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Knowledge, Domination, and Criminal Punishment¹

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Recent dramatic increases of criminal punishment in the United States and very different trends in the Federal Republic of Germany suggest a critique of basic sociological theory traditions. The article confronts structural-functionalist, Marxist, and legalistic approaches with these trends and suggests an alternative and more complex theory. Utilizing an ideal-typical comparison between the two countries, this article develops a set of interrelated hypotheses on the impact of the institutionalization of (a) knowledge production in the public, political, and academic sectors and (b) political and legal decision making on (c) macro outcomes of political and legal decision making. Using the case of criminal punishment, the article suggests new themes for theory development and empirical macro-sociological research. It also contributes to the understanding of current instabilities in the political process in the United States.

The recent dramatic increase in punishment in the United States, which diverges dramatically from the experiences of the Federal Republic of Germany (FRG) and other developed countries, presents a challenge to basic sociological theories of criminal punishment. In this article, I develop a set of hypotheses that trace this change to the institutionalization

¹ I presented earlier versions of this article at the 1992 meeting of the American Sociological Association, Pittsburgh; the Crime, Deviance, and Social Control Seminar, Department of Sociology, University of Wisconsin—Madison; and the History and Society Seminar, University of Minnesota. I profited from comments by Ron Aminzade, Donald Black, William Brustein, Raymond Duvall, Rosemary Gartner, Candace Kruttschnitt, Barbara Laslett, Gerald Marwell, Ross Matsueda, M. J. Maynes, Jane McLeod, Jeylan Mortimer, Robin Stryker, the *AJS* reviewers, and others who read this piece along the way (not all of whom agree with my theory). Frieder Dünkel, Christian Pfeiffer, and Peter Wetzels helped with the German data, Karl Krohn with figure 1. Pamela Feldman-Savelsberg always helps to draw ideas from our lives between societies. The research was supported by the Graduate School of the University of Minnesota. Correspondence should be sent to Joachim J. Savelsberg, Department of Sociology, 909 Social Sciences Building, University of Minnesota, Minneapolis, Minnesota 55455.

of (a) knowledge construction and (b) domination, that is, institutionalized political and legal decision making. The common denominator of these hypotheses is that the development of macro outcomes of political and legal decision making cannot be explained as a direct reflection of changing social structures. I thus challenge classical and contemporary functionalist (Durkheim [1893] 1984, [1899–1900] 1983; Black 1976, 1987, 1989) and Marxist (Rusche and Kirchheimer 1939; Steinert 1978) approaches. Instead, I argue that the intervening forces of knowledge and institutionalized decision making need to be taken into consideration.² I do *not* argue that structure and conflict are irrelevant. Yet, their analysis needs to be supplemented and complemented by considering the institutionalization of knowledge production and domination.³

Two sets of terminological and theoretical clarifications are warranted at the outset. First, I understand *knowledge*, as does Mannheim ([1925] 1986), in very general terms, as cognitive and normative assumptions about the world.⁴ For an example, consider peoples' assumptions about the deterrent impact of imprisonment. Knowledge in this sense is *not* based on particular methods of knowledge production, for example, on scientific rules of evidence. Knowledge instead includes beliefs based on diverse types of evidence produced in different sectors of society—in the mass media, in political debates, professional meetings, scholarly research, and the everyday world alike. I agree with Mannheim that knowledge is not disconnected from structural forces in society. Yet, I argue (a) that, whenever structural change or social conflict results in knowledge shifts, the dynamics of knowledge and the tides of beliefs and their amplitudes can only be explained if we take the institutionalization of knowledge production into account, and (b) that knowledge intervenes when social structures influence decision making.

Second, I define *domination*, following Weber (1978, p. 53), as the “probability that a command with a given specific content will be obeyed by a given group of persons.” I argue that the way in which domination is institutionalized has implications for how and to what degree different types of knowledge influence political and legal decision making. The

² Sutton (1987) has been at the forefront of taking institutional factors of the political system into account when explaining criminal punishment.

