at disadvantaged young people, Long, Mallar, and Thornton considered both the benefits to society of reduced crime after the introduction of the program, as well as the *losses* the participants experienced from committing fewer crimes while in the program (see also discussion of the study in Whittington and MacRae 1986, 667–68). Whilst it is not clear that eli-

minating these losses from the calculation would make the CBA less accurate, the issue of *which* costs and benefits deserve inclusion in CBA calculations is nonetheless highly contentious.

A third fundamental critique applies to the use of CBA in all policy areas and not just criminal justice. This critique posits that the straightforward results produced by CBA can give an *overly* simplistic impression of a policy's more complex consequences. Although CBA's straightforward results were identified in the previous subsection as one of the technique's main advantages, their simplicity might actually mask more nuanced findings. For example, although a policy might have an overall net benefit for society, it may have negative impacts for some vulnerable groups within society—and these impacts may not be readily apparent in one or two CBA figures. The idea that the impacts felt by certain particularly-affected groups should be given more weight in CBA decisions has been raised in some government reports (Payments Council 2009, 4). A potential compromise to overcome this problem is to follow Farrell, Bowers, and Johnson's (2005) recommendation that policymakers be given a limited *set* of estimates; a set would increase the comprehensiveness of the evidence policymakers could draw upon, but would preserve the straightforwardness (and lack of overwhelming information) that makes CBA so appealing.

A fourth and final fundamental critique of CBA is that it might have an inverse effect. Instead of saving public money, it may actually *discourage* policymakers from making economically-efficient choices. Although this critique might sound counter-intuitive, this inverse result could occur because of CBA's potential methodological problems that were discussed in the previous subsection. Such methodological problems and lack of accuracy could make citizens and policymakers less willing to endorse the technique's results, and thus more wary of adopting a given policy or program. As Austin (2010, 56) has argued, the unreliability of long-term cost-benefit predictions might make the public eager to endorse more reliable or more certain options. Although a more certain strategy might actually have higher costs and fewer benefits, it may seem more appea-

ling to the public than waiting for another policy's benefits to materialize far in the future.

The practical criticisms and theoretical critiques discussed in this section do not represent the complete range of bleak assessments of CBA that scholars have advanced, yet they do reveal that the use of CBA in criminal justice policymaking remains contentious. Interestingly, some of these criticisms have been advanced by scholars who actively use CBA, indicating that not all critics believe these limitations doom the entire CBA enterprise. Nevertheless, any attempts to rely on CBA must at least address these critiques and acknowledge that, like many quantitative techniques, CBA has limitations that continue to be the subject of vigorous debate.

Actuarial justice and the risk society

Of the practical criticisms and theoretical critiques examined in the previous section, one of the most significant is the difficulty—or even the impossibility—of attaching monetary values to non-market-based phenomena. Some scholars have emphasized the practical challenges involved in this process; other critics have argued that such monetization is morally repugnant and should not be done at all. Regardless of one's specific position, these criticisms highlight the centrality of this issue to any discussion of CBA. This section therefore explores the issue of attaching monetary values to non-market-based phenomena in more detail, focusing specifically on criminal justice policymaking. Two major theoretical frameworks—Malcolm Feeley and Jonathan Simon's (1992) notions of »actuarial« perspectives in crime and justice and Anthony Giddens' (1999) and Ulrich Beck's (1992) idea of the »risk society«—are explored in depth, as they offer significant insight into the origins and consequences of such monetization and quantification, and have particular relevance to the use of CBA in criminal justice policymaking. Indeed, Feeley and Simon's framework was developed explicitly in a criminal justice context, while the weighing of risks that Giddens and Beck have described is often a central element in criminal justice decision-making.

The first theoretical framework, actuarial justice, was described by Feeley and Simon (1992; 1994) as a contemporary, statistical-based emphasis on managing risk and crime; the tactic gives great weight to probabilities and statistical assessments. The *management* of offending is prioritized over more difficult questions of fairness or what constitutes a crime, and the goal of eliminating crime entirely is abandoned in favor of the goal of ensuring that crime remains at a practicable and controlled level (Feeley and Simon 1994, 173; Young 1999, 391).

Given CBA's quantitative, cost-weighting, managerial nature, it is not difficult to see the technique's connection to actuarial justice. Like actuarial justice—which focuses on crime management rather than crime prevention—CBA, as stated earlier, can shift the focus of societal attention from the number of crimes averted to the amount of money saved (Zimring and Hawkins 1995, 147). CBA's emphasis on saving money promotes a managerial role for criminal justice policy, in which costs are calculated precisely and the goal of complete crime elimination might be minimized in favor of containment and saving money. CBA's increasing prominence further underlines the ascent of actuarial justice-related ideas in criminal justice policymaking.

Interestingly, this de-emphasizing of other values—such as safety, equality, and consistency—in favor of saving money reveals how actuarial justice and CBA link to Max Weber's much earlier writings on bureaucracy and rationalization. In the early 20th century, Weber (1947) explored how an efficient public bureaucracy had emerged in concert with the rise of a market-based economy. This Weberian bureaucracy was rational, and focused on making efficient decisions unhindered by personal biases. Weber's rationality idea shares similarities with actuarial justice and CBA for, as Elster (2000, 36) has observed, Weberian instrumental rationality stresses efficiency over other values. This emphasis echoes CBA's focus on cost savings above all else. Dryzek (1993, 221) has similarly described how CBA can be seen as a »rationalistic« method for approaching policy decisions, in which efficiency is given prominence over other values that may also have substantive importance. This criticism harkens back to the theoretical critique of CBA, discussed in the previ-

ous section, about the limitations of any market-based technique to fully capture the value of non-market-based concerns.

The connections among CBA, actuarial justice, and Weberian concepts have also been hinted at by other scholars, such as Brown (2006, 110), who has noted that actuarial approaches in criminal justice naturally give regard to cost-benefit analysis and risk analysis to ensure systems operate efficiently. CBA can therefore be seen to play a central role in actuarial justice decisions, and it is also reminiscent of Weber's idea of rational and efficient bureaucracy. Similarly, Kempf-Leonard and Peterson (2000, 88) have pointedly stated that, in the US, actuarial justice's intents include the efficient and cost-effective imposition of long and harsh sentences. In this observation the implicit connection between CBA and actuarial justice is once again advanced.

CBA's link to actuarial justice and Weberian ideas means that these two concepts' limitations must also be explored. In particular, could actuarial justice's limitations also apply to CBA, given the concepts' similarities? Such limitations are numerous and, as Smith (2006, 101) has explained, include the problem that judgments about risk are often personal and disputed. This problem is significant because, according to Feeley and Simon's (1994, 173) formulation, actuarial justice focuses on overseeing and controlling groups of individuals who are classified by the level of threat they pose to society—in other words, assessing risk is one of actuarial justice's central tasks.

The challenge of assessing risk reveals the connections between the second major theoretical framework considered in this section and actuarial justice and CBA. This second framework is that of the »risk society«—an idea explored most prominently by Ulrich Beck (1992) and Anthony Giddens (1999). Giddens (1999, 3) defined the risk society as a society where individuals are surrounded by new technologies that are ever-more complex and beyond the comprehension of most human beings. For Beck (1992), risks and hazards are a result of modernity and industrialization, and the risk society itself is thus a relatively recent development in human history.

The risk society framework highlights the omnipresence of risk in human activities. Even decisions about criminal justice are all subject to risks which must, somehow, be dealt with. When assessing crime and justice issues, it is important to remember Calandrillo's (2001, 980) point, made in a more general context, that since risk is present in every human choice and action, efforts to reduce danger and foster safety are really efforts to reduce risk to an »efficient« amount. This emphasis on efficiency is deeply redolent of CBA. Indeed, CBA—with its precise, market-based weighting—is perhaps best seen as an efficient way of balancing these risks against wider societal goals. Interestingly, a slight variation on CBA that explicitly takes into account risk, risk-cost-benefit analysis (RCBA), has been used in US public-sector decision-making (Shrader-Frechette 1985). The key difference between CBA and RCBA is the explicit weighting and monetization of risks alongside costs in the latter technique.

The prevalence of such risk-weighting and cost-calculating in contemporary criminal justice is a phenomenon at the heart of actuarial justice; van Swaaningen (2000, 95) has described how, within the risk society, criminal justice officials can be seen as »actuaries.« This statement underlines that the term »actuarial« is connected to the insurance industry, where the employees tasked with weighting risks to determine insurance premiums are known as actuaries. From this perspective, the increasing use of CBA in criminal justice might only further encourage policymakers and criminal justice practitioners to behave as actuaries, meticulously comparing the costs and benefits of policy decisions. CBA can thus be seen as a fundamental expression of both actuarial justice concepts and risk society concepts, and CBA's increasing use in criminal justice offers empirical support to both of these theoretical perspectives.

However, it is of course also essential not to overstate CBA's emergence, or the newfound prevalence of actuarial justice and risk society concepts in criminal justice policy decisions. O'Malley (2002), for example, while acknowledging connections between actuarial justice and risk society concepts, has also noted that such models do not describe criminal justice policymaking everywhere. Indeed, according to O'Malley, there is

scant evidence that actuarial justice and risk society concepts have been exported from the US and impacted criminal justice policies in other countries such as Australia (the focus of O'Malley's article). Since the analysis in this article focuses on the US and the UK, there is certainly a need for more research to determine whether this same relationship among CBA, actuarial justice, and the risk society also exists elsewhere. Given the increasing interest in CBA in other countries—as described in the introduction, organizations as geographically-diverse as the European Commission and New Zealand's Ministry of Justice have indicated potential interest in the technique (van Soomeren et al. 2005; MacCallum 1997)—the need for further research in this area could become even more pressing in the near future.

Neoliberal ideas

According to Beck (1992), the risk society emerged at a particular historical moment, when industrialization and modernization exposed societies to new challenges and uncertainties. Interestingly, as described previously, the antecedents of CBA, such as Bentham's 19th-century utilitarian ideas, also emerged in the period following industrialization (Skousen 2009)—further evidence of the two concepts' similarities.

In contemporary times, historically-bound political and economic forces have also likely encouraged the growth of enthusiasm for CBA in criminal justice policymaking. In particular, neoliberal economic ideals, which have gained increasing prominence in many circles in the US and in the UK since the 1970s, seem to have played a key role in CBA's rise. With its emphasis on free-market principles and accountability, neoliberalism has a natural affinity with CBA's core tenets. Writing in the very different realm of education policy, Apple (2001, 38) has pointedly observed that, in neoliberalism, notions of »efficiency« and ideas about cost-benefit analysis both have great prominence. Given this affinity between CBA and neoliberal ideas, it is not surprising that Collins and Jimenez (2012, 62) have described the connection between CBA and neoliberal economic ideas in the US context, citing its increased use during Reagan's presidency and role in deregulation policies. Of course it is

important not to overstate the connection between CBA and post-1970s American and British enthusiasm for neoliberal tenets; the historical overview offered earlier in this article reinforces Scott and Light's (2004, 123) observation that CBA was used in certain contexts long before neoliberalism took hold. Thus neoliberal ideas are clearly not the only driver of CBA's development, although neoliberal ideas would certainly reinforce CBA's principles. The precise interrelationship between CBA and neoliberalism can be detected in Foucault's (2008, 116) idea that neoliberalism can be seen as a system in which even the government is governed by the market. Building upon Foucault's assertion it can be argued that, in order to achieve legitimacy within such a neoliberal economic system, the state must adopt the market's values. Such values would almost by definition *require* the state-led use of CBA in public decision-making.

Conclusion

This article has offered a critical overview of the potential implications, advantages, and challenges of using CBA in criminal justice policymaking. Critical analysis of CBA's presence in this field is particularly important, given the growing prominence of this technique. In January 2011, President Obama issued an executive order that explicitly recognized the role CBA can play in improving policymaking (Levshin 2011). In future years, public sector funding cuts—a consequence of the recession—might increase the pressure on policymakers to use CBA. In the US, for example, Congress voted to slash funding for federal criminal justice projects by 17% in 2011 (Burch 2011), thus increasing the incentive to develop cost-saving policies.

Given CBA's growing and future potential popularity, it is important to acknowledge the many challenges of applying it to the criminal justice realm and the underlying theoretical discomfort that many feel with regard to CBA's core tenets. As Trumbull (1990) has described, an economic-centered approach to criminal justice risks turning the justice system into a set course of »prices« that aim to balance the benefits of reduced crime with the costs of greater crime prevention. Given the

emotive nature of many crime issues, CBA's calculations and emphasis on efficiency can, for some, seem deeply misplaced. Additionally, CBA and other similar rationalistic techniques have been accused by critics of displaying little regard for the true complexities of politics and policymaking (Dryzek 1993, 221–22). Given the analysis presented in this article, one can certainly sympathize with these concerns. Even though—as Tropman and Gohlke (1973) have explained—CBA provides a potentially insightful tool for decision-makers working in the area of criminal justice, the increasing use of CBA underlines the need for more critical analysis about its role in policymaking, and its use in criminal justice policymaking in particular.

References

Adler, Matthew D., and Eric A. Posner. 1999. »Re-thinking Cost-Benefit Analysis.« *The Yale Law Journal* 109: 165–247.

—   2006. *New Foundations of Cost-Benefit Analysis*. Cambridge, MA.

Albertson, Kevin, and Chris Fox. 2012. *Crime and Economics: An Introduction*. Abingdon.

Apple, Michael W. 2001. *Educating the »Right« Way: Markets, Standards, God, and Inequality*. New York.

Austin, James. 2010. »Myths and Realities in Correctional Cost-Benefit Analysis.« *Corrections Today* 72 (1): 54–74.

Beck, Ulrich. 1992. *Risk Society: Towards a New Modernity*, translated by Mark Ritter. London.

Becker, Gary. 1968. »Crime and Punishment: An Economic Approach.« *The Journal of Political Economy* 76 (2): 169–217.

Brent, Robert J. 2006. *Applied Cost-Benefit Analysis*. 2nd ed. Cheltenham.

Brown, Sarah A. 2012. *Trends in Juvenile Justice State Legislation 2001–2011*. Denver.

Brown, Darryl. 2004. »Cost-Benefit Analysis in Criminal Law.« *California Law Review* 92 (2): 323–72.

Brown, Michelle. 2006. »The New Penology in a Critical Context.« In *Advancing Critical Criminology: Theory and Applications*, edited by Walter S. DeKeseredy, and Barbara Perry, 101–23. Lexington.

Brux, Jacqueline M. 2008. *Economic Issues and Policy*. 4th ed. Mason.

Burch, James H. 2011. »A Federal Perspective on the Cost-Benefit Knowledge Bank.« *The Vera Institute of Justice Blog*, April 27. Accessed November 1, 2013. http://www.vera.org/blog/federal -perspective-cost-benefit-knowledge-bank.

Byford, Sarah, Barbara Barrett, Richard Dubourg, Jennifer Francis, and Jane Sisk. 2010. »The role of economic evidence in formulation of public po-licy and practice.« In *Evidence-Based Decisions and Economics: Health Care,*

Social Welfare, Education and Criminal Justice, edited by Ian Shemilt, Miranda Mugford, Luke Vale, Kevin Marsh, and Cam Donaldson, 43–55. Oxford.

Calandrillo, Steve P. 2001. »Responsible Regulation: A Sensible Cost-Benefit, Risk versus Risk Approach to Federal Health and Safety Regulation.« *Boston University Law Review* 81: 957–1032.

Carlin, Alan. 2005. »The New Challenge to Cost Benefit Analysis.« *Regulation* 28 (3): 18–23.

Clear, Todd R., George F. Cole, and Michael D. Reisig. 2011. *American Corrections*. 9th ed. Belmont.

Cohen, Mark A. 2005. *The Costs of Crime and Justice*. Abingdon.

Collins, Timothy W., and Anthony M. Jimenez. 2012. »The Neoliberal Production of Vulnerability and Unequal Risk.« In *Cities, Nature and Development: The Politics and Production of Urban Vulnerabilities*, edited by Sarah Dooling, and Gregory Simon, 49–67. Farnham.

Czabański, Jacek. 2008. *Estimates of Cost of Crime: History, Methodologies, and Implications*. Berlin.

Dryzek, John S. 1993. »Policy Analysis and Planning: From Science to Argument.« In *The Argumentative Turn in Policy Analysis and Planning*, edited by Frank Fischer, and John Forester, 213–32. Durham.

Elster, Jon. 2000. »Rationality, Economy, and Society.« In *The Cambridge Companion to Weber*, edited by Stephen Turner, 21–41. Cambridge.

Farrell, Graham, Kate Bowers, and Shane D. Johnson. 2005. »Cost-Benefit Analysis for Crime Science: Making Cost-Benefit Analysis Useful Through a Portfolio of Outcomes.« In *Crime Science: New Approaches to Preventing and Detecting Crime*, edited by Melissa J. Smith, and Nick Tilley, 56–84. Cullompton.

Farrell, Graham, and John K. Roman. 2010. »Cost-Benefit Analysis and Crime Prevention.« In *Encyclopedia of Victimology and Crime Prevention*, vol. 1, edited by Bonnie S. Fisher, and Steven P. Lab, 165–68. Thousand Oaks.

Feeley, Malcolm M., and Jonathan Simon. 1992. »The New Penology: Notes on the Emerging Strategy of Corrections and its Implications.« *Criminology 30* (4): 449–74.

—   1994. »Actuarial Justice: The Emerging New Criminal Law.« In *The Futures of Criminology*, edited by David Nelken, 173–201. London.

Foucault, Michel. 2008. *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979.* Edited by Michel Senellart. Translated by Graham Burchell. New York.

Fuguitt, Diana, and Shanton J. Wilcox. 1999. *Cost-Benefit Analysis for Public Sector Decision Makers.* Westport.

Giddens, Anthony. 1999. »Risk and Responsibility.« *The Modern Law Review* 62 (1): 1–10.

Griffith, James D., Matthew L. Hiller, Kevin Knight, and D. Dwayne Simpson. 1999. »A Cost-Effectiveness Analysis of In-Prison Therapeutic Community Treatment and Risk Classification.« *The Prison Journal* 79 (3): 352–68.

Grosse, Scott D. 2009. »Cost-Comparison Analysis.« In *Encyclopedia of Medical Decision Making*, edited by Michael W. Kattan, 207–8. Thousand Oaks.

Hanley, Nick, and Clive L. Spash. 1993. *Cost-Benefit Analysis and the Environment.* Cheltenham.

Johannesson, Magnus. 1995. »The Relationship between Cost-Effectiveness Analysis and Cost-Benefit Analysis.« *Social Science & Medicine* 41 (4): 483–89.

Kania, Richard R. E., and Richards P. Davis. 2012. *Managing Criminal Justice Organizations: An Introduction to Theory and Practice.* 2nd ed. Waltham.

Kempf-Leonard, Kimberly, and Elicka S. L. Peterson. 2000. »Expanding Realms of the New Penology: The Advent of Actuarial Justice for Juveniles.« *Punishment & Society* 2 (1): 66–97.

Kula, Erhun. 1992. *Economics of Natural Resources and the Environment.* London.

Levshin, Valerie. 2011. »Is It Worth the Costs? Using Cost-Benefit Analysis to Minimize the Collateral Consequences of Convictions.« *Federal Sentencing Reporter* 24 (1): 80–81.

Lindblom, Charles E. 2001. *The Market System: What It Is, How It Works, and What to Make of It.* New Haven.

Loisel, Patrick, Jacques Lemaire, Stéphane Poitras, Marie-José Durand, François Champagne, Susan Stock, Binta Diallo, and Claude Tremblay. 2002. »Cost-Benefit and Cost-Effectiveness Analysis of a Disability Prevention Model for Back Pain Management: A Six Year Follow Up Study.« *Occupational and Environmental Medicine* 59: 807–15.

Long, David A., Charles D. Mallar, and Craig V. D. Thornton. 1981. »Evaluating the Benefits and Costs of the Job Corps.« *Journey of Policy Analysis and Management* 1 (1): 55–76.

MacCallum, Mark. 1997. »The Economic Analysis of Criminal Justice Policy Options: A Discussion Paper.« Accessed November 1, 2013. http://www.justice.govt.nz/publications/publications-archived/1997/the-economic-analysis-of-criminal-justice-policy-options-a-discussion-paper-september-1997/publication.

Marsh, Kevin. 2010. »Economic Evaluation of Criminal Justice Interventions: A Methodological Review of the Recent Literature.« In *Cost-Benefit Analysis and Crime Control*, edited by John K. Roman, Terence Dunworth, and Kevin Marsh, 1-32. Washington, D.C.

Marsh, Kevin, Aaron Chalfin, and John K. Roman. 2008. »What Does Cost-Benefit Analysis Add to Decision Making? Evidence from the Criminal Justice Literature.« *Journal of Experimental Criminology* 4 (2): 117–35.

Mauskopf, Josephine. 2009. »Cost-Consequence Analysis.« In *Encyclopedia of Medical Decision Making*, edited by Michael W. Kattan, 208–13. Thousand Oaks.

National Institute of Justice. 2008. »The Next Step: Completing the Cost-Benefit Analysis.« *NIJ Journal*, October 27. Accessed November 1, 2013. http://www.nij.gov/nij/journals/261/dna-cost-benefit-sidebar.htm.

Office of Technology Assessment. 1981. *Assessment of Technologies for Determining Cancer Risks from the Environment*. Washington, D.C.

O'Malley, Pat. 2002. »Globalizing Risk? Distinguishing Styles of ›Neoliberal‹ Criminal Justice in Australia and the USA.« *Criminal Justice* 2 (2): 205–22.