³ “Complemented” means that knowledge may be an independent factor (in addition to structure); “supplemented” means that structures are always mediated through knowledge (no matter how rationalized) when they influence decision making. I have written elsewhere how, on the other hand, structural forces constrain the realization of ideas during the formation and implementation of policy instruments (see, e.g., Savelsberg with contributions by Brühl 1994; Savelsberg 1992).

⁴ For more recent sociological discussions of knowledge see, e.g., Boudon and Bourricaud (1989), Coser (1968), and Kuklick (1983).

“probability of obedience” may depend on the electorate’s immediate control of individual decision makers.⁵ Roth (1987) has recently coined the term “universalistic personalism” (*universalistischer Personalismus*) for such systems. In these systems, increasingly characteristic for the United States, public knowledge translates relatively easily into political and legal decision making—for example, decision making on minimum mandatory sentence laws, guilty verdicts, or sentences. In the opposite case of universalistic bureaucracies, domination is more strongly based on bureaucratized procedures. In such systems, characteristic for the Federal Republic of Germany (hereafter Germany), bureaucratic rationales of political party machines or the political administration are more likely than public knowledge to influence political and legal decision making. The nation-specific institutionalization of domination thus has implications for the way in which different types of knowledge influence political and legal decision making, and, more specifically, divergent trends in criminal punishment.⁶

The hypotheses developed in this article are based on an ideal-typical comparison of the United States and Germany. These countries lend themselves to a fruitful comparison for several reasons. First, knowledge and criminal punishment within these countries show parallel trends, while the countries’ rates of punishment now differ sharply. Second, while both countries are Western and industrialized, with capitalist economies and democratic governments, they differ distinctly in terms of institutionalization of domination and knowledge production in three spheres: public, political, and academic. In Germany, institutions are more strongly bureaucratized, interest mediation between private and public spheres is more neocorporate, and status groups are more secured at the cost of free competition than in the United States.⁷

I use both deductive and inductive strategies to develop a set of inter-related hypotheses. The empirical materials on which much of my argument is based are only preliminary. A systematic test of the theory would require a research program that could not be realized by an individual researcher. We need time series for structural as well as cultural vari-

⁵ More immediate control is given, e.g., in the case of self-nomination of representatives rather than nomination through party machines, individualized parliamentary decision making rather than strict faction discipline, and, for the judicial branch, the election of judges and prosecutors rather than their appointment as life-tenured civil servants.

⁶ Throughout I do not use the term “trend” in any specific technical sense, but generally, to refer to changes in the values of a temporal series of data.

⁷ Kalberg (1987) describes the relative protection of status groups in Germany as compared to the United States and the impact of this protection on the flow of information on the micro level.

ables, and they must be measured in a way that allows for their integration into comprehensive datasets.⁸ In this article I intend to demonstrate this need. I provide theoretical reasons, argue that none of the chief sociological theories satisfactorily explains macro patterns of punishment, and I provide a new theory for future testing.

BACKGROUND

Explanations and predictions of criminal punishment have long been embedded in general sociological theories, especially sociostructural and evolutionary theories of both functionalist and Marxist lineage. Such theories have been used to explain the kinds of behavior punished (Erikson 1966; Foucault 1979; Hall 1952), the sophistication of punishment (Foucault 1979), the procedures on which legal decisions are based (Foucault 1979; Nonet and Selznick 1978; Unger 1976; Weber 1978), the purposes or functions of punishment (Erikson 1966; Foucault 1979; Hall 1952; Rusche and Kirchheimer 1939), and the types of penalties applied (Durkheim 1983; Foucault 1979; Garland 1990; Rusche and Kirchheimer 1939).

Major theoretical paradigms, classical and contemporary, have also been devoted to explaining the weight of penal law in relation to other law and the amount or intensity of criminal punishment. Durkheim (1984, 1983) and Black (1976, 1987, 1989) are prominent examples. The logic and propositions of their theories are similar. Both assume a direct relation between social structure and law and punishment. While Black's theory is more differentiated than Durkheim's, both predict that society will shift over time from criminal to compensatory law and that the intensity of punishment will decline. Their predictions are framed as universal and coincide with expectations of a structural and cultural convergence of modernizing nations (Bell 1976; Inglehart 1977).

Marxist theories, in the tradition of Rusche and Kirchheimer (1939),

⁸ Such a project could not be done by an individual researcher because it would require the collection of time-series data on knowledge trends in mass media, academia, the political sector, opinion polls, interest organizations, and other sectors. All of these would have to be measured for initially two and eventually more societies. These time series would further have to be combined with time-series data on changing social structures, group conflict, policy decisions, and policy outcomes. Since the collection of time-series data on basic cultural variables, e.g., knowledge and ideology in particular policy areas, has been much neglected, future research ideally will fill gaps in the agenda. Part of the agenda, research on crime reporting in the *Washington Post*, supported by the Graduate School of the University of Minnesota, and a related NSF-funded study on knowledge trends in American criminology and criminal justice sciences, is currently under way.

hold that punishment reflects the needs of the labor market (cf. Greenberg 1977; Jankovic 1977). These studies demonstrate correlations between economic cycles and cycles of punishment, between unemployment rates and imprisonment rates (Inverarity and McCarthy 1988, p. 265). This school concludes that the criminal justice system incarcerates fewer defendants when market demand for labor is high and supply is short.

Finally, a legalistic school argues that criminal punishment simply reflects the amount and severity of crime (Gottfredson and Hindelang 1979). The ups and downs of punishment rates are seen as the result of varying rates of crime in different places and at different times.

All of these theories have undergone numerous empirical tests. Durkheim's evolutionary predictions and historical statements have been widely criticized (Schwartz and Miller 1965; Cartwright and Schwartz 1973; Spitzer 1974–75; Luhmann 1977). And while several of Black's hypotheses have been partly confirmed by some analyses (e.g., Myers 1980; Kruttschnitt 1980–81; Hembroff 1987), they have been rejected by others (e.g., Gottfredson and Hindelang 1979; Doyle and Luckenbill 1991). The latter group of authors attribute the amount of punishment (i.e., the number of convictions and the severity of punishments) to the amount of crime (i.e., the number of crimes and their average level of seriousness). According to yet other analyses, however, the amount of crime explains only a very small part of the variance in the amount of criminal punishment (Myers 1979–80). The ambiguities of research results in this area (Liska 1987) are due to (1) the extreme complexity of the empirical field (i.e., the loosely coupled system of criminal justice [see Hagan, Hewitt, and Alwin 1979] and its political, economic, and cultural environment), (2) the difficulty of operationalizing complex and abstract macro-sociological variables, repeatedly demonstrated in recent attempts to test Black's theory of law, and (3) the validity problems of the available aggregate data, especially crime data, which have been gathered for administrative rather than for scholarly purposes. Given these problems, this article follows a strategy suggested by Tilly (1984): to study and compare dramatic shifts between nations with very distinct patterns.⁹

⁹ I introduce societies on the level of nation-states as units of analysis. While this unit of analysis is partly constructed it is not reified. Many of the spheres under consideration in this article are confined to nation-states. Examples are educational systems, election systems, political parties, legal systems (including constitutions), court procedures, criminal jurisdiction, and definitions of what constitutes criminal behavior. These spheres thus constitute the borders of the sociological phenomenon of the nation-state.

A Recent History of Punishment: Empirical Challenges

Dramatic changes in criminal punishment have occurred in the United States during the past 20 years, and considerable differences appear when we compare the United States and Germany. Incarceration rates (state and federal) in the United States and the Federal Republic of Germany have historically been relatively stable. The United States, during the past 65 years, experienced an increase from a rate of 79 inmates per 100,000 population ($N = 91,669$ inmates) in 1925 to one of 137 in 1939. The rate dropped to 100 in 1946, slowly increased to 121 in 1961, decreased again to 94 in 1968, then increased to 98 in 1973. Since 1973 this rate of incarceration steadily grew, in a way previously unknown, to more than 300 inmates per 100,000 population ($N = 823,414$) in 1991 (Cahalan 1986, p. 35; U.S. Department of Justice 1992*a*, p. 2; see fig. 1). In 1991 the United States took first rank from the world's leaders in imprisonment, the former Soviet Union and the Republic of South Africa. Including the jail population (local incarcerations), more than 1.3 million persons are now incarcerated on a given day. This increase is not compensated for by a decrease in other forms of punishment. Parole and probation also increased during this period.