Payments Council. 2009. »Financial Inclusion Policy.« Accessed November 1, 2013. http://www.paymentscouncil.org.uk/files/financial_inclusion_policy_october_2009.pdf.

Pearce, David, Giles Atkinson, and Susana Mourato. 2006. *Cost-Benefit Analysis and the Environment: Recent Developments*. Paris.

Prest, Alan R., and Ralph Turvey. 1965. »Cost-Benefit Analysis: A Survey.« *The Economic Journal* 75: 683–735.

Price, William R. Jr. 2012. »Judge William Ray Price, Jr. on Issues Facing Mo. Courts as He Steps Away.« Interviewed by Maria Altman. *St. Louis Public Radio*, August 15. Accessed November 1, 2013. http://news.stlpublicradio.org/post/judge-william-ray-price-jr-issues -facing-mo-courts-he-steps-away.

Prieto, Luis, and José A Sacristán. 2003. »Problems and Solutions in Calculating Quality-Adjusted Life Years (QALYs).« *Health and Quality of Life Outcomes* 1: 80.

Roman, John. 2004. »Can Cost-Benefit Analysis Answer Criminal Justice Policy Questions, and If So, How?« *Journal of Contemporary Criminal Justice* 20 (3): 257–75.

Roman, John, and Christine DeStefano. 2004. »Drug Court Effects and the Quality of Existing Evidence.« In *Juvenile Drug Courts and Teen Substance Abuse*, edited by Jeffrey A. Butts, and John Roman, 107–36. Washington, D.C.

Roman, John, Lisa Brooks, Erica Lagerson, Aaron Chalfin, and Bogdan Tereshchenko. 2007. *Impact and Cost-Benefit Analysis of the Maryland Reentry Partnership Initiative*. Washington, D.C.

Scott, James C., and Matthew A. Light. 2004. »The Misuse of Numbers: Audits, Quantification, and the Obfuscation of Politics.« In *Democratic Vistas: Reflections on the Life of American Democracy*, edited by Jedediah Purdy, Anthony T. Kronman, and Cynthia Farrar, 115–37. New Haven.

Shrader-Frechette, Kristin. 1985. »The Real Risks of Risk-Cost-Benefit Analysis.« *Technology in Society 7* (4): 399–409.

Skousen, Mark. 2009. *The Making of Modern Economics*. 2nd ed. Armonk.

Smith, Roger. 2006. »Actuarialism and Early Intervention in Contemporary Youth Justice.« In *Youth Crime and Justice*, edited by Barry Goldson, and John Muncie, 92–109. London.

Squire, Lyn, and Herman G. Van der Tak. 1975. *Economic Analysis of Projects*. Baltimore.

Swaray, Raymond, Roger Bowles, and Rimawan Pradiptyo. 2005. »The Application of Economic Analysis to Criminal Justice Interventions: A Review of the Literature.« *Criminal Justice Policy Review* 16 (2): 141–63.

Tropman, John E., and Karl H. Gohlke. 1973. »Cost/Benefit Analysis: Toward Comprehensive Planning in the Criminal Justice System.« *Crime & Delinquency* 19: 315–22.

Trumbull, William N. 1990. »Who Has Standing in Cost-Benefit Analysis?« *Journal of Policy Analysis and Management* 9 (2): 201–18.

Uhlmann, David M. 2012. »What are the Prospects for Much-Needed Environmental Action? (Q&A with Professor David M. Uhlmann—Part II).« By Michael Bobelian. *Forbes*, August 8. Accessed November 1, 2013. http://www.forbes.com/sites/michaelbobelian/2012/08/08/what-are -the-prospects-for-much-needed-environmental-action-qa-with- professor-david-m-uhlmann-part-ii.

van Soomeren, Paul, Jack Wever, Tim Pascoe, Sharon Monahan, and Joan Oxley. 2005. »Review of Costs and Benefits Analysis in Crime Prevention: Report to the European Commission, Directorate-General for Justice, Freedom and Security.« Accessed November 1, 2013. http://www.eucpn.org/docs/review_costs_benefits_crime_prevention _en.pdf.

van Swaaningen, René. 2000. »Back to the ›Iron Cage‹: The Example of the Dutch Probation Service.« In *Criminal Policy in Transition*, edited by Penny Green, and Andrew Rutherford, 91–108. Oxford.

Vera Institute of Justice. 2012. »Knowledge Bank for Cost-Benefit Analysis in Criminal Justice.« Accessed November 1, 2013. http://www.vera.org /project/cba-knowledge-bank.

Vergano, Lucia, and Paulo A. L. D. Nunes. 2007. »Analysis and Evaluation of Ecosystem Resilience: An Economic Perspective with an Application to the Venice Lagoon.« *Biodiversity and Conservation* 16 (12): 3385–408.

Washington State Institute for Public Policy. 2003. »Washington State's Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit

Analysis.« Accessed November 1, 2013. http://www.wsipp.wa.gov /rptfiles/drugcourtMar2003.pdf.

Weber, Max. 1947. *The Theory of Social and Economic Organization*. Translated by A. M. Henderson and Talcott Parsons. New York.

Weimer, David L. 2008. »Introduction: Cost-Benefit Analysis and Public Policy.« In *Cost-Benefit Analysis and Public Policy*, edited by David L. Weimer, 2–6. New Jersey.

Whittington, Dale, and Duncan MacRae. 1986. »The Issue of Standing in Cost-Benefit Analysis.« *Journal of Policy Analysis and Management* 5 (4): 665–82.

Young, Jock. 1999. *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*. London.

Zimring, Franklin E., and Gordon Hawkins. 1995. *Incapacitation: Penal Confinement and the Restraint of Crime*. New York.

<div align="center">***</div>

Tiffany Bergin, Ph.D., Assistant Professor, Department of Sociology,

Kent State University.

tbergin@kent.edu

From social control to urban control?
Urban protests, policing, and localization in
Germany and England (1960s to 1980s)

Klaus Weinhauer

Introduction

Because the police exercise the state monopoly of physical force, it is a key institution when it comes to the analysis of issues of social control. As outlined in the introduction to this issue, when our aim is to study how police control works, our main focus should not be on strategies formulated by high-ranking decision-makers. Rather it is very important to see how these strategies shape police work on the streets. Moreover, a comparative perspective can help to avoid inappropriate generalizations. Urban street protests are a promising case to test the traditionally held view that German police are very state-centered and tough as well as the contrasting image of English police—held to this day—which is dominated by the myth of the liberal and friendly »Bobby.«

The policing of urban settings has been discussed in historical studies as well as in criminological publications. The 1970s and '80s saw a close cooperation between both scholarly fields with, in the main, the history of the nineteenth and early twentieth centuries at the center of analysis (Sack 1972; Kappel 1987; Lüdtke 1992; Reinke 1993). This interdisciplinary dialogue is much less typical for studies which focus on policing and crime in the second half of the twentieth century. Such studies appeared later—most have been published since the 1990s. In these years, however, interdisciplinary dialogue had already lost momentum (for an overview of the history of policing see Fürmetz, Reinke, and Weinhauer 2001; Weinhauer 2003; Briesen and Weinhauer 2007; Lüdtke, Reinke, and Sturm 2011). Since these years, in Germany, historians of crime mainly quote historians and most criminologists quote authors from

their own field, although sometimes references to sociological studies are made (valuable exceptions are Eisner 1997; Dinges and Sack 2000; Krasmann and Martschukat 2007). In Great Britain, there is still a more lively exchange between criminologists and historians and vice versa (Center for Crime and Justice Studies 2011; Lawrence 2012). With this paper, I would like promote the need to renew this interdisciplinary co-operation between history, sociology, and criminology.

Cities are a promising field to restart an intellectual exchange between history, sociology, and criminology, as there are many stimulating socio-logical and criminological studies which can be re-read by urban histori-ans. While Henri Lefèbvre's triadic concept of urban space (lived, perceived, and conceived)[31] has been widely discussed and practiced in the social sciences, it very seldom informs the works of historians (Döring and Thielmann 2008). This disparity is also true for his evoca-tive thoughts on the urban revolution (»La revolution urbaine«) and on the role of the state in forging urban societies (Lefèbvre 1972).[32] Manuel Castells, whose pioneering 1983 study *The City and the Grassroots* (Castells 1983) has been overlooked by most German urban historians in favor of his more recent work on network society, offers an important approach to emphasizing the importance of fights by urban social movements in reshaping urban meaning. Moreover, criminologists researching the wide field of »cultural criminology,« such as Keith Hayward, Jeff Ferrell, and Susanne Karstedt, have very much to tell historians about how urban consumption, fun-driven urban action, and emotions (e.g. fear) interact with crime (Hayward 2004; Ferrell and Websdale 1999; Ferrell, Hayward, and Young 2008; Karstedt and Farrall 2006). David Garland's works on

---

31   In this model, space is not a mere container but a relational concept which shapes and is shaped by human actions. Space integrates urban practices (lived), perceptions/concepts (perceived), and symbolically constructed (conceived) elements.

32   This lack of interest among historians also becomes obvious when we look at the recently booming discussions about how Lefèbvre's multifac-eted approach can stimulate new research (see Goonewardena et al. 2008).

changing cultures of control underline—as do historical studies—the manifold political and cultural caesurae of the 1970s (Garland 2001, 96; Doering-Manteuffel and Raphael 2012).

Cities may serve as a good test ground to take advantage of the approaches and insights generated by all these authors, as cities have a long history as sites where police forces and protestors meet, sometimes violently. The urban protests of the last third of the twentieth century offer a good opportunity to analyze the interaction of policing, urban space, social movements, and consumption. This article analyzes in the main the policing of street protests during the 1960s to 1980s in Germany and in England (for sociological studies on protest policing see Waddington, Jobard, and King 2009; Winter 1998; Della Porta and Reiter 1998; for a historical case study see Weinhauer 2003). My arguments are structured by the following assumption: In both countries, until the 1960s, policing street protests still aimed at completely controlling a physical territory including the movements of persons or groups within it, leaving only very few pockets for independent spatial appropriations by protestors. This pattern of protest policing, established in the nineteenth century, was originally developed to be employed against protests which used urban space mainly as a mere stage to present their aims. The police focused their actions on restoring an abstract social (England) or state (Germany) order. I would like to call this pattern of protest policing *social control protest policing*. In urban neighborhoods in the early/mid-1980s however, this pattern of protest policing was challenged in an unprecedented manner. The two main questions are: how can we explain these violent clashes between police and 1980s protestors, and why is protest policing in both countries still struggling to make necessary changes?

The main challenges to 1980s protest policing came from a process I prefer to call *urban localization*. Inspired by Lefèbvre, I understand localization as a complex set of factors encompassing the (re-)discovery of the potentialities of local urban space. Space in this case was a power resource for identity formation, for stimulating visions of the future of the urban, and for satisfying consumer needs. In order to make clear the problems of practical policing, which resisted many ad-hoc police re-

forms, the first section puts a strong focus on the police of the 1960s. Internal problems, patterns of perception/communication and comparative aspects of German and English police forces are analyzed, while interaction with urban protestors is only briefly sketched. As the 1980s are much less well-studied, the second section both briefly outlines the culture of the police and give an overview of social and cultural changes and the interaction of urban protest, localization, and policing.

1960s policing: Protests *in* the city

European cities of the mid- and late-1960s saw some turbulent student protests. In West Germany, student protestors aimed mostly at political change, while their English counterparts were more focused on cultural issues; although, as recent research has underlined, cultural aspects also played an important role in 1960s protest movement in West Germany. The protestors usually articulated their aims without referring directly to aspects of urban life. They addressed university reforms, transnational issues like the Vietnam War or international solidarity, but also abstract political or cultural issues such as democratization or liberalization of drug use (Weinhauer 2006; Stephens 2007; Klimke and Scharloth 2008a and 2008b). These movements acted *in* the city and used urban space merely as a stage.

In both countries, in the 1960s and '70s the policing of protests was shaped mainly by actions that aimed to achieve not only the control over a contested physical territory, but also over the movements of (masses of) people (Della Porta and Reiter 1998). As will be demonstrated below in greater detail, using this model of policing street protests, the police tried to restore (local) order (England) or to protect the state as a whole (Germany).

Talking about *the* German or *the* English police, however, is problematic, as there was nothing like a single uniform body of police. In West Germany, the federal states (*Bundesländer*) had jurisdiction over police matters. Moreover, until the mid-1970s, some cities had independent city police forces. These were based in federal states territory which formerly had been occupied by the US American troops, including Bavaria and

Hesse. Although the number of police forces in England and Wales went from 152 to 43 between 1962 and 1985 (Scraton 1985, 54–55), we still cannot talk of one English police force. Moreover, the commissioners of the local police forces, the police chiefs, were largely autonomous. Again and again in England it was stressed that »the police are not the police of government but of the community« (Reiner 1985, 17). This, however, changed dramatically in the 1980s.

The collective protests of the 1960s did show the police less in their favored role as friend and helper and more as the agency responsible for putting the state monopoly on physical violence into practice. Moreover, among many West German student protestors, the police represented a fascist past. In 1967/68, this murderous past came into public awareness because in many German cities, for example Hamburg and Wuppertal, there were trials against policemen (many of whom were still in active police service) who had participated in National Socialist mass murder (Weinhauer 2009).

German police: Protecting the state

In the 1960s, German police forces acted in a transitional phase in which police tasks had to be newly defined. The main problem was that many West German police forces struggled to emancipate themselves from traditions of paramilitary policing which had their roots in the Prussian police of the Weimar Republic (Weinhauer 2003). While this transition was well under way in day-to-day police work and in policing youth riots, the policing of protests which were labeled as »political« was still strongly influenced by paramilitary concepts and traditions. The most important Weimar legacy was the civil war model of social control protest policing. It guided the perceptions of the police when it came to handling protests labeled as political (see Werkentin 1984; Weinhauer 2003). The key feature of this civil war model was the employment of heavily armed police troops who were willing to end all protests by any means and at all costs—including shooting at the protestors and even killing them. This civil war model was still taught at police training centers up until the early 1970s.

Generally spoken, against the background of a deep-rooted anti-communism, many West German policemen shared a dislike of the soft policing of political protests. When it came to an analysis of the 1960s protests, the master plan and mastermind theory of protest dominated the thinking of policemen and of most politicians. First, both groups of officials were sure that political protests were not spontaneous actions, but part of a (communist) plan drawn up in advance. Second, such political protests were organized by professional ring-leaders who turned crowds into »acute masses« (*akute Massen*). These masses were seen as acting as one single, acutely threatening, homogenous being out to destroy any given order. This view of acute masses, a concept inspired by the late nineteenth century French psychiatrist Gustave Le Bon, was shared by police comrades in other countries (see Weinhauer 2003, 274–77; Weinhauer 2011a). Mass behavior, as West German policemen were sure to know, was manipulated by *Rädelsführer* (ringleaders) who strove to turn their followers into acute masses whose actions would inevitably lead to communism (Stiebitz 1956; Pulver 1960). The destructive potential of these acute masses was very high, thus, the ringleaders had to be isolated and seized by the police.

Even in the Cold War conditions of the otherwise quiet 1950s, policemen sometimes drew their arms in order to protect the West German state against its communist enemies. But these weapons were very seldom used. In Hamburg in May 1951 the police violently squashed student protests against public transport fares, one protestor was shot dead in May 1952 in Essen during an anti-rearmament demonstration, and in Munich in 1954 police fought street battles against consumer protests. Most of the time, the demonstrators were highly disciplined members of the German labor movement or equally disciplined activists of the peace movements of the late 1950s (see Kraushaar 1996, 428–30 and 603–5). However in 1966–68, in many West German cities, student activists employed new patterns of protest and provocation. Would West German police again draw—and this time use—their weapons?

1960s German policemen had shown great inflexibility in handling spontaneous and creative student protests. This was reinforced by the

contemporary police culture with its pattern of masculinity centered on the »man of action.« His main task was to protect the highly mythologized state, if need be at the cost of his own life. When these men were deployed against political demonstrations—where acute masses would inevitably occur and thus communism was lurking—it was irrefutable that such protests had to be fought hard and determinedly. These policemen likened the actual situation in West Germany with the demise of the Weimar Republic and thought that the democratic order was threatened or about to be undermined.

During these protests, however, the police forces of the federal states of West Germany did not follow one single concept but employed various police intervention tactics. A confrontational concept of policing these protests—which has been a main focus of existing research—was employed in West Berlin, where on June 2, 1967 student Benno Ohnesorg was shot dead by a policeman. It was not only the city's unique political situation which led to these well-known clashes with the police, but also the fact that the Berlin police were inspired by strong anticommunist sentiments and employed a confrontational civil war model of protest policing in its purest form (see Sack 1984; Busch et al. 1988).

Another precondition—which is often forgotten—also had repercussions on the policing of political protests: the way the media, in this phase mainly the press, reported about local police interventions. While Berlin, with the dominance of the Springer press, was a good example of how these processes of mutual radicalization could work, big cities in North-Rhine Westphalia were at the opposite end of the scale. Hamburg was situated somewhere in between, as it was home not only to some critical weekly journals (*Die Zeit* and *Der Spiegel*), but also to the *Hamburger Morgenpost,* a daily newspaper that did not always demonize protesting students. In this city, and also in Munich, police intervention tactics followed a softer line—first theoretically, then also practically. These reforms did not mean that no physical violence was employed by policemen. In Hamburg and some other cities, however, at least the institutional setting was (slowly) changing towards a less confrontational

mode of protest policing. There are three factors which can help explain why this conceptual change became possible.

First, efforts of reforming protest policing were put forward by political actors who were socialized outside the ranks of the police forces—not by policemen themselves. These politicians began to control »their« police forces. As a consequence, in Hamburg in 1967, the guidelines for protest policing were radically revised. Second, crucial steps towards an explicit reform of the civil war model of protest policing had been taken before 1967/68—which means before the main wave of political protests began. These reform processes started in Munich after the Schwabing riots in June 1962 (Fürmetz 2006) and in Hamburg after a demonstration in front of the US consulate in July 1966. Third, in Munich as well as in Hamburg, new channels of communication for policing political protests were established. In Munich in 1964, the police were assisted by a Study Group for Political Psychology and Communication Research and by a psychologist. In Hamburg a planning group was established in October 1966 and a psychologist was employed in 1969 (Weinhauer 2001, 314; Weinhauer 2003, 300–301). The planning group in Hamburg brought together policemen, politicians, officials from the trade unions, church leaders, and local interest groups. Their task was to discuss appropriate measures for protest policing and to work out special recommendations for the police. Unsurprisingly, in their early stages all these measures—be it the flexible reaction or the invention of new channels of communication— met harsh opposition from leading policemen in Hamburg.

Although these reform-oriented politicians tried to change police intervention tactics, in practice this was hard to achieve on the spot (on the following see Weinhauer 2003, 328–30). Two unique features of 1960s police culture—the specific group culture and the dominant pattern of police masculinity—can explain this delay. Among 1960s policemen, forming and being part of highly cohesive collectives was very important. During police interventions against political protests, however, these informal collectives of »men of action« made the police uncontrollable. Policemen over the age of thirty in particular were disappointed

that they could not act against the demonstrators as radically as they thought was appropriate. As a consequence, these frustrated policemen built small groups that fought their own battles against political protestors. Even their direct superiors could not stop or control these groups of policemen, because their members consciously cut themselves off from any communication with the rest of the force. These violent actions of uncontrollable groups of West German policemen revealed a specific aspect of West German police culture which also contributed to the escalation of violence: the obvious paradox of putting a Weimar-oriented civil war model of protest policing into practice when the social conditions had changed dramatically. For one, since the late 1950s, the use of firearms against protestors—a key element of the civil war model—had become nearly unimaginable in practical policing. This in turn intensified disorientation among West German policemen.

English police: Restoring order

During the 1960s, protest policing in England was different than in Germany. There were only scattered individual acts of physical violence in 1960s protests, on the side of policeman as well as on the side of protestors. Such acts did however occur during the anti-Vietnam protests of March and October 1968 in London. Especially in the days before the October 27, 1968 protests, the press campaigned against them, spreading rumors about a militant plot or speculating about an escalation of violence as in France in May 1968 (Thomas 2002, 289). The general expectation, however, was that

> although nobody intended to provoke a confrontation with the police, given the expected numbers of both demonstrators and the police, some violent incidents and resulting casualties would probably be unavoidable (Halloran, Elliot, and Murdock 1970, 36).

And indeed there were casualties in October 1968. A careful investigation of contemporary sources reveals, that 74 policemen and 96 protestors and bystanders were injured, but only seven policemen and 22 protest marchers or bystanders had consulted a doctor. The overall impression was that most injuries arose »out of being pushed against the

police cordon by pressure from behind« or »were consequent upon be-
ing in a large crowd.« Injuries included »fainting and shock together with
abrasions and lacerations sustained while falling to the ground and being
kicked and trampled on during sudden movements of either the police
or the crowd« as well as »lacerations from objects thrown, particularly
splinters from banner sticks« (ibid., 50–51). Moreover, the majority of
protestors were not professional revolutionaries who aimed to over-
throw the government. Rather, the longtime perspective of these pro-
tests was »concerned with the strengthening of existing institutions,«
aimed at »inclusive participation,« and the protests themselves were »acts
of ›ordinary‹ people« (Thomas 2002, 297).