Criminal punishment in Germany shows a rather different pattern of relative stability during the post-World War II period. The incarceration rate of approximately 70–80 prison inmates per 100,000 population has hardly changed from the early 1950s, after the republic's foundation, through 1968. The 1968 criminal code reform, which abolished short-term prison sentences, led to a decline of the incarceration rate, which reached a low of 54 in 1971. However, this rate soon rebounded in 1974 to a level of 59 and slowly increased from there to an extreme of 81 (1984).¹⁰ After 1984 the rate slowly and consistently declined (see fig 1; see also Statistisches Bundesamt 1977, p. 18; 1990, p. 7).¹¹

Neither the German nor the American patterns are directly associated with changing crime rates. In Germany almost constant incarceration rates during the 1960s were accompanied by a 25% increase in crime rates (Bundeskriminalamt 1991).¹² Only during the 1970s through 1984

¹⁰ Part of this rebound may be explained by a theory that takes criminal justice resources into consideration (Pontell 1984; Sutton 1987). More prison cells became available after the abolition of short-term imprisonment for lesser crimes in 1968. Some of these cells were later used for longer terms against more serious offenders.

¹¹ However, 1991–92 was characterized by a renewed increase. It is difficult to predict how German incarceration rates will develop after 1991 given the radical structural and institutional changes brought about by unification.

¹² The crime rate increased from around 2,700 crimes per population of 100,000 (1960) to 3,588 (1968). If we consider the 1970–71 prison rate (after the abolition of short

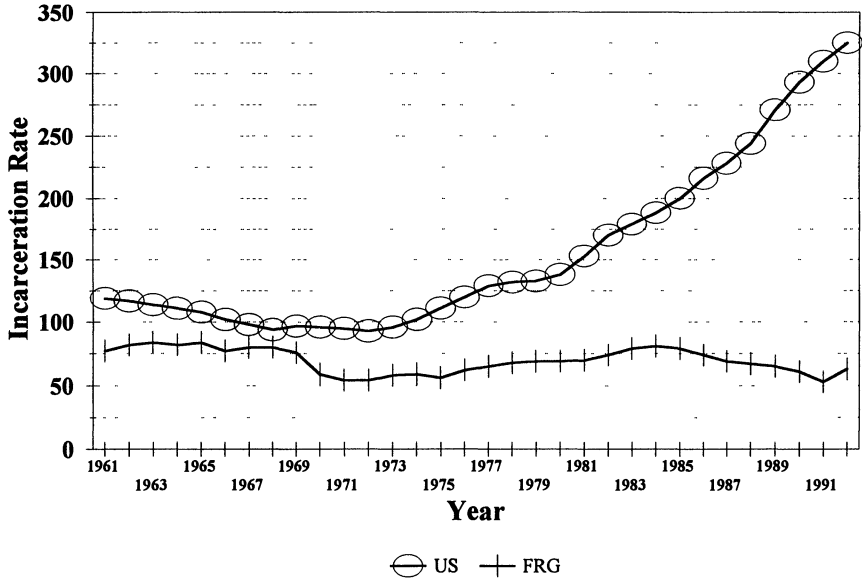


FIG. 1.—Trends of incarceration rates in the United States and the Federal Republic of Germany, 1961–92. For the United States, the incarceration rate is for prisoners sentenced to more than one year under the jurisdiction of state or federal correctional authorities between 1961 and 1992 (see Cahalan 1986; U.S. Department of Justice 1990*b*, 1992*a*; figs. for 1992 are estimated). The incarceration rate (*Gefangenziffer*) in Germany is based on Statistisches Bundesamt (1977, 1991; figs. for 1992 are estimated).

do we find that the increase in incarceration rates is accompanied by an increase in crime rates. Yet, while incarceration rates increased by less than 50%, the increase in crime rates was considerably steeper at 75%.¹³ Reported cases of violent crime almost doubled, from less than 60,000 in 1970 to almost 110,000 in the mid-1980s. In subsequent years in Germany, the general crime rate stabilized, violent crime declined by 10%, while the incarceration rate declined by almost 25% during the second half of the 1980s.