Although there were individual acts of police violence, overall in 1968
police tactics »cleverly defused potential areas of confrontations«
(Thomas 2008, 349). Or as the Chief of the London Metropolitan Police
put it in his report reviewing the events of 1968:

> I take the view that we should deal with violent confrontations by
> traditional methods […] we do not wear protective clothing, and
> do not make use of tear gas, water cannon, barbed wire barriers or
> any equipment that could be said to give rise to provocation to the
> demonstrators.[33]

Moreover, after the protests of October 1968 in London there was a
collection of 300,000 signatures congratulating the London police »on
their tact, restraint and good humour.«[34] In a 1969 report, the commis-
sioner of the London Metropolitan police was still convinced that the
»policy of using traditional methods in dealing with these demonstrations
is the right one and in this the police service is supported by the vast
majority of the general public.«[35]

---

33   *Report of the Commissioner of Police of the Metropolis for the Year 1968* (London:
      1969), 9.

34   Ibid., 42.

35   *Report of the Commissioner of Police of the Metropolis for the Year 1969* (London:
      1970), 10.

Until the 1970s, four factors contributed to a less violent modus of policing street protests by the English police (Halloran, Elliot, and Murdock 1970; Geary 1985; Weinhauer 2008). First, in contrast to their German counterparts, English policemen did not see the existence of the state as threatened by the protestors. Although they did also see »acute masses« acting during street protests, these crowds did not aim to challenging the state order, but rather disturb the local order or peace. English policemen lacked the strong commitment to anticommunism as well as the mythological glorification of the abstract state. Second, although it was a mere myth, the image of the English Bobby contributed strongly to inhibit further escalation of violence on both sides. However distorted and mythological this image may have been, it had a de-escalating impact. On the one hand it convinced the policemen that they would be able to meet all challenges, and on the other hand it reassured the student protestors that police violence had clear unwritten limits. This was reinforced by the fact that 1960s street protests were attended mainly by well-educated members of a predominantly white middle-class (Nehring 2005, 399). Third, these white middle-class protestors and policemen—at least until the mid-1970s—were part of a shared network of communication, which strongly inhibited processes of de-humanization of the respective other side. In German cities, this lack of non-violent communication was a key element contributing to the escalation of violence in student protests. At least some German cities, as I have demonstrated above, tried to overcome these obstacles. Fourth, until the 1970s, the English police could be fairly relaxed in fighting collective protests at home, as the case of Northern Ireland amply demonstrated what could happen if the police was really challenged by coordinated acts of physical violence. All in all, since this system of informal checks-and-balances was kept intact, in England there was no urgent need to reform the established pattern of social control protest policing, as was the case in 1960s West Germany.

Localization and 1980s policing: Protests *about* the city

During the 1980s, European cities saw a wave of urban protests in which protestors and the police often clashed violently. The urban protests in

1980s Germany and England took place in societies which had thoroughly changed since the 1960s. First, it became obvious that the 1980s had seen an erosion of central social norms and values, giving way to more diverse sets of informal rules and to the localized identities which I have described above. As a consequence, a process which had already started during the 1960s gained momentum. The concept of a stable and holistic social order had eroded; no longer did individuals need to be educated to find their place in a clearly defined society, rather the reigning idea was that individuals had to be trained to be able to make choices in a diversified consumer society (Friedrich-Ebert-Stiftung 2012; Wills 2005, 182–83). Second, beginning in the late 1960s, social scientists in Germany and in Britain discovered a set of intertwined changes in urban societies which were perceived as being very dramatic. Urban riots, crime, and violence, committed mainly by young men, had gained massive attention (Brand and Cox 1974; Rees and Lambert 1985).

Although these phenomena had accompanied the history of urban settings at least since industrialization and the intensification of urbanization during the nineteenth century, in the last third of the twentieth century these problems, and the threats they posed, seemed to have become exacerbated, leading to a thorough urban crisis (Eisner 1997; Häußermann and Siebel 1980). This crisis was not only caused by changes in the perception of some already well-known urban problems, but was also the product of decay in inner-city neighborhoods and of infrastructural problems which led to a loss of control over urban growth. Third, the perception of this urban crisis that had been growing since the 1970s was intensified, since at the same time there was a growing awareness of spatial aspects of urban life (Lefèbvre 1972; Castells 1983; Sennett 1970). Until the early 1960s, an interest in abstract urban planning together with a belief in social progress shaped the perception of urban problems (Haumann 2011). Since the 1970s, however, local aspects of urban life gained importance. This newly gained power of the local also affected the urban protests of the 1980s.

West German police: Still »seeing like a state«

Before the wave of new urban protests hit West German cities in the early 1980s, West German police forces underwent technical, organizational, and tactical changes. Starting as early as the late 1950s, technical police equipment for routine policing had been modernized, mainly in the form of radio patrol service and related organizational changes. By the1980s, everyday policing had adapted to social changes. The tendencies of urban inhabitants to be more engaged in local urban policy on the one hand, and to express a higher fear of crime on the other hand, were met by the police with the reinvention of local beat policemen, the *Kontaktbereichsbeamten* (KOB). These local beat policemen went on regular foot patrols and had to establish good relations with the inhabitants of their neighborhood (Busch et al. 1988, 97–99). They were supposed to keep an eye on social tensions and crime while also improving services for disabled and elderly people. While middle-class citizens greeted the invention of KOB, the critical left and members of the underclass criticized this localized police practice as a kind of decentralized big brother.

While these reforms in routine policing were welcomed by many policemen and also by many local citizens, it was much harder to modernize police tactics against protests labeled as political. As a consequence of the uncontrollable police interventions against 1960s student protests, police training was updated, mainly by concepts which relied less on military ideals than their predecessors (on the following see Weinhauer 2003; Busch et al. 1988). Moreover, in the early 1970s, West German police forces, as one element of attempts to de-militarize their intervention tactics, established specialist teams (*Sondereinsatzkommandos* and *Mobile Einsatzkommandos*) to handle exceptional situations. Additionally, the *Bundesgrenzschutz* (Federal Border Guard) was trained to handle violent protests. In the 1980s however, it was still open to question what all these organizational reforms meant when it came to practical policing of mass street protests in a localized urban setting, among them the massive anti-nuclear protests of the late 1970s, and the 1980s wave of urban squatting

When we look at how localization affected 1980s urban protests, several factors stand out. While many 1960s protestors in West Germany wanted to change the whole political system (or sometimes the whole world), 1980s urban protests had in the main more local aims. First, these protests were expressed by urban social movements (Castells 1983). These urban movements (citizens' initiatives, urban action groups, etc.) did not primarily address abstract social changes. Their actions and protests were *about* the city and they even put the future of the city on the agenda. Second, these urban protests addressed aspects of life in the city through a primarily local lens. Third, in these locally-focused urban social movements, (local) aspects of consumption often stood at the forefront (Castells 1983; Weinhauer 2011b). Fourth, 1980s activists lived in closely interconnected microcosms, nicely captured in the term »two cultures« (*zwei Kulturen*, Hoffmann-Axthelm 1979). It postulates that West German society was separated into two cultural camps: On the one side stood the social majority which shared mainstream norms and values, and on the other side were the many young people who had turned their back on these norms. Thus it comes as no surprise that 1980s protestors, fifth, articulated a strong interest in local democracy. They demanded participation in urban planning, became more aware of social problems in their neighborhoods, and self-confidently formulated ideas about the future of local urban life (Haumann 2011).[36]

Taken together, these localized urban social movements posed crucial challenges to police forces. The interaction between 1980s urban protestors and the police in German cities has not yet been covered by historical research in any detail. We still have to rely on contemporary political and social science studies (Busch et al. 1988; Winter 1998), which have little to say about urban and spatial aspects. The rich contemporary literature in both countries that looks at the relationship between the police and the state/government comes to quite similar

---

36   This search for local roots also found expression in a powerful interest in local everyday history. In Germany and England the *Geschichtswerkstatt*/History Workshop movement gained momentum (Bausinger 1980; Lindenberger and Wildt 1989; Vorgänge e.V. 1980).

insights: In the 1980s, the police became something like a disciplining super power, employing violence on a massive scale. There seemed to be a master narrative asking: »Is Law and order out of control?« (Scraton 1985, book cover). How could this happen? Why were these police forces not able to adjust their modus of policing street protests to the challenges created by localized urban protests?

To begin with, West German protest policing in the 1980s was shaped by a mixture of continuity and change. The hermetic occupational culture of the police, with its unique pattern of masculinity, inhibited more far-reaching transformations. Technical and organizational reforms had influenced street policing, which was now mainly the task of units of specially trained young men, the *Bereitschaftspolizei* (riot police). As a consequence, 1980s police interventions were no longer dominated by uncontrollable campaigns of revenge by ad-hoc groups of older policemen. However, the police still aimed at achieving full social control; its intervention tactics were mostly built on worst-case scenarios in which protestors acted extremely violently and tried to reach their political aims by actions planned well in advance.

On the level of norms and values, there was a similar mixture of few changes and strong continuities. Only very slowly could policemen be convinced that protest demonstrations were an important civil right which had to be protected by the police. At least on the formal level, the May 1985 verdict of the Federal Constitutional Court on the freedom of assembly urged the police to tolerate demonstrations and to communicate better with their organizers (Winter 1998, 66–67 and 197). In small steps, the state-centered philosophy became modernized (see Weinhauer 2003, 119–20). For older policemen, who had mostly been trained during the Weimar Republic, the state was a mythological sacred entity, which they wanted to protect even at the cost of their own lives. As a consequence of the expansion of the welfare state in the 1970s, West German policemen's view of the state slowly became more concrete; the state was de-mythologized. In these years a perspective evolved of »seeing like a state« (Scott 1998), which still gave high priority to the protection of the now more concrete state. Policemen in the 1980s tried to discern

whether the urban protests were legally legitimate or illegitimate. Influenced by the cold war climate, many of them shared the perspective of the West German press, which continually tried to find connections of Berlin squatters to left-wing terrorists. In police bulletins, policemen—often using metaphors of warfare—debated the extent to which these protests threatened the whole political system (*Polizeinachrichten* 1982; Freund 1982; Ganschow 1983).

Among the more militant protestors there was also a confrontational spirit fueled by a dichotomous view that could—similar to that of policemen—only distinguish between them (police, state officials) and us (the militant protestors). Because of this binary model of interpretation on both sides, tensions between protestors and policemen escalated easily and confrontations often got of hand. Neither side, however, used guns, etc. In the 1980s, this line was only crossed once in November 1987, when two policemen were killed by pistol shots fired by militant activists (Geronimo 1990, 144–45; Diederich, Schindowski, and Hoffman 1987; Anders 2008).

When we try to analyze what exactly localization meant for the street protests of the 1980s, several factors come to the forefront. In Berlin, local squatters expressed their needs as urban consumers mainly through demands of cheap housing in which they could find space to realize their aims of local democracy and an autonomous life in a community of the like-minded. These activists were aware that it was important to establish good relationships to their »normal« local neighbors. These local goodwill efforts sometimes worked and were able bridge the divide between the »two cultures« (Lessing and Liebel 1981). Many urban protestors also stressed the fun-driven aspects of local revolt, a pattern which—exceptions aside—was much less widespread among 1960s protestors: The alternative left-wing daily newspaper *die tageszeitung* spoke of »joy looting« (*Freudengeplünder*)[37]. One self-aware squatter underlined the thrilling aspects of fighting in the streets of his (local) neighborhood:

---

37   Quoted in »Da packt dich irgendwann 'ne Wut,« *Der Spiegel 52*, December 22, 1980.

> You can feel our power when there's a rampage on the streets: up to the tips of our toes in the fastest sneakers. It's the quivering of desire and fear in your stomach when the panes shatter after the liberating throw, in running while you laugh. You're the coolest. Half proud warrior, half sleek animal. They can't get you as long as you're not scared. (Härlin 1981, 24–25)[38]

All in all, light-years separated the policemen's cold-war modus of »seeing-like-a-state,« which was blind to spatial aspects, from the locally-based spatial imaginations and perspectives held by activists of the urban social movements of the 1980s. Thus open communication between protestors and the police was nearly impossible. Their occupational culture and their state-centered perspective prevented policemen from figuring out how to handle such localized fun-driven actions, in which policemen were also, in the purest sense of the word, players in a game, and sometimes contributed—as I have mentioned above—to an escalation of violent encounters. All in all, in West Germany, urban police forces were unable to reflect critically on the role police interventions played in the escalation of street violence. This was another factor which shaped the tensions in the relationship between local urban movements and the police in West German cities. Thus it comes as no surprise that among the young urban protestors, nearly nobody was interested in discussing reforms or a better control of the police. In their view, this institution was too strongly interwoven with—and too much a part of the norm and value systems of—the hated state (Wissmann and Hauck 1983; Willems 1997; Balistier 1996).

English police: Challenges of the »community relations« myth

In England the deep caesura for the police as an organization in general and for policing street protests in particular came more than a decade later than in West Germany. While in West Germany, police intervention tactics had come under severe critique since the 1960s student protests, the English system of policing street protests had survived nearly unal-

---

38 See also Scheer and Espert 1982, 138–40; Gudrun Grundmann et al. 1981.

tered. Could the English police, as was the case during the 1960s, successfully meet these challenges by simply resorting to its »tact, restraint and good humour«? As has been indicated above, it could not.

Similar to in West Germany, policing in localized English cities had to cope with the consequences of social and cultural changes, and also with an urban crisis that was more intense than in West Germany. The deep irritation of English social and political elites at having »to abandon thinking of a nation as a homogenous entity« in the 1970s can hardly be overestimated (Waters 1997, 238). Society was structured by ethnicity, which marked an important social divide. Since the mid 1960s more and more migrants were concentrated in run-down inner-city neighborhoods. There was a growth in racist attitudes and racist politics directed against these »aliens.« Violence against minorities, such as »Paki-bashing« (physically attacking Pakistanis) increased (Webster 2005; Kettle and Hodges 1982, 53–54) and the fascist National Front mobilized against non-whites. During the Notting Hill, London street carnival in 1976 and 1977, the police (equipped with shields for the first time ever in 1977) was involved in skirmishes quarrels with immigrant youth.[39] In these years, it also became obvious that the police developed an »institutional racism« (for an overview see MacPherson 1999; Lea 1986) against non-whites. As a consequence, a »racialisation of disorder« (Rowe 1998) gained ground in 1980s Britain. On the political level, the 1976 installation of the Commission for Racial Equality was at least an effort, albeit deficient, to counter the growing racism in British society.

In English cities it was not squatting or the student protests of the 1960 and '70s that caused the changes in protest policing, but rather a series of severe urban unrests which reverberated like a shock wave throughout the country (Gudrun Grundmann et al. 1981, 21–27; Benyon and Solomos 1987a; Frost and Phillips 2011). These riots hit Bristol (April 1980), Brixton, London (April/July 1981, September 1985), Toxteth,

---

39   See *Report of the Commissioner of Police of the Metropolis for the Year 1977* (London: 1978), 23–24. The contemporary terms for immigrants were »black,« »people of colour« or »West-Indians.«

Liverpool (summer 1981), Moss Side, Manchester (September 1985), Handsworth, Birmingham and Broadwater Farm Estate in Tottenham, London in October 1985. On the political level, these events led to many enquiries, among which Lord Scarman's report on the early riots, first published in November 1981, became the most well-known (Scarman 1983; see Gifford 1986; MacPherson 1999).

The riots in Brixton in April 1981, in which 450 people were injured, 207 vehicles were damaged, and 354 arrests were made, were an expression of an extremely deteriorated relationship between the police and the inhabitants of black neighborhoods (on the following see Willems 1997; Benyon 1984; Benyon and Solomos 1987a). Common police methods included »swamp 81,« arrests on suspicion and stop-and-search, as well as saturation policing: All these interventions were instrumental in sparking off the riots. In Brixton, a police intervention named »swamp 81« (early April 1981) brought more than one hundred local plainclothes police officers into black neighbourhoods to search for criminals without contacting any community representatives beforehand. In the view of leading policemen, this was a »resounding success« (Kettle and Hodges 1982, 105) with 118 arrests made and 943 stop-and-search actions undertaken. For the non-white inhabitants, however, this sometimes brutal police action added to the tensions in the neighbourhood. Additionally, notoriously brutal non-local SPG (Special Patrol Group) policemen entered poor Brixton neighborhoods, sealed them off and checked people for drugs, stolen goods, etc. This kind of saturation policing was carried out disproportionately often in black residential areas. Moreover, police actions based on the Vagrancy Act of 1824 allowed the police to arrest a person on suspicion of loitering with intend to commit an arrestable offence (repealed later in 1981). Through these police actions, the mutual trust that, as we have seen, existed in the 1960s was severely eroded on both sides. This was true not only in Brixton, but in many other black neighborhoods in British cities.

The final spark in Brixton came on a Saturday afternoon in early April 1981 when street policemen tried to help a young immigrant who was bleeding. A series of misunderstandings culminated with people attack-

ing police cars. What followed was a weekend of burning cars and looted stores, but also of collective pleasures and a temporary euphoric atmosphere. The looting was not aimless: big chain stores and pubs known for their racial discrimination were attacked while local stores remained untouched. The 1980s urban riots even had a soundtrack, a song by the punk band The Clash, »Guns of Brixton«, which could often be heard on the street, sometimes played on stolen audio equipment.

English newspapers, in their reports on the urban riots of the summer of 1981, set the stage for a debate about better police equipment (riot gear, vehicles, weapons) which reappeared time and again throughout the decade (Murdock 1984). On the TV and in the press, the police use of tear gas in July 1981 (the very first time on the British homeland) was described as entirely necessary. The reporting on the 1981 riots contributed strongly to the militarization of the English police in the following years (Murdock 1984, 93). In most of the debates among English policemen in contrast, there was still a widespread belief that the police acted as a mediator of social tensions and, in their view, itself did not play any (important) role in the escalation of tensions (Reiner 1985).

The dominating narratives explaining the roots of the 1980s riots underline several factors. On a general level, contemporary critical literature, spearheaded by Stuart Hall et al. with their path-breaking study, *Policing the Crisis*, which diagnosed a deep crisis in cultural and political hegemony in Britain, where mugging and »black crime« became »virtually synonymous« (Hall et al. 1978, 327) and race had »come to provide the objective correlative of crisis« (ibid., 333). At the center of any serious explanation of the 1980s urban riots, as social science research pointed out,

> must be the catastrophically bad relationship between the police and young black people. Theirs is an antagonistic relationship. They expect, on the basic of long mutual experience in particular areas, that each is up to no good. Each regards the other as suspicious, likely to be violent and likely to lie about whatever they are doing. (Kettle and Hodges 1982, 247)

This does not mean, however, that both sides were equal. While one side held the monopoly on state violence, the other had much less formal power at hand. As one black Brixton youth put it, it was not the stop-and-search policy alone which created tensions but the number of times people were searched on the street. We should not forget what Tony Jefferson has stressed in a recent article (Jefferson 2008, 117): black youth were »not just arrested more ›because they are black‹ but ›because they are young and male and »rough« working class black.«« Since the late 1970s a breakdown of police relationship with black communities became apparent (Hall 1987, 45–46).

The 1970s also saw the development of a growing police autonomy that fostered some critical patterns of behavior including institutional racism, misuse of police discretion, and a proliferation of stop-and-search actions (whenever a policeman thought a person might plan or have committed a criminal offense), which all aimed mostly at young black people. Thus it comes as no surprise that critical debates evolved around police autonomy or police discretion, which were rooted in a hermetic informal occupational police culture where the police officer had

> considerable autonomy in defining and responding to specific situations. The only formal briefing police officers receive before handling difficult situations and different people is a woefully inadequate police training course. Consequently, the police receive most of their training on the job from other more experienced officers within the police work group. […] This informal training has the most powerful influence on police ideology. For it is in the confines of the messroom or the police club that the prejudices of the police appear most sharply. This is a camaraderie of survival, a uniting against the pressures of internal hierarchy and outside criticism; it is also a collective identity built on shared assumptions about race, gender, youth, class […]. It is within this occupational culture that the »enemy« is defined, attitudes are shaped and prejudices reinforced. (Scraton 1985, 49)

When compared with their West German colleagues, perceptions of 1980s English policemen were not characterized by visions of a my-

thologized state or by »seeing-like-a-state.« Instead, it was the strong emphasis English policemen put on good relations with »their« community which generated strong tensions. A growing disillusionment about this myth of having good ties to the local community—which had been at the basis of the »tact, restraint and good humour« of 1960s English policemen—became apparent. First, more and more police officers were transferred from local beats to radio patrol cars, thus »becoming a ›fire brigade,‹ losing the contact with the members of the public«[40] (see also Kettle and Hodges 1981, 6; Wells 1987). Second, this loss of contact was all the more challenging as during the 1970s many policemen realized that even these weakened ties only applied to predominantly white communities. Third, community policing, which in those years was something like a universal cure for many problems policing faced, could not help to overcome these problems. Police committees, set up to control community policing, often turned into assemblies of extreme right-wing and racist people. As one member put it, you »cannot even discuss the issue of black people […]; indeed it is difficult even to mention the word ›black«« (Benyon and Solomos 1987b, 93).

The multifold symptoms of crisis, deteriorating police-community relations, aggressive policing, and institutional police racism alone cannot explain the 1980s riots. All these arguments must be contextualized in processes of localization. Beginning in the 1970s, the inhabitants of inner-city neighborhoods, among them many black neighborhoods, developed a strong local identity which went hand in hand with a heightened awareness of acts of local discrimination. In the early 1980s, more and more black people became convinced that policing black people was synonymous with »policing without consent« (Kettle and Hodges 1981, 65).

In many migrant neighborhoods, for example in Liverpool (on the following see Frost and Phillips 2011, 70–76), networks of local community centers, community relation councils, and community action groups

---

40   *Report of the Commissioner of Police of the Metropolis for the Year 1969* (London: 1970), 13.

(Rock Against Racism, anti-apartheid, Chile solidarity) filled these quarters with life and created a consciousness of belonging and shared identities. The manifold economic, housing, and labor-market problems should not be forgotten, but the people of these quarters were not passive victims of the police. On the contrary, drawing on these networks, citizens mobilized against a police force that was seen as a sometimes unwelcome and aggressively racist intruder (on the important role of this »community spirit« see Watt 2006, 793). Young men in particular self-confidently defended their territories against groups of white policemen trying to clear the streets where they had gained a local reputation, even if it was in the networks of the booming inner-city drug trade (Brookman et al. 2011). These actions challenged the police on a terrain where they claimed to be the only legitimate actor, »the single agency preventing the territory they police from descending into chaos and disorder« (Lea 1986, 154). The importance of these local tensions and interactions have long been overlooked by the literature (see the critique by Girling, Loader, and Sparks 1998; Keith 1993).

Local citizens were also massively upset about many national newspapers reports portraying their neighborhood as »run down« or as a »black ghetto« or describing riots with metaphors of war (»battle,« »war,« »riot-torn streets,« »blitzed by mobs,« etc.) without making any reference to the networks or institutions of local civil society. These irritations added to the existing tensions and fueled the urban protests of the early 1980s in a highly important way. This self-assured locally based protest culture aimed primarily at influencing the local urban environment through direct actions. These actions were driven by a quest for subjectivity and by a striving to extend participation in a consumer society, a society shaped much more by individual needs than by uniform mass consumer products.

Conclusion

In this paper I have argued for a re-energized interdisciplinary cooperation of historians with authors from sociology and criminology. Such a fruitful cooperation could be put into practice in several ways. Historians

should be much more aware of the wealth of information gathered by contemporary criminological researchers. Their publications are still all too often overlooked—interestingly especially in the field of post-1945 contemporary history. It is not only the source material which makes these studies so useful. Historical research could also benefit from the methods and concepts elaborated by these authors. Concepts of »space« as outlined above can be a very good basis for this interdisciplinary co-operation. On a medium level of abstraction, »space« can act as a bridge to bring locally-oriented research (source-based and conceptually reflexive) together with research interests that focus more on theoretical models. A challenging test field for this cooperation could be the elaboration of theoretically informed bottom-up perspectives on spatial issues asking how the global is constituted by (trans-)local processes and transfers (see Epple 2013; Sassen 2005). This perspective would allow historians, sociologists, and criminologists to contribute even more innovatively to the booming scholarly interest in global urban studies—a field which promises to generate many intellectually stimulating debates.

Focusing on police control practices in urban settings in West Germany and in England in the 1960s and 1980s, this paper aimed at demonstrating some of the analytical benefits of a space-oriented, localized perspective. Inspired by Henri Lefébvre, this perspective takes the triadic concept of space seriously, in which space integrates urban practices, perceptions/concepts, and symbolic issues. This contributed to a better explanation of why 1980s police interventions escalated into violence in both countries. In 1980s West Germany and England, the policing of street protests still aimed at completely controlling a physical territory as well as the movements of all persons or groups. This modus of policing was deeply challenged by a process of urban localization. Localized urban protests used local urban space as a multifold power resource. Spatial issues stood at the center of local protests about local democracy and consumer needs, and helped formulate visions of the future of the urban. With these actions, local citizens self-consciously claimed the right to protest on *their* streets in *their* neighborhood to present *their* aims. Police actions oriented towards completely sweeping urban ground and

thus ignoring most of these highly localized aims of 1980s urban protests always ran the risk of a massive escalation of violence.

An alternative model of protest policing geared towards decentralized urban control rather than complete social control would have had to have rested on three pillars. Such an urban control protest policing would have required the police 1) to respect the appropriations of local urban space driven by identity politics, urban imagination, local democracy, and consumption. This would have allowed the police to realize that such protests originally aimed neither at an abstraction such as regime changes nor at disturbing an abstract social order; 2) to develop decentralized locally- and space-sensitive tactics of policing, thus giving up the aim of restoring an all-encompassing abstract social or state order; and 3) to self-critically reflect the role of the police in interactions with protestors—and thus in potentially escalating violence.

Generally, in England as well as in West Germany, avoiding or minimizing violent clashes between the police and urban protestors by working towards a model of decentralized urban control policing would have had to overcome many obstacles. In both countries, breaking up the hermetic culture of the police with its unique pattern of masculinity would have been the most important step forward. In Germany, police culture was instrumental in perpetuating state-centeredness. Although the state was demythologized, when it came to protest policing, many 1980s policemen mainly followed the cold-war modus of »seeing-like-a-state,« which was blind towards the importance self-assured, locally-oriented 1980s protestors gave to spatial aspects. The difference between these two perspectives made meaningful communication between the two groups nearly impossible. Moreover, the strict mental separation of routine policing on the one side and the policing of protests which were labeled political on the other side worked massively against establishing alternative models of protest policing.

While it was the state-centered perspective of the police which generated or intensified violent tensions in West Germany, in England it was ironically the strong local focus of the police. Beginning in the 1970s, English policemen had to realize that local urban communities had changed

dramatically. The police had to deal not only with higher numbers of, but also with more self-confident, black citizens (and protestors) who were deeply embedded in localized civil society networks. As many urban neighborhoods became ethnically mixed, the high priority policemen gave to (the myth of) good community relations now became a source of ongoing conflict. These local tensions were fueled by an institutional racism shaped by the occupational culture of the police. Highly-valued community policing could lead to a mutual re-enforcement of racism among white urban inhabitants due to racism among policemen. In England, implementing urban control police tactics would have meant that the police would have to have given up its self-image as a neutral mediator of social tensions. Policemen would have to have realized that the police itself was a central actor in such often racialised conflicts. This, however, is a task the police still must grapple with today.

References

Anders, Freia. 2008. »Die ›Gewaltfrage‹ an der Startbahn West.« In *Gewalt im politischen Raum: Fallanalysen vom Spätmittelalter bis ins 20. Jahrhundert*, edited by Neithart Bulst, Ingrid Gilcher-Holtey, and Heinz-Gerhard Haupt, 260–87. Frankfurt am Main.

Balistier, Thomas. 1996. *Straßenprotest: Formen oppositioneller Politik in der Bundesrepublik Deutschland zwischen 1979 und 1989*. Münster.

Bausinger, Hermann, ed. 1980. *Heimat heute*. Tübingen.

Benyon, John, ed. 1984. *Scarman and After: Essays Reflecting on Lord Scarman's Report, the Riots, and Their Aftermath*. Oxford.

Benyon, John, and John Solomos, eds. 1987a. *The Roots of Urban Unrest*. Oxford.

—   1987b. »Policing and Urban Unrest: Discussion in Urban Unrest.« In *The Roots of Urban Unrest*, edited by John Benyon and John Solomos, 91–96. Oxford.

Brand, Janet, and Margaret Cox, eds. 1974. *The Urban Crisis: Social Problems and Planning*. Glasgow.

Briesen, Detlef, and Klaus Weinhauer, eds. 2007. *Jugend, Delinquenz und gesellschaftlicher Wandel: Bundesrepublik Deutschland und USA nach dem Zweiten Weltkrieg*. Essen.

Brookman, Fiona, Trevor Bennett, Andy Hochstetler, and Heith Copes. 2011. »The ›code of the street‹ and the generation of street violence in the UK.« *European Journal of Criminology* 8 (1): 17–31.

Busch, Heiner, Albrecht Funk, Udo Kauß, and Wolf-Dieter Narr. 1988. *Die Polizei in der Bundesrepublik*. Studienausgabe. Frankfurt am Main.

Castells, Manuel. 1983. *The City and the Grassroots: A Cross-Cultural Analysis of Urban Social Movements*. Berkeley.

Center for Crime and Justice Studies. 2011. *British Journal of Criminology* 51 (3).

Della Porta, Donatella, and Herbert Reiter, eds. 1998. *Policing Protest: The Control of Mass Demonstrations in Western Democracies*. Minneapolis.

Diederich, Axel, Waldemar Schindowski, and Martin Hoffman, eds. 1987. *2.11.87…Berichte, Stellungnahmen, Diskussionen zu den Schüssen an der Startbahn West: Dokumentation*. Amsterdam.

Dinges, Martin, and Fritz Sack, eds. 2000. *Unsichere Großstädte: Vom Mittelalter bis zur Postmoderne*. Konstanz.

Döring, Jörg, and Tristan Thielmann, eds. 2008. *Spatial Turn: Das Raumparadigma in den Kultur- und Sozialwissenschaften*. Bielefeld.

Doering-Manteuffel, Anselm, and Lutz Raphael. 2012. *Nach dem Boom: Perspektiven auf die Zeitgeschichte seit 1970*. 3rd ed. Göttingen.

Eisner, Manuel. 1997. *Das Ende der zivilisierten Stadt? Die Auswirkungen von Modernisierung und urbaner Krise auf Gewaltdelinquenz*. Frankfurt am Main.

Epple, Angelika. 2013. »Lokalität und die Dimensionen des Globalen: Eine Frage der Relationen.« *Historische Anthropologie* 21 (1): 4–25.

Ferrell, Jeff, Keith Hayward, and Jock Young. 2008. *Cultural Criminology: An Invitation*. Los Angeles.

Ferrell, Jeff, and Neil Websdale, eds. 1999. *Making Trouble: Cultural Constructions of Crime, Deviance, and Control*. New York.

Freund, Günter. 1982. »Der Jugendprotest und seine Auswirkungen auf den Dienst einer Polizeibehörde« *Die Polizei* 73: 197–201.

Friedrich-Ebert-Stiftung. 2012. *Wandel des Politischen: Die Bundesrepublik Deutschland während der 1980er Jahre*. Archiv für Sozialgeschichte 52. Bonn.

Frost, Diane, and Richard Phillips, eds. 2011. *Liverpool 81: Remembering the Riots*. Liverpool.

Fürmetz, Gerhard ed. 2006. *»Schwabinger Krawalle«: Protest, Polizei und Öffentlichkeit zu Beginn der 60er Jahre*. Essen.

Fürmetz, Gerhard, Herbert Reinke, and Klaus Weinhauer, eds. 2001. *Nachkriegspolizei: Sicherheit und Ordnung in Ost- und Westdeutschland 1945–1969*. Hamburg.

Ganschow, Manfred. 1983. *Hausbestzungen in Berlin. Die Polizei* 74: 201–5.

Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford.

Geary, Roger. 1985. *Policing Industrial Disputes: 1893 to 1985*. Cambridge.

Geronimo. 1990. *Feuer und Flamme: Zur Geschichte und Gegenwart der Autonomen*. Amsterdam.

Gifford, Lord. 1986. *The Broadwater Farm Inquiry: Report of the Independent Inquiry into Disturbances of October 1985 at the Broadwater Farm Estate, Tottenham.* London.

Girling, Evi, Ian Loader, and Richard Sparks. 1998. »Crime and the Sense of One's Place: Globalization, Restructuring and Insecurity in an English Town.« in *The New European Criminology: Crime and Social Order in Europe*, edited by Vinzenzo Rugiero, Nigel South, and Ian Taylor, 304–22. London.

Grundmann, Gudrun, Christian Schulz, Wolfgang Becker, Johannes Emig, and Andreas Pospisil. 1981. *Sachschaden: Häuser und andere Kämpfe.* TAZ-Journal 3. Frankfurt am Main.

Goonewardena, Kanishka, Stefan Kipfer, Richard Milgrom, and Christian Schmid, eds. 2008. *Space, Difference, Everyday Life: Reading Henri Lefebvre.* New York.

Hall, Stuart. 1987. »Urban Unrest in Britain.« In *The Roots of Urban Unrest*, edited by John Benyon and John Solomos, 45–50. Oxford.

Hall, Stuart, Chas Critcher, Tony Jefferson, John Clarke, and Brian Roberts. 1978. *Policing the Crisis: Mugging, the State, and Law and Order.* London.

Halloran, James D., Philip R. C. Ellliot, Graham Murdock. 1970. *Demonstrations and Communication: A Case Study.* Harmondsworth.

Haumann, Sebastian. 2011. *»Schade, daß Beton nicht brennt…«: Planung, Partizipation und Protest in Philadelphia und Köln 1940–1990.* Stuttgart.

Härlin, Benny. 1981. »Von Haus zu Haus—Berliner Bewegungsstudien.« In *Der große Bruch: Revolte 1981.* Kursbuch 65, edited by Karl M. Michel and Tilmann Spengler, with the assistance of Magnus Enzenberger, 1–28. Berlin.

Häußermann, Hartmut, and Walter Siebel. 1980. »Krise der Stadt? Stadtentwicklungspolitik unter Bedingungen reduzierten Wachstums.« In *Politikfeld-Analysen 1979,* edited by Thomas Ellwein, 619–32. Opladen.

Hayward, Keith J. 2004. *City Limits: Crime, Consumer Culture and the Urban Experience.* London.

Hoffmann-Axthelm, Dieter, Otto Kallscheuer, Eberhard Knödler-Bunte, and Brigitte Wartmann, eds. 1979. *Zwei Kulturen? Tunix, Mescalero und die Folgen*. Berlin.

Jefferson, Tony. 2008. »Policing the Crisis Revisited: The State, Masculinity, Fear of Crime and Racism.« *Crime, Media, Culture: An International Journal* 4 (1): 113–21.

Kappel, Sibylle, ed. 1987. »Kriminologie und Geschichte.« Special issue, *Kriminologisches Journal*, Beiheft 2.

Karstedt, Susanne, and Stephen Farrall. 2006. »The Moral Economy of Everyday Crime: Markets, Consumers and Citizens.« *British Journal of Criminology* 46 (6): 1011–36.

Keith, Michael. 1993. *Race Riots and Policing: Lore and Disorder in a Multi-Racist Society*. London.

Kettle, Martin, and Lucy Hodges. 1982. *Uprising: The Police, the People and the Riots in Britain*. London.

Klimke, Martin, and Joachim Scharloth, eds. 2008a. *1968: Handbuch zur Kultur- und Mediengeschichte der Studentenbewegung*. Bonn.

— 2008b. *1968 in Europe: A History of Protest and Activism, 1956–1977*. Houndmills.

Krasmann, Susanne, and Jürgen Martschukat, eds. 2007. *Rationalitäten der Gewalt: Staatliche Neuordnungen vom 19. bis zum 21. Jahrhundert*. Bielefeld.

Kraushaar, Wolfgang. 1996. *Die Protest Chronik 1949–1959*. 4 vols. Hamburg.

Lawrence, Paul. 2012. »History, Criminology and the ›Use‹ of the Past.« *Theoretical Criminology* 16 (3): 313–29.

Lefèbvre, Henri. 1972. *Die Revolution der Städte*. Munich. Originally published as *La révolution urbaine* (Paris, 1970).

Lessing, Hellmut, Manfred Liebel. 1981. »Leben im Zeitraffertempo.« *Päd. extra Sozialarbeit* 5 (6): 16–18.

Lindenberger, Thomas, and Michael Wildt. 1989. »Radikale Pluralität. Geschichtswerkstätten als praktische Wissenschaftskritik.« *Archiv für Sozialgeschichte* 29: 393–411.

Lüdtke, Alf, ed. 1992. *»Sicherheit« und »Wohlfahrt«: Polizei, Gesellschaft und Herr-schaft im 19. Und 20. Jahrhundert.* Frankfurt am Main.

Lüdtke, Alf, Herbert Reinke, and Michael Sturm, eds. 2011. *Polizei, Gewalt und Staat im 20. Jahrhundert.* Wiesbaden.

MacPherson, William. 1999. The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William MacPherson of Cluny. Cm. 4262.

Murdock, Graham. 1984. »Reporting the Riots: Images and Impact.« In *Scarman and After: Essays Reflecting on Lord Scarman's Report, the Riots, and Their Aftermath*, edited by John Benyon, 73–95. Oxford.

Nehring, Holger. 2005. »The Growth of Social Movements.« In *A Companion to Contemporary Britain, 1939–2000*, edited by Paul Addison and Harriet Jones, 389–406. Malden.

Polizeinachrichten: Berufskundliche Hefte der Polizei 2. 1982. 39–48.

Pulver, Robert. 1960. »Polizei und akute Masse.« Unpublished Manuscript. Library of Deutsche Hochschule der Polizei (Münster).

Rees, Gareth, and John Lambert. 1985. *Cities in Crisis: The Political Economy of Urban Development in Post-War Britain.* London.

Reiner, Robert. 1985. *The Politics of the Police.* Brighton.

Reinke, Herbert, ed. *1993. »…nur für die Sicherheit da…?« Zur Geschichte der Polizei im 19. und 20. Jahrhundert.* Frankfurt am Main.

Reiter, Herbert, Klaus Weinhauer. 2007. »Police and Political Violence in the 1960s and 1970s: Germany and Italy in a Comparative Perspective.« *European Review of History: Revue européene d'histoire* 14 (3): 373–95.

Rowe, Michael. 1998. *The Racialisation of Disorder in Twentieth Century Britain.* Aldershot.

Sassen, Saskia. 2005. »The City: Its Return as a Lens for Social Theory.« In *The Sage handbook of sociology*, edited by Craig Calhoun, Chris Rojek, and Bryan S. Turner, 457–70. London.

Sack, Fritz. 1972. »Stadtgeschichte und Kriminalsoziologie: Eine historisch-soziologische Analyse abweichenden Verhaltens.« In *Soziologie und Sozial-geschichte: Aspekte und Probleme*, edited by Peter Christian Ludz, 357–85. Opladen.

Sack, Fritz, and Heinz Steinert. 1984. *Protest und Reaktion.* Opladen.

Scarman, Leslie G. 1983. *The Scarman Report: The Brixton Disorders, 10–12 April 1981.* Harmondsworth.

Scheer, Joseph, and Jan Espert. 1982. *Deutschland, Deutschland, alles ist vorbei: Alternatives Leben oder Anarchie? Die neue Jugendrevolte am Beispiel der Berliner »Scene«.* München.

Scott, James C. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed.* New Haven.

Scraton, Phil. 1985. *The State of the Police.* London.

Sennett, Richard. 1970. *The Uses of Disorder. Personal Identity and City Life.* New York.

Stephens, Robert. 2007. *Germans on Drugs: The Complication of Modernization in Hamburg.* Ann Arbor.

Stiebitz, Fritz. 1956. »Die Behandlung akuter Massen.« In *Psychologie im Dienste der Polizei*, edited by Heinz Maly, 42–48. Cologne.

Thomas, Nick. 2002. »Challenging Myths of the 1960s: The Case of Student Protest in Britain.« *Twentieth Century British History* 13 (3): 277–97.

— 2008. »Protests Against the Vietnam War in 1960s Britain: The Relationship between Protesters and the Press.« *Contemporary British History* 22 (3): 335–55.

Vorgänge e.V. 1980. *Heimat und Identität.* Vorgänge: Zeitschrift für Gesellschaftspolitik 47–48.

Waddington, David, Fabien Jobard, and Mike King, eds. 2011. *Rioting in the UK and France: A Comparative Analysis.* Cullompton.

Waters, Chris. 1997. »›Dark Strangers‹ in Our Midst: Discourses of Race and Nation in Britain, 1947–1963.« *Journal of British Studies* 36 (2): 207–38.

Watt, Paul. 2006. »Respectability, Roughness and ›Race‹: Neighbourhood Place Images and the Making of Working-Class Social Distinctions in London.« *International Journal of Urban and Regional Research* 30 (4): 776–97.

Webster, Wendy. 2005. »Immigration and Racism.« In *A companion to contemporary Britain, 1939–2000*, edited by Paul Addison and Harriet Jones, 93–109. Malden.

Weinhauer, Klaus. 2001. »Innere Unruhe: Studentenproteste und die Krise der westdeutschen Schutzpolizei in den 1960er Jahren.« In *Nachkriegspolizei: Sicherheit und Ordnung in Ost- und Westdeutschland 1945–1969*, edited by Gerhard Fürmetz, Herbert Reinke, and Klaus Weinhauer, 303–25. Hamburg.

Weinhauer, Klaus. 2003. *Schutzpolizei in der Bundesrepublik: Zwischen Bürgerkrieg und Innerer Sicherheit; die turbulenten sechziger Jahre.* Paderborn.

—   2006. »Drug Consumption in London and Western Berlin during the 1960–70s: Local and Transnational Perspectives.« *Social History of Alcohol and Drugs. An Interdisciplinary Journal* 20: 187–224.

—   2008. »Polizeikultur und Polizeipraxis in den 1960er und 1970er Jahren: Ein (bundes-)deutsch-englischer Vergleich.« in *Unterwegs in Europa: Beiträge zu einer vergleichenden Sozial- und Kulturgeschichte*, edited by Christina Benninghaus, Sven O. Müller, Jörg Requate, and Charlotte Tacke, 201–18. Frankfurt.

—   2009. »NS-Vergangenheit und struktureller Wandel der Schutzpolizei der 1950–60er Jahre.« In *Die Polizei im NS-Staat: Beiträge eines internationalen Symposiums an der Deutschen Hochschule der Polizei in Münster*, edited by Wolfgang Schulte, 139–58. Frankfurt am Main.

—   2011a. »Controlling Control Institutions: The Case of the West German Police During the 1960s.« In *Control of Violence: Historical and International Perspectives on Violence in Modern Societies*, edited by Wilhelm Heitmeyer, Heinz-Gerhard Haupt, Andrea Kirschner, and Stefan Malthaner, 213–29. New York.

—   2011b. »Urbane Jugendproteste, Jugendbanden und soziale Ungleichheit seit dem 19. Jahrhundert: Vergleichende und transnationale Perspektiven auf Deutschland, England und die USA.« In *Kulturen jugendlichen Aufbegehrens: Jugendprotest und soziale Ungleichheit*, edited by Arne Schäfer, Matthias D. Witte, and Uwe Sander, 25–48. Weinheim.

Wells, Richard. 1987. »The Will and the Way to Move Forward in Policing.« In *The Roots of Urban Unrest*, edited by John Benyon and John Solomos, 75–89. Oxford.

Werkentin, Falco. 1984. *Die Restauration der deutschen Polizei: Innere Rüstung von 1945 bis zur Notstandsgesetzgebung.* Frankfurt.

Willems, Helmut. 1997. *Jugendunruhen und Protestbewegungen: Eine Studie zur Dynamik innergesellschaftlicher Konflikte in vier europäischen Ländern.* Opladen.

Wills, Abigail. 2008. »Delinquency, Masculinity and Citizenship in England, 1950–1970.« *Past & Present* 187 (1): 157–85.

Winter, Martin. 1998. *Politikum Polizei: Macht und Funktion der Polizei in der Bundesrepublik Deutschland.* Münster.

Wissmann, Matthias, and Rudolf Hauck, eds. 1983. *Jugendprotest im demokratischen Staat: Enquete-Kommission des Deutschen Bundestages.* Stuttgart.

<center>***</center>

Prof. (apl.) Dr. Klaus Weinhauer, Center for InterAmerican Studies (CIAS), Bielefeld University.

klaus.weinhauer@uni-bielefeld.de

Theorizing modern politics and its ironies of control through the case of East German state socialism

Andreas Glaeser

It is the central claim of this paper that modern forms of politics not only presuppose a particular dynamic relationship with processes of political knowledge-making on the one hand and control practices on the other, but that they produce characteristic unintended consequences that undermine politicians' very intentions. In other words, modern forms of politics generate historically specific ironies of control. Through one historical case, the GDR's efforts to control the peace and civil rights movements in Berlin during the 1980s, I identify two domains of politics in which such ironies have emerged: the party-state's efforts to direct citizens' behavior (section 4) and the political epistemics of the state, exemplified here by its premier investigative agency, the secret police (section 5). Before I can do this, however, I need to outline the general framework within which GDR politics proceeded (section 3). To motivate my concluding remarks about the pertinence of insights generated from socialist politics for liberal regimes, I examine both the historicity of politics, knowledge and structures of control to bare the common modernist roots of both liberalism and socialism (section 1). Although Foucault ([1975] 1995; [2004] 2009) has done more than anyone else to thematize both the historicity of politics and the interdependence between its modalities and its relations to control and knowledge, he has never provided a processual analytics that would allow researchers to trace—ethnographically and/or historically—the emergence of ironies of control beyond direct resistance. In fact, his theory stipulates the mutual amplification of knowledge and control, whereas the historical record,

notably the ultimate failure of socialism in Eastern Europe, urges a more differentiated analysis. A conceptual retooling is therefore needed that will allow us to rethink the relationship between actions, institutions, politics, control and knowledge (section 2).

The emergence of modern politics

Dialectically entangling each other, notions and practices of politics have developed in stages. In time they have assumed ever greater *scope*, increasingly involving more people across wider territories, while also deepening in *scale* to reach into the bodies, hearts and minds of people.[41] Concurrently, the core of politics as we understand it today became more self-consciously intentional, assuming the guise of specific projects which stand in competition with one another. The awareness of a choice between alternative paths raised the issue of criteria with which one could decide rationally between them. Thus both the concept of truth and the ultimate aims of human beings became connected to politics. The notions of choice and deliberation, finally, have reestablished the practice of politics as a domain of free action for the sake of freedom. Eastern European socialisms mark an apex in this development towards widely scoped and deeply scaled intentional political projects that are sanctioned by claims to truth for an emancipatory goal.[42] Guided by what they took to be the only possible science of the social, Eastern European socialisms, at least initially, aspired to nothing less than world

---

41   Norbert Elias ([1935] 1976, 312–14) was one of the first scholars to analyze the codependence of territorial expansion, diversifying organizations and the movement from external to internal forms of control. What is more, Elias has provided a processual rationale that is sorely missing in Foucault's ([1975] 1995; [2004] 2009) relatively static comparison of forms.

42   Many scholars have followed James Scott for this reason in calling Soviet-type socialisms »hypermodern« (Scott 1998). This understanding of socialism as a radicalization of the modern was not only part of socialism's self-understanding, but was also fairly widespread during the first part of the twentieth century (cf. Mannheim 1940, part 5; Hayek [1944] 2007, 59).

revolution—carried out by new types of associations, staffed by a new type of human being, to be created by, through and for political action in the service of humankind's self-emancipation. For this reason, socialisms are particularly interesting objects of study when examining modern politics and the ironies of control they generate.

None of the characteristics of modern politics I have spelled out in the last paragraph are limited to socialism. The Spanish and Portuguese empires are early practical examples of aspirations of a global scope. Conceptually, the global as field for political action is a byproduct of the emphatic universalism first of Christianity and later of Enlightenment philosophy. Scale was added to scope as a political requirement as soon as territorial states were conceived as intentional projects in culturally heterogeneous environments. Missionaries often preceded, and surely always followed, colonizing soldiers. They were instrumental in turning the newly conquered peoples into god-fearing subjects fit for colonial rule (e.g. Steinmetz 2007, 289–96; Tiberondwa [1977] 1998, esp. chap. 3 and 4). In Europe itself, kings and queens aspired to counter what in their minds was the danger of religious plurality by creating a denominationally homogeneous subject population. On the theoretical level, this is reflected in Bodin's ([1576] 1992, vol. 1, chap. 8) fervent urging that sovereignty must remain undivided and Hobbes' ([1651] 1994) argument that Leviathan can hold his sword only by also holding the staff. In the same vein, the formation of nation-states beginning in the seventeenth century is not only a reaction to the perceived dangers of religious (and later cultural) pluralism, but also builds systematically on antiquity's one model for religious homogeneity, namely the Israel of the Hebrew Bible. Thus it is no surprise that nationhood became inextricably intertwined with universal schooling that centered on the formation of national subjects (e.g. Anderson [1983] 2006; Schissler and Soysal 2005). In other words, the condition for the possibility of forming states in the modern sense is the fashioning of a citizen-subjectivity (see Foucault [2004] 2009, lectures 3 and 4).

The intentionality of politics made a first quantum leap from princely tactics and strategies of dynastic growth to choosing from orders of

existence during the Protestant reformation and the ensuing wars of religion (Nexon 2009, chap. 4 and 7). A prince, or even a municipal council, could suddenly *decide* to remain Catholic or to adopt a particular form of Protestantism—with far reaching consequences for property relations, law and international relations. The idea of alternative political orders first arose as a result of encounters with political alterity in the context of global empires, and later through a dramatic succession of different political regimes in late seventeenth and early eighteenth century England and through the American Revolution. Entire socio-political orders came under the imagined control of design with the fast-spreading news of the success of the French Revolution (Fritzsche 2004, chap. 1).[43] As soon as alternative orders were imaginable, questions surfaced about criteria for choosing the right one. The first important criterion, faithfulness to revealed truths and thus to the presumed divine creator, in the eighteenth century gave way to debates about being true to human nature, a term which took on an increasingly scientific rather than theological-juridical meaning. Post-Enlightenment ideas about the possibility of scientific politics amplified this tendency even further. Popular revolutions also firmly entrenched the idea that politics is a domain of freedom for the benefit and emancipation of the people, who can only thus became citizens.[44]

---

43   The immediacy of the effect of the French Revolution on the theoretization of the political is nicely illustrated by the contrasting reception of Edmund Burke and Johann Gottlieb Fichte. Looking forward, both lay the groundwork for, respectively, conservative and revolutionary thought (see also Mannheim 1926 and 1929). Burke says: »The very idea of the fabrication of a new government is enough to fill us with disgust and horror. We wished at the period of the Revolution, and do now wish, to derive all we possess as an inheritance from our forefathers« ([1791] 2001, 181). For Fichte in contrast the goal is a complete transformation of human institutions in accordance with human beings' freely generated image of the same (e.g. [1794] 1997, 17–21).

44   Liberals at times talk about democracy as if it no longer entailed any ultimate references to truth or other absolute standards. They instead see politics as a matter of utilitarian negotiations between parties with different interests. Such a view of course ignores liberalism's own metaphysi-

In short then, the ballooning of the political, its pari passu expansion of scope, scale and intentionality, its quest for truth and ultimate values, is part and parcel of modern political imaginaries and thus shared by both socialism and liberal capitalism.

Social life, institutions, politics, power and control

This rough sketch of the history of politics in Europe does not provide any clues about the processual interplay between modalities of politics, modalities of knowing, forms of control, and the specific ironies these all entail. To provide a framework, I will draw on a social ontology I have elsewhere called consequent processualism (Glaeser 2005; 2011, 29–44).[45] Consequent processualism assumes that the social exists as a dense thicket of processes formed by interconnected action-reaction effect flows.[46] In other words, the stuff of the social is a flow of actions that prompt each other while intersecting in complicated ways. One action is

---

cal and, historically speaking, indeed theological underpinnings (Schmitt [1932] 1963, 43–44; Kahn 2012, chap. 3).

45   This rethinking of social ontology tries to accomplish several tasks at once. First, aligning itself with and extending the Manchester School of anthropology (Evens and Handleman 2006; Gluckman 1964) it attempts to provide a process-centric framework within which ethnographic forms of analysis can be »scaled up« to macro-historical developments, while at the same time freeing macro-analysis from politically highly problematic reifications. With its process centricity and its hermeneutic turn, it is line with Giddens (1984), while attempting to provide a much clearer conception of process and structure (cf. Sewell 1992) that at the same time frees the hermeneutic approach from its rationalistic bent and the closely associated phenomenological approach (Schütz [1932] 1974) from its individualistic bias. Lastly, it takes issue with the layer-cake ontology of critical realism (e.g. Archer et al. 1998).

46   For another contemporary perspective that argues for an understanding of social life from within the flow of actions, compare Collins 2004, chap. 1. The major difference between Collins' and my approach is, for example, that he focuses on face-to-face interaction, whereas I am just as interested in mediated action effect flows across space and time, as shall become clear in the following.

typically a reaction to a number of antecedents, and at the same time gives rise to a multitude of consequences. What is more, action-reaction effect chains can create reflexive loops. For where the flow of actions and reactions is repeated in a self-similar manner across time, institutions emerge. They endure in time—that is to say they have an identity—in the *form* of self-similar flows. Importantly, actions can be *projectively articulated* across time and space, thus connecting people across continents and generations. Incidentally, this is the reason why I prefer the admittedly cumbersome term action-reaction effect flow to *interaction* which, at least since the second Chicago school, has acquired a definite face-to-face connotation. The projective articulation of action effects is enabled by socio-technological means of communication, transportation, and storage. Reactions are linked to actions by alterable historically, culturally and even biographically contingent *understandings*. Seen thus, understandings are the condition for the possibility that action-reaction effect flows may turn reflexively onto themselves to form institutions. Indeed, understandings are the linchpin of processes of institutionalization. What, then, are understandings? They are discursive, emotive and/or perceptual ways of differentiating and integrating the world (Glaeser 2011, 9–17). By functioning as a practical ontology, they provide orientation and direction for action. Where understandings become validated in agreement with other human beings, where they are confirmed or disconfirmed by the ex post assessment of the success or failure of action, or where they are supported by comparison with already existing understandings, they congeal into more objectified forms. They become transmogrified from existing only in fleeting performance to memorized exemplars or abstracted templates (Glaeser 2011, 22–26).[47]

---

47   Because understanding is the key term of the hermeneutic tradition and
      because it captures the process of objectification through its morpholo-
      gical ambiguity as a continuous and a gerund, I prefer it to more con-
      temporary terms such as schema or frame.

What we now have at our disposal is a four-step procedure for thinking through the stability of institutions.[48] First, we need to link institutions to the action-reaction chains that constitute them; second, we need to identify the understandings that produce these links in a regular form; and third, we need to find the processes of validation that stabilize these understandings. Often enough we will find, fourth, that these issue from yet other institutional arrangements, thus showing us how the layering or dove-tailing of different kinds of processes can create local stability in social life. Conversely, we have equipped ourselves with a method to analyze processes of deinstitutionalization, including catastrophic institutional breakdowns such as those which occurred from 1989 to 1991 throughout Eastern Europe.

Consequent processualism opens a very simple, straightforward and analytically fruitful perspective on politics, control, knowledge and power. From this viewpoint, politics is best understood as the *intentional effort* to form, maintain, alter, and in the last consequence also destroy, institutions. Politics is therefore neither primarily a struggle for power as Max Weber believed ([1922] 1980, 822)—a definition which makes politics into an empty pursuit of tokens. Nor is its fundamental defining characteristic the distinction between friend and foe as Carl Schmitt insisted ([1932] 1963, 26)—a definition which is far too narrow and far too pessimistic to grasp a whole range of phenomena which standard discourses would easily classify as political.

Of course not all politics is successful. Intentions misfire due to misunderstandings, resistance and the production of unintended consequences, as well as due to unforeseen contingencies. This is where the notion of power comes in. Viewed from the perspective of consequent processualism, power is the ability to *succeed* in politics. What precisely power is in any particular instance depends very much on the institution aimed at

---

48   With its hermeneutic focus on a plurality of understandings structured by validations, the approach outlined here differs fundamentally from neo-intuitional approaches in economics (e.g. North, 1990; 2005) political science (e.g. Thelen 2004) and sociology (e.g. Powell and DiMaggio 1991).

and the situation from within which politician targets that institution. At times, socio-technological means of projective articulation matter most and politicians need what Michael Mann calls infrastructural power (1984). At other times understandings are key, in which case politicians need especially what Nye Joseph (1990) calls soft power (cf. Lukes 1974). Neither money nor knowledge are power per se. However, political knowledge—well-validated understandings of the kinds of action-reaction effect chains that are central to particular institutions—is extremely useful for acquiring and exercising power. Yet such knowledge is still not power on its own. I may know, for example, that the business of banks is centrally dependent on balancing incoming and outgoing cash-flows. In an attempt to ruin or deinstitutionalize a bank, this piece of knowledge becomes power only if I also know how to stage a big enough run on a bank. This also means that overall, power is not necessarily positively associated with knowledge as Foucault suggests (e.g. [1975] 1995), because knowledge—as we shall see—can actually undermine the ability to form or maintain institutions. Nor should power be interpreted simply as the capacity of one person to impose her will on others, even those who resist, as Weber proposes ([1922] 1980, 804), because that too may in the longer run undermine processes of institutionalization, for example by provoking silent forms of resistance such as working to rule.

What, then, are the major means of doing politics? Since institutions exist in the self-similar reproduction of interlinked action-reaction effect flows, politicians can intervene at all moments along the path of process: at the moment of initiating action; at the moment of orienting and directing reaction through understanding; or at the moment of articulating that action across time and space. Since actions presume material resources in terms of time, space and energy, politicians may support or hamper the expression of action by freeing or closing access to these resources. This may then be called a *politics of general enablement or disablement*. Examples pertinent to the case at hand are the regulation of access to public spaces, to means of communication and to leisure time. Since actions require understandings to orient and to direct them, politicians

may want to cultivate or deracinate particular understandings. This may be called a *politics of education*. If particular understandings about the relative value of certain goods are already firmly in place, for example through a politics of education, politicians can build on this fact with a politics of incentivization that aims at tipping the scale of people's calculation of value so that they act in accordance with politicians' intentions. Money can act as an incentive only where the understanding that more money would be desirable is already firmly in place; medals prompt self-sacrifice only if people already believe that receiving a medal bestows honor and if honor is what they care for. Finally, since people can only react to an action if they are placed within its reach, politicians may want to enable or disable the articulation of action effects in time and space by meddling with communication, transportation or storage. By making ideas secret, for example by locking away books or by preventing critiques from being stated or by insulating critiques once voiced, the flow of actions and reactions can be disrupted. This may be called a *politics of articulation or disarticulation*.

Wherever the institutions targeted by politics go beyond a certain scope, politicians need to team up with others while also recruiting staff to assist them. In other words, they need to *organize,* because the formation of institutions is contingent on the coordination of many spatially and temporally distributed actors. Their successful enrollment into a political project without their direct participation in defining goals makes them into *political subjects*. This need for massive enrollment confronts politicians with a collective action problem. This is where *organizations* come into play. The fundamental idea of organization is to coordinate large fields of loosely connected actors to achieve a particular institutional effect (e.g. profit, freedom from violence, etc.) with the help of a much smaller but tightly connected and firmly controlled group of politicians (as in a social movement organization or a party) or by staff hired and directed by politicians (as in a modern bureaucracy). In fact, organizations are all about politics. It is important to see that *organizations* are themselves a special kind of institution. While institutions in general exist in a self-similar replication of action-reaction chains, whether or not

there is a politics in place to address them, it makes sense to speak of organizations only if institutions become self-conscious, in the sense that they are associated with groups of politicians who (typically assisted by staff) try to maintain these institutions. The rise of organizations as a social form is thus a useful index for the increasing intentionality of politics. While this meta-institutional character of organizations may vastly increase the chances of success in generating, maintaining or changing institutions, thus making politics in a sense easier, it also makes politics much more complex because organizations must engage in maintaining themselves; they must practice a self-(sustaining) politics in addition to pursuing external political goals.

This brings me finally to the issue of *control*, which becomes acute precisely because politicians need the voluntary and dedicated collaboration of ever larger numbers of people to realize their institution-forming ambitions. The word »control« has two interconnected and yet distinct meanings highlighted by different primary usages in various European languages. In English, the primary sense of »to control« is »to direct,« or »to determine,« that is effectively »to dominate.« In terms of consequent processualism, control occurs if one actor, the politician, can with a high degree of certainty, through any of the political means discussed above, predetermine a favorable response by another who thus becomes a political subject.[49] This formulation immediately makes it clear why the very idea of control is an aphrodisiac to politicians. If institutions exist in regularized action-reaction effect flows, then control promises to furnish the politician with the agency to create institutions at will.

Taken in this sense, the desire for and advocacy of control involves a set of meta-understandings about the political process, notably a monologic imaginary of politicians as suitors of universal truths and values. This is what legitimates their presumption to direct others, whom they see as political subjects, toward what they think they know is in the subjects' best interests. Control as a part of the social imaginary has its emotional roots in fantasies about the unhindered realization of worthy intentions,

---

49   Control in the English sense is therefore much like power in Weber.

as well as in fantasies of the politician as hero, as a maker and shaker of the world.[50]

Since most everybody knows from experience that control efforts are not necessarily crowned by success (i.e. lead to power), control also has the meaning (still its primary meaning in, for example, French, Italian and German) of »to check,« »to verify« or »to inspect.« That is to say it is a modality of political knowledge-making. True to the likely origins of the term in medieval administrative practices, in the control register of politics, informational feedback typically leads merely to a readjustment in the deployment of political means in order to more effectively pursue the institutionalization effect envisioned by the politician.[51] The pursuit

---

50   Weber's analysis of the three forms of legitimate domination ([1922] 1980, 122–76) falls short in analyzing the motivations behind demands for compliance, precisely because it does not look at deeper imaginary referents, including emotions, such as the fears of the wrath of god, of a violent state of nature or, positively, the hope for fulfillment in the form of the most desirable goods: salvation, beauty, lust, truth.

51   It is probably not an accident that the continental European languages preserved a collective memory for the connection between surveillance and domination in the concept of control for the individual, her body and its direct technical extensions (tools, skis, cars etc.), but *not* for social relations. For individuals and their bodies, this collective memory is supported, its understandings continuously validated, by for example Paulinian theology and classical Greek ethics, both of which emphasize the domination (archê) of soul over body. Within this understanding, the administrative practices of »contra-rotulus« might have insinuated a convenient metaphor for benchmarking the performance of self against scriptural norms and ideals. At the same time, rulers were probably eager to emphasize the technical appearance of the administrative use of the term while deemphasizing political intentions, thus hiding the link between surveillance and domination in the social sphere. In English, however, the connection between the Latin contra-rotulus and domination might have become particularly apparent in the intra-élite confrontation between Normans and Anglo-Saxons. It is interesting to note in this respect that the term was introduced precisely at a time when growing kingdoms needed to retool their administrative capacities. In England, this happened right after the Norman conquest. The Normans used new bureaucratic techniques of inspection and documentation to

of control in both the English and continental meaning transmits a very distinct flavor to political practices. One could therefore also speak of control as a particular register of politics that, due to its focus on preset intentions, might best be called *monologic*. Within it, the goodness of goals tends to sanction the political means that are employed, often in a manipulative manner: The politics of education becomes marketing or propaganda; the politics of enablement or disablement, articulation or disarticulation becomes favoritism for conformist behavior.

The polar opposite of the control register is dialogue, which allows for the interactive shaping of intentions from within the political process. In terms of consequent processualism, actors count on, and in an ideal scenario even hope for, the independent, surprising reaction of others. The underlying imaginary of social life as dialogue does not operate with a hierarchical distinction between politicians and political subjects. Instead it assumes that all participants needed to form, sustain or alter an institution partake in these actions as co-politicians. The knowledge about means and ends deployed in the process is never taken as final, as *the* truth, but remains open to renegotiation and adjustment. Dialogic registers of politics operate with open, malleable, even emergent project goals and they refrain from manipulative uses of political means. They emphasize enablement rather than disablement, articulation rather than disarticulation, argument rather than incentives. With the growing scope and scale of political projects, dialogic registers of politics—although often celebrated as ideal (e.g. Rousseau [1762] 1997, vol. 2, chap. 3)—became suspect to modern politicians due to their inefficiency or impracticality in regularizing action-reaction flows across space and time (e.g. Habermas [1963] 1990). Modern politics has therefore largely been conducted in the register of control. That is also true for representative democracies, where the effects of control are mitigated as a result of centralizing enforceable individual rights, and of institutionalized political competition.

---

dominate through precise records of holdings and tax obligations, which became prima facie unalterable. Hence, perhaps, the moniker »Doomsday Book« for William the Conqueror's great survey.

In both the register of control and the register of dialogue, the conscious effort to form institutions is itself in need of useful discursive, emotive and kinesthetic understandings to orient and direct its efforts. In other words, politics is in need of an epistemics that is adequate to the task at hand.

Socialism's project and politics[52]

Given the emphasis on the central role of understandings in the theory of institutions presented here, I need to begin my interpretation of the socialist project by sketching the ways in which the party has taught its members to understand it.[53] Its basic presupposition was that Karl Marx had established the fundamental principles of a true science of the social. At the heart of this science dwelt an understanding of history as an inevitable progression towards a secular paradise. The party understood this »march of history« as driven by the class struggle between two principal classes, one of which acted as the agent of the status quo ante and thus

---

52   Much of what follows is based on my own ethnographic and historical work, which I have reported in Glaeser 2011. The empirical material is drawn from 25 interviews (between four and 40 hours in length) with former full time officers of the Stasi and 16 members of the peace, civil rights and environmental movements active during the late 1970s and 1980s in Berlin. It also draws on archival work in the Stasi document center Berlin (BStU), the Mathias Domaschk Archive and, as a comparison with administrative practices in other part of government, the Berlin branch of Germany's Federal Archives (Bundesarchiv-SAPMO).

53   Arguably the single most important document for socialist parties' self-understanding is the »Short Course« on the history of the CPSU (CC-CPSU 1939). The development of the official »party line« can be best gleaned from the reports of the general secretary to the party congresses as well as from key articles in the party newspaper that helped set said line, *Neues Deutschland*. Individual members on all levels have of course in their personal understanding deviated more or less from the official version. Such personal deviance from the party line at any one given point in time has typically also varied as regards subject matter, in response to historical events and, on average, systematically over time. Besides the interviews, I have made extensive use of the memoirs of socialist politicians on all levels of influence, including both renegades and stalwarts.

of an unjust social order while the other acted in the service of progress and thus justice. In this way a strong Manichaean sensibility was introduced into the socialist project. The seemingly improbable success of the October Revolution however also taught the party that the teachings of Marx needed to be adjusted continuously to changing historical circumstances. After all, Marx himself had adapted his own teachings to the lessons he had derived from current events, as evinced by the 18th Brumaire and his writings on the Paris Commune. In Lenin, socialist politicians saw the great adapter of Marxism to fit post-WWI Russia. That such adjustments were necessary was in their minds demonstrated by the fact that Marx himself would have predicted Russia to be an unsuitable country to stage a revolution, while the sheer success of the October Revolution corroborated Lenin's position. In this sense, the party spoke of Lenin's teachings as the »Marxism of our times« and called the ideology governing its politics »Marxism-Leninism.«

Stalin, who against both Lenin and Marx affirmed that socialism could be established in one country, was officially interpreted in his time as having adjusted the teachings of Marx and Lenin to the experience of failed revolutionary uprisings outside of the Soviet Union. Once more history was read as having corroborated this position in the Soviet victory over Nazi Germany in World War II. For some time, therefore, Marxism-Leninism actually became Marxism-Leninism-Stalinism. After Stalin's death, the party bureaucracy was charged with adjusting socialism to changing historical circumstances. As I will show below, this was a fatal move because the greater adjustments of doctrine had historically been dependent on charismatic leadership as well as on more or less violent purges. At any rate, the first generation of post WWII socialist leaders thought of Marxism-Leninism-Stalinism as providing the prerequisite political knowledge and, through its embodiment in Soviet institutions, a living blue-print for the successful formation of socialist institutions in Eastern Europe. Hence one of the most important propaganda slogans was »Learning from the Soviet Union means learning to win!«

Socialist parties saw themselves caught up in a mortal battle with the bourgeoisie and the capitalist institutions it supported. This enemy was, like an injured beast, deemed to be the more dangerous the closer it came to its certain death. Accordingly, the party sensed that the institutional achievements of the October Revolution were increasingly imperiled. They needed to be defended, if necessary with arms, since socialist institutions constituted humankind's best hope for a better life (e.g. Grimmer et al. 2002, 58). Readiness for battle required mass mobilization and central direction by an organization that had, with the utmost clarity, absorbed the teachings of Marxism-Leninism. Socialist parties believed they could only protect themselves against the enemy's sabotage and subversion by keeping all eyes firmly fixed on the true understanding of history. Hence the necessity of what Lenin called »a party of the new type« to function as the vanguard agent of historical necessity. In the terminology of consequent processualism, it was the task of the party to overcome the problem of collective action inherent in all large scale political projects. Since that project concerned nothing less than a revolutionary restructuring of social life in an entire country, the party had to become a master-organization, determining who could organize how and for what purpose and in what relationship to other organizations. The party was believed to be able to play this role precisely to the degree that it was a highly motivated, excellently trained and tightly controlled organization (Lenin [1902] 1961, chap. 1.d). Party members were invited to see themselves as co-politicians in this project by humbly accepting, against romantic subjectivism, that every member had to become an obedient bureaucrat. By implication, the rest of the population was relegated to the status of mere political subjects.

The instrument most suited for mobilization was believed to be the appeal of Marxism-Leninism itself. Since its teachings were assumed to be true, and since people were assumed to be rational by nature, people could be expected to accept the principles of Marxism-Leninism of their own volition, because of their own insights. This understanding of human beings led to a mode of accounting for errors that had all the characteristics of a theodicy, because it preempted criticisms of the sys-

tem. According to socialist party logic, there were only two reasons why the natural proclivity to accept Marxism-Leninism could fail to express itself: insufficiencies in their own propaganda efforts or inimical action by the class enemy. In both cases, the root of the problem was typically sought in the performance of individuals rather than that of institutions.

The task of the party, to first establish and then maintain and adjust socialist institutions, thus suggested two different directions for politics. From the very beginning, both directions were expressed in a register of control due to the truth claims connected with Marxism-Leninism, which left no room for goals in contradiction with the party line. First, there needed to be an expansive politics of education that enabled as many people as possible to understand and identify with Marxism-Leninism. That effort was supported by a politics of articulation that ensured that the party's teaching would reach everybody on an ongoing basis. This side of socialist politics was enacted by an enormous propaganda machinery that suffused every corner of society through mandatory participation in propaganda events as well as by the party-state's monopolization of all mass media and of public spaces.[54] Second, there needed to be a politics of disablement, which prevented enemies from acting against the interests of socialism and, where this failed, a politics of disarticulation limiting the effect flow of enemy action. This could be achieved by locking people away, by exiling them or by keeping them busy with their own problems. That side of socialist politics came to be spearheaded by the secret police. In this sense, the Stasi saw itself as the »sword and shield of the party.«

Contrary to Marx's own superstructure-infrastructure model, in the course of time socialism became an ever more self-consciously ideology-driven project. Indeed, after the major waves of the socialization programs of first industry, then agriculture and finally craft production and retail trade and had been completed, ideology was seen as the primary

---

54   The only type of larger space not controlled by the party-state were churches, which the official state-church compact interpreted as »private« in the sense that they were dedicated to religious worship.

vehicle to maintain and finally reform socialist institutions in the direc-
tion of a communist society. The hope was that socialism as a set of
ideas would drive a set of practices, and hence institutions. In other
words, socialism was de facto treated by the party as if it could self-
realize performatively. Former Stasi officer Herbert Eisner (interview,
Glaeser 2011, 66–67) expresses the centrality afforded to that ideology
with the following words:

> Socialism is very sensitive to ideological disturbances. The bracket
> which keeps the whole thing together is ideology and if this
> bracket is weakened the whole system falls apart. In capitalism this
> bracket is money. Thus we always spoke of the ideological work,
> the party-educational work which aimed to make everybody
> identify with it. The idea was that I will raise my children, that I
> will influence the neighborhood, the parents' council at school, the
> national front, the association of fishermen, whatever, in
> accordance with party policy. We wanted that everybody
> internalized the policy of the party.

Indeed, the party aspired to construct what I have called a monolithic
intentionality (Glaeser 2011, 82). People were supposed to think, speak,
feel and act in accordance with the natural dynamics of history made
flesh in the latest party pronouncements, the so-called party line. This
was supported by a specific socialist ethics. The distant glimmer of true
humanity on the horizon justified the demand for the self-objectification
of everyone in the image of the party. Self-objectification, the heroic
Kantian fight against subjectivist inclinations, found its expression in a
socialist categorical imperative. Former officer Martin Voigt (interview
by A.G., transcript 2001) put it this way: »We only had to ask ourselves
›who benefits from your action, socialism or the capitalist class enemy?‹«

In socialist societies this imperative exerted tremendous pressure on
anyone with career ambitions to demonstrate that they were adhering to
the party line. For this reason the party created countless opportunities
to show allegiance, ranging from active participation in propaganda
events to the use of particular speech forms. In sum, after power had
been seized, after the party had established itself as the political master

organization, and after the economy had been socialized and thus brought under control, the main political task became the maintenance and deepening of socialist institutions by cultivating as much identification with the party's current line, its historically adjusted interpretation of Marxism Leninism, as possible. The means to do so was a massive politics of education aiming at the unity and purity of understandings of all party members, and as much of the rest of the population as possible.

Organizational arrangements that place so much of their hopes in the unity and purity of a particular set of understandings are in a rather peculiar situation once their politicians realize that convictions can be feigned. In cases where the developments projected by the true science of Marxism-Leninism did not unfold as expected, the socialist theodicy offered a tantalizingly simple diagnosis. Unexpected problems could always be blamed on wanting propaganda efficacy or on enemy action. Thus the failure to surpass capitalism economically in the late 1950s nourished suspicions that people who professed to be socialist were actually merely feigning allegiance. Under these circumstances, there appeared to be only one way of finding out what people truly believed: one had to observe them across all of their life contexts, notably in situations where they assumed themselves to be unwatched by socialist authorities. This perceived need to verify allegiance was the impetus behind the creation of a massive surveillance apparatus, of which the Stasi was the central and most powerful part.[55] The secret police were tasked with running comprehensive background screenings whenever particular trust was deemed necessary or concrete suspicions about someone's loyalty surfaced. Ultimately, only secret police methods able to cut

---

55   More or less clandestine surveillance was an integral part not only of party membership, but also of the organization of schooling, housing and personnel management. Through its network of secret informants, the Stasi de facto pulled most of these lines of policing together, even in areas where it had no formal bureaucratic authority. The most comprehensive source of information about the Stasi remains BStU 1995. Readers who do not read German can consult Koehler 2000 for an overview of foreign espionage activities and Bruce 2012 for a historical study of the work of two Stasi county offices.

through the veil of public performances were deemed suitable to assess loyalty. One consequence of this was what one might want to call a secret police model of truth. The truth about people could not be found in conversation with them or even in open research; instead it needed to be clandestinely spied out. Another consequence was the extreme moral valancing of conformist behavior and the criminalization of non-conformist behavior.

In sum, propaganda and secret policing operated in tandem. The one attempted to propagate true understanding, the other tried to stamp out the falsehoods endangering it; the one aspired to cultivate ethical behavior, the other aspired to eradicate unethical and criminal behavior; the one operated in broad daylight to effect control in the sense of direction, the other had to operate clandestinely to effect control in the sense of surveillance. Both were seen as essential to the institutional reproduction of socialism and both, for that very reason, grew in size, effort and budget through all the many crises of socialism from its inception to its end.[56] When there was no paper for printing literary texts, there was always paper for printing propaganda material. When administrative budgets had no room to improve medical services, there was always room to increase intelligence manpower. Thus the secret police grew almost sixfold in size from the mid-1950s to the end of the GDR, finally sporting about 90,000 full time employees (Gieseke 2000, 552–57) while keeping nearly 180,000 full time informants on call (Müller-Enbergs 2008, 59).

Precisely because socialism operated with the understanding that it was based on a scientifically ascertained and thus true and necessarily fixed

---

56   To my knowledge there is as yet no comprehensive study of the GDR propaganda effort. Statistics about it are difficult to assemble because propaganda expenses were part of so many different accounts. My assessment is built on interviews as well as Boyer's (2005, chap. 3) study of journalists in the GDR. For the secret police, reasonably good figures exist by comparison (see above). Even if employee statistics reflect once more only a part of surveillance activities, they resonate positively with the subjective accounts of its growth that I was given in interviews.

goal, precisely because, at least initially, it had to be established against the resistance of an entrenched ruling class, central control was integral to the socialist project. Losing control was socialist politicians' greatest anxiety, because to them it was tantamount to the deinstitutionalization of socialism. In the political imaginary of socialism, this was of course supposed to be a transitory situation. With the firm establishment of socialism, after the class enemy had finally been defeated, the state, the coordinating center of control, would gradually expire because it would no longer be needed.[57] In the much quoted words of Engels ([1876–78] 1962, 262):

> The state interference in social relations becomes superfluous in one sphere after another, and then ceases of itself. The government of persons is replaced by the administration of things and by the direction of the processes of production. The state is not »abolished,« it withers away.[58]

Ironies of direction in socialist politics

Socialism's political focus on the transmission of specific under-standings, paired with a rigorous policing of the success of transmission, fueled distrust in all possible directions (Glaeser 2004; cf. Kligman 1998; Havel 1990). The party-state in general, as well as almost all bureaucratic superiors, looked for clear signs of allegiance in their subordinates, be-cause in cases of failure they would be held accountable for the lack of proper socialist training in their domain of responsibility. In accordance with the socialist theodicy, proper training was thought to act as the main guarantor of success. People with career ambitions had to worry that their actions could be misread as deviant. Such accusations, typically presented as cases of »ideological uncertainty« or »lacking class consci-

---

57   Since the state was seized by the party, the end of control would come only with the end of the party as a vanguard institution.

58   English translation by Emile Burns (1935, 315). The popularity of Engels' formulation probably owes itself to the fact that Lenin quoted it quite frequently, notably in some of his key writings.

ousness,« had significant consequences. Thus the party-state's mix of political means of instituting a socialist society led to increasing levels of performative self-monitoring and self-seclusion in the form of the famous retreat into private life (Betts 2010, 9–11; Wolle 1998, 219–20; Gaus 1983). Rather than mobilizing people with socialist ideas, their controlled, mechanistic reproduction in late socialism was widely experienced as infantilizing and depressing—in the final years even among functionaries such as secret police officers.[59]

What we have here is a situation in which the policies deployed to exercise control ironically undermined power. The particular irony of control under consideration here could be called the irony of proselytization. It is the danger of any politics of education that sees political subjects as containers to be filled with specific, non-negotiable understandings. Politics of this kind suffers from three fundamental misunderstandings. On the most basic level, it tends to overlook the fact that the communicative process is characterized not only by inevitable losses of information, but also that education is contingent on successful translations between divergent life worlds, and that interpretation is therefore always a reconstruction (Reddy 1993).[60] Moreover, the cultivation of particular understandings is often pursued by means of the explicit denigration of others which, depending on the relationship between educator and educated, can stimulate counter-imaginaries in which they attain value as forbidden fruit.[61]

---

59   For an illuminating comparison with the late Soviet Union and the emergence of particular forms of humor in response to this situation see Yurchak 2005.

60   Interestingly, the linguistic ideology (Silverstein 1979) underlying socialist politics of education was already discredited by early Soviet semioticians (see Volosinov [1929] 1973).

61   The classic reference for such processes is Foucault [1976] 1978.Once more, even though richly suggestive, the work is weak on theorizing process in contexts of contingencies. For a dialectical heuristic for thinking through cases in which counter-imaginaries take place, see Glaeser 2011, chap. 4.

On a more specific historical level, socialist politics of education ran afoul of prevalent modern understandings of selves as not only active but as creative and critical (e.g. Taylor 1989; 2004). Modern self-ideals are incompatible with politics articulated in the register of control, calling instead for dialogic inclusion in political processes. For the realm of politics, this means that every citizen should be understood in a fundamental way as a politician, as a co-former of institutions. Ideally, this is in the end precisely what people's sovereignty means (Rousseau [1762] 1997, vol. 1, chap. 6). Socialist propaganda recognized these understandings of modern selves as genuinely socialist.[62] In fact socialist critics of liberal democracies (modeling themselves on Lenin [1917] 1962) accused them of violating these modernist values by deceiving their electorates in such a way that they mistook the choice between pseudo-alternatives presented by seemingly different parties for genuine choice between institutional frameworks. Socialist officials offered involvement in the party, or in any of the socialist mass organizations, as a pathway to living the modern ideal of the self as an active, creative and critical part of the popular sovereign. Even though large parts of the population remained distrustful of this invitation by the party, during the years of reconstruction after World War II, problems notwithstanding, this is how many party members could and did experience their participation (see Epstein 2003, chap. 6). Extraordinary career opportunities in which young people could quickly advance to positions of leadership further corroborated party members' self-perception as active formers of institutions.

Yet, the rigidities of life in the party and socialist mass organizations remained off-putting for many non-members and became increasingly troublesome even to some of the most dedicated members (e.g. Schürer 1996; Henrich 1989; Scherzer 1989). The notorious, regularly recurring »freeze« periods with heightened levels of surveillance led increasingly

---

62   It thus created the potential for the appearance of a fundamental contra-
diction that no conservative authoritarianism needs to face, because con-
servatives are anti-modern as regards precisely this point.

larger numbers of members to disengage.[63] During the last years of the GDR this happened at an accelerating pace.[64]

Yet, rigidities were introduced precisely because the party leadership felt it imperative to control ideological reproduction tightly. It attempted to reconcile its desire for ideological control with modern self-ideals by exhorting everybody to creatively apply general, prevalent doctrine to specific contexts. It also encouraged critique, but only in relation to the class enemy and in areas where the party did not yet have any clear doctrinal commitments. Otherwise the party demanded discipline and self-objectification in line with the socialist categorical imperative. For its historical context, it explicitly acknowledged that freedom at the macro-political level, the freedom to create and sustain (socialist) institutions, was only available at the price of sacrificing individual freedoms for the sake of a better future. To help people get over their »subjectivist inclinations,« the party devised a range of rituals with dialogic names such as »critique and self-critique« and, later, »talks« (*Aussprachen*) which however rarely shed their fiercely didactic, monologic character. The result was fixed in advance: re-alignment or isolation. While these socialist ways of reconciling »personal« and »civil« liberties (Rousseau [1762] 1997, vol. 1, chap. 8) resonated positively with the *Aufbaugeneration*[65] during the GDR's first 20 years, when socialist institutions were young and believa-

---

63   Such freezes occurred either in response to major domestic or international events such as in 1953 (June 17 uprising), 1956 (Hungarian uprising), 1968 (Prague Spring) and 1987 (Soviet glasnost) or in response to domestic policy shifts such as in 1965 (11th Plenum condemning cultural productions perceived to swerve from the party line), 1976 (after the forced exile of Wolf Biermann) and 1989 (perception of growing crisis).

64   Individual higher-ranking functionaries, especially in less policed domains of social life, showed time and again that a greater openness and more satisfying life within the party was possible by creating an atmosphere of trust. Such pockets of openness remained the exception, however, and my interview partners have reported that they decreased in later years.

65   The founding generation that engendered and benefited from a fresh start after WWII.

bly threatened, they increasingly lost their persuasiveness with the apparent stability of socialist arrangements, which were touted by the party as major successes.[66]

Beyond the irony of proselytization generated through a combination of propaganda and surveillance, socialist practices of central planning produced yet another irony of control which resulted from efforts to direct the behavior of citizens. Instead of relying on floating prices and free markets, socialism depended on central coordination to allocate scarce resources. A plan determined what would be produced by whom in which quality and quantity; it also determined inputs and investments for productive units as well as what would be available where for final distribution to consumers. It also more or less fixed the prices of goods for exchange (Mittag 1969; cf. Steiner 2004). In other words, economic planning was the epitome of control. The argument socialist politicians made for planning rested on the understanding that, for several reasons, it was more rational than the market. Most importantly, planned economies were understood to be more efficient than market economies, because planning could consciously harness »economic laws« to attain chosen outcomes, while free markets were thought to subject participants to these laws in an uncontrollable fashion. In other words, planning promised to replace the chaotic »laws of the jungle« created by the short-term self-interested behavior prevailing on free markets with centralized, long-term coordination in the genuine interest of society. The model for this sort of liberation was the scientific identification of the laws of nature and their systematic use for human ends in engineering applications. Thus planning promised to eliminate business cycles produced by over- or underproduction as well as the human misery of mass-unemployment and deskilling. Planning was thought to allow for the creation of productive monopolies and thus the realization of the

---

66   Once more it is interesting to note that socialist practices of pairing a monologic politics of education with tight surveillance contradicted early Soviet theories of pedagogy (Vygotsky [1932-34] 1978, chap. 6 and 7) and the results of what were later much-celebrated pedagogical experiments (Makarenko [1933-35] 1955).

largest possible economies of scale without incurring the exploitation associated with monopoly pricing on free markets. Finally, it was thought that planning also eliminated other kinds of waste associated with market competition such as the need for excessive or deceptive advertising as well as the need for useless product differentiation. The rationality of production would be supported by the rationality of consumption, socialist thinkers taught, because the end of class warfare would end the need for social differentiation through conspicuous consumption. The combined result of these rationalizations was expected to be a far greater average standard of living, more funds for socially useful investments, and thus quicker increases in the productivity of labor and ultimately higher economic growth, which would eventually allow for the establishment of communism.

Famously, these expectations were not realized. Not only did the forecasted growth rates not materialize, but socialist economies developed serious shortages that endured for decades, even in basic necessities such as shoes or building materials. As Janos Kornai (1992, chap. 7 and 12) has pointed out, these shortages were produced by the incentive structure of central planning. Managers not only manufactured in abundance of what they could easily produce to fulfill their plans, they also hoarded resources to deal with the vagaries of the plan. To keep the economy running, all production units relied increasingly on »fixers,« people enmeshed in personal networks who could strike barter deals outside of the plan. They ironically introduced counter-plan practices which made the plan seemingly workable while at the same time increasing planning uncertainties.[67]

---

67   Precisely because the secret police had very many lateral contacts, it regularly served the role of fixer. Thus the Stasi stole Western technology, specialty chemicals or other urgently needed components from the class enemy; within the GDR it helped to broker supply deals for everything from coal to apartments, and it regularly acted as a purveyor of information that could not travel through official channels. Of course there were definite boundaries to this trickster work set by the secrecy requirements of the Stasi.

Central planning was an effort to control as many economic action-reaction links as possible by monopolizing the projective articulation of supply and demand. Once more, control led directly to a loss of control. The question is why? Kornai's answers remain in many ways merely descriptive. The flaws he describes were well known to insiders, practitioners, planners and theorists of the socialist economy. This is, after all, the world in which Kornai had lived for a long time.[68] The question is therefore no longer why a particular form of planning did not work, but why a system which was known to be dysfunctional could not be changed. The first answer to this question is technical, and I will sketch it here. The second answer, however, involves a complex of political and epistemic issues that I will discuss at the end of this paper, because it is relevant to the ironies of control discussed in the next section as well.

Thinking about the economy from the perspective of consequent processualism highlights the staggering complexity of economies as concatenated activities across time and space. Modeling such complexities in a meaningful way is very difficult to this day. The heuristics introduced in socialism to accomplish the task added many additional inaccuracies and uncertainties. That is to say control that truly amplifies power is dependent on the available material and social technologies. Deficiencies in material technologies can be compensated to a certain degree by institutional arrangements and vice versa.[69] The GDR leadership tried to do

---

68   There was actually a lively debate in the late 1950s and 1960s about socialist incentive schemes and planning methods, which led to a sway in economic reform proposals. Important contributors were, in Poland, Oskar Lange (1959, 1970), Ota Sik in Czechoslovakia (1972), Erich Apel and Günter Mittag in Germany (1963), and in the Soviet Union, Evsej Liberman (1974).

69   The builders of the massive constructions of the ancient world were obviously able to overcome (what from today's perspective looks like) the lack of power machinery through the tight coordination of massive amounts of human labor as well as through much longer planning horizons. In the opposite direction, the American National Security Agency banks on screening telecommunications electronically rather than on informant-based spying operations.

this by using classical propaganda methods geared towards overfulfilling plans. Of course these were in turn subject to the ironies of proselytization that I have described above.

Epistemic ironies of socialist surveillance

Another type of ironies of control becomes apparent in the investigation of the party-state's political epistemics. In particular, I analyze how the secret police of former East Germany, popularly known as »the Stasi,«[70] worked within the parameters set by its role within the socialist project. My analysis focuses on secret police attempts to know and control the peace and civil rights movements in Berlin. What interests me here is the question of why the Stasi never came to understand the phenomenon of dissidence, in spite of its oft-stated intention to do so. This is relevant on the practical level of policing, because the Stasi failed to check the growth of these movements, their establishment of local and country-wide institutions and their linkage with Eastern and Western European counterparts. This is also relevant from the perspective of the party-state's self-sustaining politics, because such knowledge would have educated the party about significant reasons for its own propagandistic inefficacy. As an epistemic project of the state, moreover, the secret police's generation of knowledge about dissidence throws an interesting light on the ways in which the party-state more generally produced knowledge about itself. Systematic comparisons with the party-state's other epistemic projects reveal that the causes for the Stasi's failure are symptomatic of the system as a whole. In other words, the Stasi case reveals how the party-state's efforts at generating political knowledge in the end undermined its chances for successful self-sustaining politics. This is the basic epistemic irony of control that I shall explore in this section.

---

70 The official name was Ministry for State Security, abbreviated MfS, which maintained regional and local offices. Its various branches, beyond its foreign espionage and much-discussed domestic secret policing services, included a passport control unit, the GDR guard regiment, a body guard unit, a legal affairs unit, etc.

So who were the dissidents?[71] For two reasons, the situation of dissidents in East Germany was very different from those elsewhere in Eastern Europe. First, until 1961, when the Berlin Wall was built, 2.7 million people or about 15% of the population escaped through the Berlin gap in the Iron Curtain. This drain of people pre-empted classical liberal or conservative dissidence in the GDR. Exceptions were Protestant ministers who faced reemployment prohibitions in the FRG if they abandoned their flock in the GDR. Not surprisingly, people from the Protestant milieu played a significant role in non-conformist circles. In fact, the Protestant Church supplied vital resources for party-independent activists as regards space and access to duplication and communication technology. In this way it contravened the state's politics of general disablement vis-à-vis anybody unwilling to live their political ambitions within the frameworks provided by the party. The second reason for the atypical situation of dissidents in the GDR is that, second only to the Soviet Union, the GDR was perhaps the Eastern European country where socialism held the highest legitimacy, due to Germany's Nazi history. Nowhere else could socialism more successfully cast itself as a living bulwark against fascism. It is significant in this respect that even among the members of the last politburo of the GDR, about half had wartime anti-fascist credentials.

Given both of these reasons, it is not surprising that dissidence outside of the party and on a somewhat larger scale only appeared in the early 1980s, when the new cold war triggered fears of an all-out nuclear war. This fear led to the formation of peace groups both in Western and Eastern Europe. In the GDR, activists recruited themselves from two

---

71   Thanks to the historical research of former dissidents themselves, the literature on the lives of dissidents and the history of all forms of resistance in the GDR has become vast. Arguably the most comprehensive introduction is still Neubert 1998 and, with an emphasis on the last two decades of the GDR, Ansorg et al. 2007. Valuable analyses of individual groups can be found in the contributions in Deutscher Bundestag 1995, vol. 7. Poppe et al. 1995 provides insight into the various forms of resistance. In English, Joppke 1995 and Torpey 1995 and, with a focus on the last year of the GDR, Olivo 2001 and Pfaff 2006 can be consulted.

rather different sources, whose interaction became critical for the groups' success. On the one side were more radical Protestants who were willing to break out of the Lutheran two kingdoms doctrine (see for example Sengespeick-Roos 1997; Eppelmann 1993). On the other side were non-religious young men and women with clear sympathies for socialism as an idea, who had, however, also repeatedly come into conflict with the party-state (e.g. Templin, 2000, 112–14; Kukutz 1995; Rüddenklau 1992) and who felt ever more clearly that socialism needed thorough reform.

The Stasi's understanding of dissident activity was fully embedded within the party's understanding of history as progressing in clearly delineable stages. In the early to mid-1950s, the Stasi focused its efforts on fighting the domestic class enemy presumed to resist the party's revolutionary project. For the Stasi this included churches as agents of reaction. More importantly, however, the open borders in Berlin made the two Germanys a playground for spies that the Stasi endeavored to catch (cf. Kierstein 2007; Möller and Stuchly 2002, 431–558; Labrenz-Weiß 1998, 35–41). After the Wall was built in 1961 however, spying slowed down considerably because the closed borders made it significantly more dangerous and more difficult to organize. Moreover, during the latter part of the 1960s, an understanding of GDR society began to prevail that saw socialism as being so well established that domestic class enemies no longer existed. Says former officer Martin Voigt (interview, Glaeser 2011, 465):

> We have always worked from the assumption […] that in a developed socialist society, there could not exist such a thing as a genuine opposition. All there was, was a so-called opposition, which was in reality an anti-socialist political underground, inspired and directed by the class enemy.

For the party and for the Stasi, the problem of dissidence was in a sense always already understood. It resulted from a conjunction of a GDR citizenry that had failed to absorb the teachings of Marxism-Leninism, and the malicious interventions of the foreign class enemy engaging in ideological warfare.

It would be too easy, however, to see this understanding of dissidence as foreign-inspired as a mere fantasy. The theory was developed in response to historical experiences, which, in the eyes of the Stasi, corroborated it. Until 1961, Western organizations did try to foment and organize discontent within socialist countries. The churches in the 1950s did define themselves in opposition to the socialist project, and they did receive and continued to receive ample support from affiliated West German churches. Yet by the mid-1970s the Protestant Churches had reached a compact with the state, which led them to argue for »a church embedded in socialism« (e.g. Pollack 1994). However with the increasing importance of electronic mass media, the entirety of the GDR came to be within the radius of West German radio and television broadcasts (Hesse 1988). And there is no doubt that these Western broadcasting services insisted on the official West German government position that the GDR was illegitimate, that the population of the GDR was suppressed, and that the Bonn government was the only truly democratic government in all of Germany. Finally, a few prominent cases of socialist dissidence, notably Robert Havemann's and Wolf Biermann's, were interpreted by officers and other officials as corroborating the notion that dissidence in the GDR was the result of capitalist interventions.[72]

For the Stasi, it seemed logical to apply the theory of Western-inspired and organized dissidence to the emerging peace and civil rights movements as well, because it fit the party-state's understanding of the dynamics of the renewed Cold War. At the height of the movements' development, the Stasi estimated that there were about 2,500 activists in the entire country, organized in several hundred small groups (Mitter and Wolle 1990). All were known by name and address, and all were under surveillance by hundreds of secret informants. The telephones and the apartments of the more important members were bugged. Thus the Stasi knew about almost all meetings, they knew approximately who said what

---

72   On the Stasi case against Robert Havemann see Polzin 2006 (with an emphasis on Havemann's work as a secret informant) and Vollnhals 2000. For the interpretation of this case by Stasi officers see Glaeser 2011, 303–6.

to whom, and they knew about almost all events way in advance. These events were exclusively peaceful; typically small demonstrations, vigils, blues masses, political night prayers, petitions, or information fairs about group activities.[73]

Given the size of the population, this »political underground,« as the Stasi called it, was a relatively small affair. And yet it was deemed dangerous. The reasons should be clear, considering the character of the socialist project as an ideology-driven attempt to perform a self-fulfilling prophecy. The party feared that these intramural »influence agents« (Suckut 1996, 303–5) could validate the messages of Western mass media in face-to-face interactions, thereby undercutting the efficacy of its own propaganda. Moreover, the party feared that because of the interplay of Western propaganda and local influence agents posing in the guise of a democratic opposition, the GDR would become the target for blackmail on the international diplomatic scene because it might appear as if it repressed a genuine opposition when it did nothing but control the activities of a Western, agency-sponsored, pretend opposition.[74] In short the party-state was firmly convinced that the actions of the activists seriously undermined the socialist project.

In this situation, the secret police was charged with the task of stopping dissident activities. Their ideal way of doing so was to collect evidence for a trial of activists for political crimes according to the penal law of the GDR. All of the cases opened against activists began with the presupposition of a violation of a particular set of laws, typically either the subversion of the ideological resolution of the GDR population or the transmission of secret information to the class enemy. Had the plan worked, imprisonment would have operated as a combination of a politics of general disablement (as prison is designed to preempt action), a

---

73   For an overview of the full breadth of these activities see Neubert 1998.

74   At issue were international recognition and the GDR's bargaining position for obtaining hard currency credits, which became necessary to finance a surge in consumption spending (cf. Schalck-Golodkowski 2000; Schürer 1996).

politics of disarticulation (as it aimed to sever action-reaction effect flows between prisoners and their friends), and a politics of education (by withdrawing a source of recognition for dissident understandings while spreading fear of the state). In other words, imprisonment is a totalizing form of politics.

Three factors in particular militated against this route of stopping the activists. First, the dissident's activities were designed to remain on this side of the law or, if they were not legal, they were calculated to fall into the category of misdemeanor rather than of that of felony. Second, the post-Stalinist GDR became an increasingly bureaucratic and concurrently legalistic country. Although it never became ruled by law, there was an increasing emphasis on rule-governed proceedings. In Weberian terms (Weber [1922] 1980, 44), the formal rationality of procedure began to gnaw into the substantive rationality of the vanguard-party concept. Accordingly, the Stasi maintained a legal department (division IX) which checked the formal merit of any case.[75] The Stasi's main problem of operation within this increasingly legalized environment was that most of its evidence rested on the testimony of secret informants. These, however had to be protected both so that they could continue to operate as sources producing information and to uphold the promise of secrecy they were given when they signed on as informants. Third, even when legal proceedings would have been possible, they were often deemed inopportune for political reasons because the dissidents had learned to mobilize domestic and international protest against incarcerations.

With the ideal, juridical ending to their casework effectively blocked, the Stasi took recourse to methods of harassment as an alternative. The Stasi's term for these methods was *Zersetzung,* that is »decomposition« (Pingel-Schliemann 2002). These aimed at activists' sense of reality, including their sense of self and their social integration. Harassment included efforts to prevent activists from gaining employment suitable to

---

75   Unfortunately the research on the Stasi has neglected this department. My assessment here is based on interviews with officers as well as on a comparative analysis of casework documents.

their level of education, restrictions on travel, clandestine but obvious apartment searches, performative shadowing in the streets, the instigation of sexual jealousy, the spread of rumors about the moral character of a particular person or simply the amplification of pre-existing conflicts in their marriages, friendships or groups, so that members would busy themselves with infighting.[76]

Even though secret police harassment created real suffering, it failed to prevent the opposition from growing. Instead it contributed to its radicalization. Police harassment identified as such constituted an obvious human rights violation. Thus dissidents had evidence for the party-state's contemptuous action, which they learned to broadcast to the world. Elsewhere (Glaeser 2011, 450–51), I call this the ecce homo strategy.[77] The very embarrassment that the party-state tried to escape on the international scene by controlling expressions of dissidence was thus produced by these control efforts themselves. In this manner, the Stasi contributed to the creation of the very specter it tried to exorcise. As to the question of the Stasi's efforts to prove connections between activists and Western secret service agencies, now that all the important dissident files of the secret police have been studied again and again, we can be certain that the Stasi never really had proof for its theory; and I say this even though it is quite possible that the one or the other dissident worked actively for the CIA, BND, or other secret service agencies. The point is that dissidence in the GDR was not produced by Western interference. The secret the party-state could not unlock was that dissidence was produced from within the political dynamics of the GDR itself. As peace and civil rights activist Thomas Klein said (interview, Glaeser

---

76   This list is oriented toward the effect of the action and is more inclusive than the Stasi's own technical use of the term which did not include travel restrictions, employment prohibitions, and searches.

77   How this worked becomes particularly apparent by studying samizdat publications, most notably *Grenzfall* which was explicitly founded to document, broadcast and satirize human rights violations in the GDR (Hirsch and Kopelew 1989; Kowalczuk 2002).

2011, 341): »The ›enemies‹ of the GDR were made by nobody more effectively than by the GDR herself.«

Many activists began their »deviant« careers after experiencing bitter disappointment at not being taken seriously by the party-state. They were shocked by shaming rituals, or they rebelled against overly zealous, heavy-handed propaganda. Unlike party officials who were, through their personal networks, led to rationalize similar experiences as failures of particular individuals, future activists' networks began to recognize them as problematic characteristics of the socialist system. Moreover, with its control efforts, the secret police amplified the original causes that led activists to speak up against the party-state in the first place. If this is so, then why did the Stasi not discover the »elephant in the room«—this root cause of dissidence—and why did it remain oblivious to its own role in worsening the problem rather than in helping to solve it?

To understand this we have to take the organizational cultures of the Stasi and of the party into account. Anyone writing a document within an organization engages in an act of communication between a lower and a higher level of bureaucracy. Such documents are taken to reveal the qualities of the writer, in this case that of an officer as a member of the party and as a bureaucrat charged with a particular task. Accordingly, officers had to follow conventions of writing that allowed them to cater to their superiors' expectations that they perform flawless class consciousness. Thus officers ostentatiously distanced themselves from »enemy« views and actions, while equally ostentatiously identifying with the party line. Nothing could be said that looked in the faintest like a critique of anyone above themselves. The universal slogan in GDR socialism was »no discussion about mistakes.« One had to be positive; one had to avoid anything that could be read as undermining mobilization and resolve. Hence former officers describe their report-writing as acts of acute self-censorship (interviews). One of them said: »the principle was

simple: what should not exist can not exist.« Another said: »we needed to castrate our reports«, a third referred to his reports as »lullabies.«[78]

That situation was aggravated by the fact that the knowledge-generating ideology underlying much of socialist bureaucracy was one of contract engineering. Lower levels were supposed to fulfill only limited, clearly circumscribed tasks. More specifically, they were supposed to generate facts, but add neither interpretation nor analysis. That was the prerogative of higher-ups, simply because they had access to more information. Of course this kind of thinking was thoroughly indexical, characterizing work all the way up to the politburo itself. The ultimate analytical referent was exactly: nowhere.

The root cause of the epistemic ironies of control lies in the institutionalization of the generation of political knowledge in the GDR. The party-state had formed practices of communication that made learning immensely difficult as soon as it in any way challenged fundamental assumptions. All knowledge that threw a critical light on the functioning of the socialist system, in fact anything that looked as if it might endanger mass mobilization, had to be kept secret or was best not even developed. This is the result of a fundamental tension between knowledge-generating practices and action. People need understanding to orient and direct their action. Since there can be a multiplicity of ambiguous, ambivalent or even contradictory understandings, people search for validations to find the most reliable path for action. Agency, the ability to act, is in this sense contingent on sufficiently validated understandings. But this also means that raising doubts has a detrimental effect on agency. Those who

---

[78]   I have checked the results of my investigation of Stasi-internal patterns of communication against reports from other branches of GDR government and the results about party life with the help of the extensive body of memoirs which has confirmed these findings as systemic features of the party-state. This holds true regardless of how the authors positioned themselves vis-à-vis the GDR after unification, and of the branch and level of the party-state organization. In addition to the aforementioned literature I would like to mention Eberlein 2000; Modrow 1995; Uschner 1993; Schabowski 1991.

crave to act therefore crave sufficiently certain knowledge, and they potentially perceive anybody calling this certainty into doubt as a spoilsport.

This basic tension was amplified by the fact that Marxism-Leninism cultivated an awareness of the fact that decisive action could change circumstances in such a way that the knowledge of yesteryear might quickly become old hat. In Marxist-Leninist thought, what counted as true *political* knowledge, which aims at the formation of institutions, is therefore knowledge that accommodates itself to the performativity of human action. In other words, true political knowledge allows for the possibility of self-realization and reflects the conditions of this possibility. Accordingly, critiques that derive their punch from a mere analysis of what currently exists are always in danger of being, in the truest sense of the word, no more than petty nagging. Useful political knowledge thus necessarily requires an image of social life that reflects its temporal progression into the future. And such knowledge, it was believed in socialism, was only available at the center of the party. Its instantiation moved from Marx to Lenin to Stalin and then to the apparat of the politburo. Yet none of Stalin's successors had either the depth of social analysis and/or the charismatic authority to make deep institutional accommodations to changing circumstances in the same way that Lenin or Stalin did. Ironically, the continuing functioning of socialist institutions rested on charismatic political epistemics. And, perhaps tragically, this charisma was lost before the party's institutionalized political epistemics could be changed.

Power, as I said at the beginning of this paper, is the ability to form, maintain or alter institutions. Unfortunately, what de facto is and is not power is revealed only within a wider temporal horizon. For that reason, and quite myopically, power is often perceived merely as the ability to get action going. Socialism, inspired by revolutionary ambitions, in this manner placed a huge premium on mobilization, on getting everybody united behind the party's agenda. To support mobilization, the party instituted processes of validation which could only safely validate that which was already known. To put it bluntly, in 1989, Leninism was still the Marxism of its time. Knowledge formation processes that are cut off

from renewal through experience and thoroughgoing critical procedures become completely circular. This is what happened in the GDR. Yet party officials believed they had profound knowledge about the social world in which they acted. And how could they not? Their environment constantly validated their understandings. At the bottom, in everyday experiences, there were of course doubts, because people saw individual aspects of the project derailing with their own eyes. But there was also always the hope that this was just a local occurrence, and that those further up, owing to their deeper knowledge, knew better. When it became ever clearer to party members that that which had first appeared as a local problem was indeed a failure of the system, the party no longer had institutional frameworks to develop better understandings of their situation, understandings that might have enabled successful self-sustaining politics. In fact, the political epistemics of the party-state led to a self-fetishization of socialism at a particular stage of development. Unable to act constructively, devoid of the power that would have come about with the help of a different kind of knowledge, the party-state simply imploded.

Conclusions: Learning from socialism

At the beginning of this paper I presented socialism as a form of hyper-modernity. The analytical purchase of this classification is that it allows us to step out of the comparative political systems model, whose principal flaw lies in the mutually exclusive juxtaposition of seemingly closed and coherent systems. These systems are seen as alternative models of social life that one could chose to institutionalize politically.[79] If one such system fails while the other survives, scholars are tempted to argue that the former broke down because it was unlike the latter. Not surprisingly, there are plenty of accounts of socialism's impossibility (and, retrospec-

---

79   These flaws pertain much more to contemporary work in the genre of social analysis than to its ancient Greek origins. Both Plato and Aristotle were quite aware of the continuities between »politeiai« simply because they were interested in the transformations of the one into the other, its causes and consequences.

tively, dissolution) that essentially blame it for not having been a capitalist liberal democracy (notably Mises [1922] 1936; Hayek [1944] 2007, but also their contemporary students at the Cato Institute, the American Enterprise Institute, the Brookings Institution, etc.). Neo-Parsonian modernization theories (e.g. Zapf 1993; Meuschel 1992) do not fare much better, because they implicitly identify that which strikes them as necessary in social processes of differentiation with those extant in surviving (concretely, capitalist/liberal) systems. Not only do neoliberal and modernization theoretic approaches engage in problematic reifications, but their comparative matrix never lets them look deeply enough into the dynamics of process. Moreover, a comparative systems approach systematically blocks from view the fact that many of the processes which form and maintain institutional arrangements are quite similar across various modern institutional clusters. Finally, no concrete assembly has the neatness that the systems metaphor suggests.

Similarities across different clusters of institutional arrangements are traceable to common historical origins and to similar problem constellations that may lead to similar institutional solutions. All modern political forms, including liberalism and socialism,[80] have developed imaginaries which operate with global scopes and on personality-transforming scales. They aim to bring about, as an effect of intentional transformations, putatively liberating institutional arrangements, be it a global free market among a community of representative democracies, or world communism. All modern political forms have developed a putatively true science to supply the political knowledge needed to support these transformational political ambitions, among them (liberal) economics and Marxism-Leninism. Precisely to the degree that they operate with pre-set goals which are *not* open to adjustment in negotiations with citizens who are thus treated as political subjects rather than as co-politici-

---

80   I have not included fascism here because it is a more fragmented phenomenon. Even though German National Socialism easily falls into the categories above, its goal (a global order of races) and its science (race-based social Darwinism) does not easily translate into Italian or Spanish fascisms.

ans, and to the degree that the underlying scientific practice is hypostatized as true, these formations need to engage in a politics cast in a register of control. Liberals need to force market participation (intensifying with scope and scale of the project) while enforcing the operation of the price mechanism; socialists need to force political participation in the party and its mass organizations while aligning everyone with the party line.

I have sketched out some of the major ironies of control that beset the operations of socialist politics. Are there similar ironies of control in operation within capitalist liberal democracies? Epistemic ironies abound wherever the generation of political knowledge in the service of control becomes entangled in circular processes of validation (something that happens regularly in organizational contexts) and where imperatives to act seem to predominate (for example in foreign policy transactions). Ironies of direction appear regularly where government actors try to prescribe and enforce particular courses of action (for example in anti-smoking campaigns), thus clearly dividing politics into agents and subjects. Yet, there is one element of liberal, capitalist institutional arrangement that seems to break the edge off ironies of direction. Actors interested in the maintenance or expansion of capitalist logics of behavior have been much more successful in naturalizing these logics than socialists were. By systematically veiling the fact that markets are institutions formed in interlinked action-reaction effect sequences, that is through the fetishization of »the market« as an autonomous actor, the intentionality of actors in shaping markets—their politics—is methodically obfuscated. The contradiction that has appeared in socialism between modern notions of self on the one hand and the division of political agency into politicians and subjects on the other, is thus submerged in capitalism in the fog of seemingly universal subjecthood vis-à-vis the market as Leviathan. The reason for the greater success in naturalizing capitalism probably lies in the corroboration of this understanding by its success in producing income growth for everyone. After three bubble economies that have systematically widened the income and

wealth distribution between the super-rich and the rest of the population, that may be about to change.

References

Anderson, Benedict. (1983) 2006. *Imagined Communities: Reflections on the Origin and Spread of Nation States.* London.

Ansorg, Leonore, Bernd Gehrke, Thomas Klein, and Danuta Kneipp, eds. 2007. *Politische Gegnerschaft in der DDR: Herrschaftswandel und Opposition in der Ära Honecker; Herrschaftswandel und politische Gegnerschaft in der DDR (1971–1989).* Köln.

Apel, Erich, and Günter Mittag. 1963. *Fragen des neuen ökonomischen Systems der Planung und Leitung der Volkswirtschaft.* Berlin.

Archer, Margret, Roy Bhaskar, Andrew Collier, Tony Lawson, and Alan Norrie. 1998. *Critical Realism: Essential Readings.* London.

Betts, Paul. 2010. *Within Walls: Private Life in the German Democratic Republic.* Oxford.

Bodin, Jean. (1576) 1992. *On Sovereignty: Four Chapters from The Six Books of the Commonwealth.* Cambridge.

Boyer, Dominic. 2005. *Spirit and System: Media, Intellectuals and the Dialectic in Modern German Culture.* Chicago.

Bruce, Gary. 2012. *The Firm: The Inside Story of the Stasi.* Oxford.

Burke, Edmund. (1791) 2001. *Reflections on the Revolution in France.* Stanford.

BStU (Bundesbeauftragter für die Unterlagen der ehemaligen Staatssicherheit der DDR). 1995. *Anatomie der Staatssicherheit: Geschichte, Struktur, Methoden; MfS Handbuch.* Berlin.

CC-CPSU (Central Committee of the Communist Party of the Soviet Union). 1939. *History of the Communist Party of the Soviet Union (Bolsheviks): Short Course.* New York.

Chirot, Daniel, ed. 1991. Chap. 1 in *The Crisis of Leninism and the Decline of the Left: The Revolutions of 1989.* Seattle.

Collins, Randal. 2004. *Interaction Ritual Chains.* Princeton.

Deutscher Bundestag, ed. 1995. *Materialien der Enquete-Kommission »Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland.«* 9 Vols. Frankfurt am Main.

Eberlein, Werner. 2000. *Geboren am 9. November: Erinnerungen.* Berlin.

Elias, Norbert. (1935) 1976. *Der Prozeß der Zivilisation: Wandlungen des Verhaltens in den weltlichen Oberschichten des Abendlandes.* Frankfurt.

Engels, Friedrich. (1876–78) 1962. *Herrn Eugen Dührings Umwälzung der Wissenschaft (Anti-Dühring).* Berlin.

Engels, Friedrich. (1876–78) 1935. *Herr Eugen Dühring's Revolution in Science (Anti-Dühring).* Translated by Emile Burns. New York.

Eppelmann, Rainer. 1993. *Fremd im eigenen Haus: Mein Leben im andren Deutschland.* Köln.

Epstein, Catherine. 2003. *The Last Revolutionaries: German Communists and Their Century.* Cambridge.

Evens, T. M. S., and Don Handleman. 2006. *The Manchester School: Practice and Ethnographic Praxis in Anthropology.* New York.

Fichte, Johann G. (1794) 1997. »Einige Vorlesungen über die Bestimmung des Gelehreten.« In *Werke*, 2:9–66. Frankfurt.

Foucault. Michel. (1975) 1995. *Discipline and Punish: The Birth of the Prison.* New York.

— (1976) 1978. *History of Sexuality: Volume 1; An Introduction.* New York.

— (2004) 2009. *Security, Territory, Population: Lectures at the Collège de France 1977–1978.* New York.

Fritzsche, Peter. 2004. *Stranded in the Present: Modern Time and the Melancholy of History.* Cambridge.

Gaus, Günter. 1983. *Wo Deutschland liegt.* München.

Giddens, Anthony. 1984. *The Constitution of Society: Outline of the Theory of Structuration.* Cambridge.

Gieseke, Jens. 2000. *Die hauptamtlichen Mitarbeiter der Staatssicherheit: Personalstruktur und Lebenswelt.* Berlin.

Glaeser, Andreas. 2004. »Monolithic Intentionality, Belonging and the Production of State Paranoia: A View Through the Stasi onto the Late GD.« In *Off Stage/On Display: Intimacy and Ethnography in the Age of Public Culture*, edited by Andrew Shryock, 244–78. Stanford.

— 2005. »An Ontology for the Ethnographic Analysis of Social Processes: Extending the Extended Case Method.« *Social Analysis* 49 (3): 18–47. Reprinted in *The Manchester School: Practice and Ethnographic Praxis in Anthropology*, edited by T. M. S. Evens and Don Handelman. 2006. New York.

— 2011. *Political Epistemics: The Secret Police, the Opposition, and the End of East German Socialism*. Chicago.

Gluckman, Max, ed. 1964. *Closed System and Open Minds: The Limits of Naivety in Social Anthropology*. Chicago.

Grimmer, Reinhard, Werner Irmler, Willi Opitz, and Wolfgang Schwanitz, eds. 2002. *Die Sicherheit: Zur Abwehrarbeit des MfS*. 2 vols. Berlin.

Habermas, Jürgen. (1963) 1990. *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. Frankfurt.

Havel, Vaclav. 1990. *Living in Truth: 22 Essays*. New York.

Hayek, Friedrich A. von. (1944) 2007. *The Road to Serfdom*. Chicago.

Henrich, Rolf. 1989. *Der vormundschaftliche Staat*. Reinbek.

Hesse, Kurt. 1988. *Westmedien in der DDR: Nutzung, Image und Auswirkungen bundesrepublikanischen Hörfunks und Fernsehens*. Köln.

Hirsch, Ralf, and Lew Kopelew, eds. 1989. *Grenzfall: Vollständiger Nachdruck aller in der DDR erschienenen Ausgaben (1986/87); Erstes unabhängiges Periodikum*. Berlin.

Hobbes, Thomas, (1651) 1994. *Leviathan or the Matter, Form and Power of Commonwealth, Ecclesiastical and Civil*. Indianapolis.

Jesse, Eckhard, ed. 2000. *Eine Revolution und ihre Folgen: 14 Bürgerrechtler ziehen Bilanz*. Berlin.

Joppke, Christian. 1995. *East German Dissidents and the Revolution of 1989: Social Movements in a Leninist Regime*. New York.

Kahn, Paul. 2012. *Political Theology: Four New Chapters on the Concept of Sovereignty*. New York.

Kantorowicz, Ernst. 1957. *The King's Two Bodies: A Study in Medieval Political Theology*. Princeton.

Kierstein, Herbert, ed. 2007. *Heiße Schlachten im Kalten Krieg: Unbekannte Fälle und Fakten aus der Spionageabwehr der DDR.* Berlin.

Kligman, Gail. 1998. *The Politics of Duplicity: Controlling Reproduction in Ceausescu's Romania.* Berkeley.

Koehler, John O. 2000. *Stasi: The Untold Story of the East German Secret Police.* Boulder.

Kornai, János. 1992. *The Socialist System: The Political Economy of Communism.* Princeton.

Kowalczuk, Ilko-Sascha, ed. 2002. *Freiheit und Öffentlichkeit: Politischer Samisdat in der DDR, 1985–1989.* Schriftenreihe des Robert Havemann Archivs 7. Berlin.

Kukutz, Irena. 1995. »Die Bewegung ›Frauen für den Frieden‹ als Teil der unabhängigen Friedensbewegung der DDR.« In *Enquete-Kommission »Aufarbeitung von Geschichte und Folgen der SED-Diktatur in Deutschland,«* vol. 7, no. 2, 1285–1408. Baden-Baden.

Labrenz-Weiß, Hannah. 1998. *Die Hauptabteilung II: Spionageabwehr.* Anatomie der Staatsicherheit: MfS-Handbuch, vol. 3, no. 7, edited by BStU. Berlin, 1995–.

Lange, Oskar. 1959. »Political Economy of Socialsm.« *Science & Society* 23 (1): 1–15.

—— 1970. *Introduction to Economic Cybernetics: Prepared With the Collaboration of Antoni Banasiński on the Basis of Lectures Delivered at the University of Warsaw.* Translated by Józef Stadler. Warsaw.

Lenin, Vladimir I. 1960–63. *Collected Works* (cited as *CW*). 45 vols. Moscow.

—— (1902) 1961. »What is to be done? Burning Questions of our Movement.« In *CW*, 5:347–530. Moscow.

—— (1917) 1962. »The State and Revolution: The Marxist Theory of the State and the Tasks of the Proletarian in the Revolution.« In *CW*, 25:381–492. Moscow.

Liberman, Evsej G. 1974. *Methoden der Wirtschaftslenkung im Sozialismus: Ein Versuch über die Stimulierung der gesellschaftlichen Produktion.* Frankfurt am Main.

Lukes, Steven. 1974. *Power: A Radical View.* London.

Makarenko, Anton S. (1933–35) 1955. *The Road to Life: An Epic of Education.* Moscow.

Mandeville, Bernard. (1704) 1924. *The Fable of the Bees: Or Private Vices, Public Benefits*, edited by F. B. Kaye. Oxford.

Mann, Michael. 1984. »The Autonomous Power of the State: Its Origins, Mechanisms, and Results.« *European Journal of Sociology* 25: 185–213.

Mannheim, Karl. (1926) 1984. *Konservatismus: Ein Beitrag zur Soziologie des Wissens.* Frankfurt.

— (1929) 1985. *Ideologie und Utopie.* Frankfurt.

— 1940. *Man and Society in the Age of Reconstruction.* London.

Marx, Karl, and Friedrich Engels. 1957–83. *Karl Marx-Friedrich Engels-Werke*, edited by the Insititut für Marxismus-Leninismus beim ZK der SED. 44 vols. (cited as *MEW*). Berlin.

— (1848) 1959. »Manifest der kommunistischen Partei.« In *MEW*, 4:459–93. Berlin.

Meuschel, Sigrid. 1992. *Legitimation und Parteiherrschaft in der DDR.* Frankfurt.

Mises, Ludwig von. (1922) 1936. *Socialism: An Economic and Sociological Analysis.* London.

Mittag, Günter, ed. 1969. *Politische Ökonomie des Sozialismus und ihre Anwendung in der DDR.* Berlin.

Mitter, Armin, and Stefan Wolle, eds. 1990. *Ich liebe euch doch alle! Befehle und Lageberichte des MfS Januar-November 1989.* Berlin.

Modrow, Hans, ed. 1995. *Das grosse Haus von aussen: Erfahrungen im Umgang mit der Machtzentrale der DDR.* Berlin.

Möller, Günter, and Wolfgang Stuchly. 2002. »Zur Spionageabwehr (HA II im MfS/Abt. II der BV).« In *Die Sicherheit–Zur Abwehrarbeit des MfS*, vol. 1, edited by Reinhard Grimmer, Werner Irmler, Willi Opitz, and Wolfgang Schwanitz, 431–558. Berlin.

Müller-Enbergs. 2008. *Inoffizielle Mitarbeiter des Ministeriums für Staatssicherheit: Teil III—Statistik.* Berlin.

Neubert, Erhart. 1998. *Geschichte der Opposition in der DDR, 1949–1989.* Berlin.

Nexon, Daniel. 2009. *The Struggle for Power in Early Modern Europe: Religious Conflict, Dynastic Empires, and International Change.* Princeton.

North, Douglas. 1990. *Institutions, Institutional Change and Economic Performance.* Cambridge.

Nye, Joseph. 1990. *Bound to Lead: The Changing Nature of American Power.* New York.

— 2005. *Understanding the Process of Economic Change.* Princeton.

Olivo, Christiane. 2001. *Creating a Democratic Civil Society in Eastern Germany: The Case of the Citizen Movements and Alliance 90.* New York.

Pfaff, Steven. 2006. *Exit-Voice Dynamics and the Collapse of East Germany: The Crisis of Leninism and the Revolution of 1989.* Durham.

Pingel-Schliemann, Sandra. 2002. *Zersetzen: Strategie einer Diktatur.* Berlin.

Pollack, Detlef. 1994. *Kirche in der Organisationsgesellschaft: Zum Wandel der gesellschaftlichen Lage der evangelischen Kirchen in der DDR.* Stuttgart.

Polzin, Arno. 2006. *Der Wandel Robert Havemanns vom inoffiziellen Mitarbeiter zum Dissidenten im Spiegel der MfS-Akten: BF informiert 26/2005.* Berlin.

Poppe, Ulrike, Rainer Eckert, and Sascha Ilko Kowalczuk, eds. 1995. *Zwischen Selbstbehauptung und Anpassung: Formen des Widerstandes und der Opposition in der DDR.* Berlin.

Powell, Walter, and Paul DiMaggio, eds. 1991. *The New Institutionalism in Organizational Analysis.* Chicago.

Reddy, Michael. 1993. »The Conduit Metaphor: A Case of Frame Conflict in Our Language about Language.« In *Metaphor and Thought*, edited by Andrew Ortony, 164–201. 2nd edition. Cambridge.

Rousseau, Jean-Jacques. (1762) 1997. *The Social Contract.* 4 vols. Cambridge.

Rüddenklau, Wolfgang. 1992. *Störenfried: DDR-Opposition 1986–1989.* Amsterdam.

Schabowski, Günter. 1991. *Der Absturz.* Reinbek.

Schalck-Golodkowski, Alexander. 2000. *Deutsch-deutsche Erinnerungen.* Reinbek.

Scherzer, Landolf. 1989. *Der Erste: Eine Reportage aus der DDR.* Köln.

Schissler, Hannah, and Yasemin Soysal, eds. 2005. *The Nation, Europe and the World: Textbooks and Curricula in Transition.* New York.

Schmitt, Carl. (1932) 1963. *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien.* 2nd ed. Berlin.

Schürer, Gerhard. 1996. *Gewagt und verloren: Eine deutsche Biographie.* Frankfurt an der Oder.

Schütz, Alfred. (1932) 1974. *Der sinnhafte Aufbau der sozialen Welt: Eine Einleitung in die verstehende Soziologie.* Frankfurt.

Scott, James. 1998. *Seeing Like a State: How Certain Schemes to Improve the World Have Failed.* New Haven.

Segal, Charles. (1967) 1994. »Transition and Ritual in Odysseus' Return.« In *Singers, Heroes and Gods in the Oddysey*, edited by Charles Segal, 65–84. Ithaca.

Sengespeick-Roos, Christa. 1997. *Das ganz Normale tun: Widerstandsräume in der DDR-Kirche.* Berlin.

Sewell, William Jr. (1992) 2005. »A Theory of Structure: Duality, Agency, and Transformation.« In *Logics of History: Social Theory and Social Transformation*, 124–151. Chicago.

Sik, Ota. 1972. *Economic Planning and Management in Czechoslovakia.* Prague.

Silverstein, Michael. 1979. »Language Structure and Linguistic Ideology.« In *The Elements: A Parasession on Linguistic Units and Levels*, edited by Paul R. Clyne, William F. Hanks, and Carol L. Hofbauer, 193–245. Chicago.

Steiner, André. 2004. *Von Plan zu Plan: Eine Wirtschaftsgeschichte der DDR.* München.

Steinmetz, Georg. 2007. *The Devil's Handwriting: Precoloniality and the German Colonial State in Qingdao, Samoa, and Southwest Africa.* Chicago.

Suckut, Siegfried, ed. 1996. *Das Wörterbuch der Staatssicherheit: Definitionen zur politischoperativen Arbeit.* Berlin.

Taylor, Charles. 1989. *Sources of the Self: The Making of Modern Identity.* Cambridge.

—— 2004. *Modern Social Imaginaries.* Durham.

Templin, Wolfgang. 2000. »Nicht nur die staatliche Wiedervereinigung, sondern auch gesellschaftliche Neuvereinigung.« In *Eine Revolution und ihre Folgen: 14 Bürgerrechtler ziehen Bilanz*, edited by Eckard Jesse, 110–22.

Thelen, Kathleen. 2004. *How Institutions Evolve*. Cambridge.

Tiberondwa, Ado. (1977) 1998. *Missionary Teachers as Agents of Colonialism: A Study of their Activities in Uganda 1877–1925*. Kampala.

Torpey, John. 1995. *Intellectuals, Socialism, and Dissent: The East German Opposition and Its Legacy*. Minneapolis.

Uschner, Manfred. 1993. *Die zweite Etage: Funktionsweisen eines Machtapparates*. Berlin.

Vollnhals, Clemens. 2000. *Der Fall Havemann: Ein Lehrstück politischer Justiz*. Berlin.

Volosinov, Valentin N. (1929) 1973. *Marxism and the Philosophy of Language*. Cambridge.

Vygotsky, Lev S. (1932–34) 1978. *Mind in Society: The Development of Higher Psychological Processes*. Cambridge.

Weber, Max. (1922) 1980. *Wirtschaft und Gesellschaft*. Tübingen.

Wolle, Stefan. 1998. *Die heile Welt der Diktatur*. Berlin.

Yurchak, Alexei. 2005. *Everything was Forever Until it was No More: The Last Soviet Generation*. Princeton.

Zapf, Wolfgang. 1993. »Die DDR—Zusammenbruch einer Sozialstruktur?« In *Der Zusammenburch der DDR*, edited by Martin Kohli and Hans Joas, 29–48. Frankfurt.

<div align="center">***</div>

Andreas Glaeser, PhD Professor, Department of Sociology,

University of Chicago.

a-glaeser@uchicago.edu