In the United States, rates of criminal punishment developed even more differently from rates of crime. The decrease in imprisonment in the 1960s and the increase in the 1980s were opposed to the development

prison terms), the crime increase is accompanied by an almost 40% decrease in imprisonment.

¹³ The crime rate increased from 3,983 crimes per 100,000 (1971) to around 7,000 (average for 1983–85). The 1988–90 average is around 7,045.

of major crime indicators. The 1960s and early 1970s were characterized by a dramatic increase of index crimes (i.e., a group of crimes counted on the national level), which leveled off in the late 1970s from 3.2 million cases in 1960 to 13.2 million in 1980 (*Uniform Crime Reports [UCR]* 1986). The number of murder and nonnegligent manslaughter cases more than doubled from around 9,000 in 1960 to more than 20,000 in the peak year of 1980. During most of this period the imprisonment rate declined, with lows of 94 incarcerated per 100,000 in 1968 and 95 in 1972. Only during the last four years of this increase in index crimes (1976–80) did the imprisonment rate grow beyond the level of 1960. During the 1980s crime rates increased only slowly according to the *UCR*, while the incarceration rate doubled (*Uniform Crime Reports* 1991).

The National Crime Victimization Survey (NCS), undertaken by the Department of Justice, provides a different indicator for trends in criminal behavior. While the NCS indicates that American crime rates had stabilized during the second half of the 1970s and decreased during the 1980s, the difference between both data sources may be due to the inability of victim surveys to adequately record the crimes of aggravated assault, forcible rape, and larceny theft. If we take this survey problem into consideration, we may assume a modest increase in crime rates during this period.¹⁴ The *UCR* measurement of a moderate increase in crime rates during this period would only have to be somewhat qualified (downward) if we account for the increasing willingness of Americans to report crimes to the police.¹⁵ Despite the problems of adequate measurement of crime trends, the available evidence indicates that modest increases in crime rates during the 1980s contrast with a continuing and radical increase in the prison population by another 400,000 inmates, to over 800,000, or a rate of over 300 prisoners per population of 100,000 in 1991.

¹⁴ There is no perfect measure of crime trends. Increases in index crime rates reflect not only trends in criminal behavior but also reporting behavior. Victimization surveys, conducted since 1973 by the U.S. Department of Justice's NCS are likely to underreport certain types of crime. Further the base rates of the two data sources differ (*residential* U.S. population in the *Uniform Crime Reports* vs.—for the NCS—*households* in the United States for property crimes and the noninstitutionalized population aged 12 and over for personal crimes). According to the (probably underreported) NCS, American crime rates had already stabilized during the second half of the 1970s. They dropped during the 1980s. For example, the proportion of households experiencing a violent crime in the course of a year fell from 5.7% in the second half of the 1970s to 4.7% in the second half of the 1980s. The respective decreases for personal theft are from 15.5% to 11% and for all NCS crimes from 31% to 24.5% (U.S. Department of Justice 1992*b*, p. 2).

¹⁵ According to the U.S. Department of Justice (1990*a*, p. 5), the reporting of personal crimes to the police increased from 32% of all incidents (1973) to 37% (1989) and of household crimes from 38% (1973) to 41% (1989).

The trends in the United States and Germany suggest three conclusions:

1. While we observe considerable increases in crime, and especially violent crime, in both countries, the increase in violent crime in Germany is delayed and is not as pronounced as in the United States.

2. Punishment also develops differently in the United States and Germany. After relatively stable patterns in both countries during the 1950s and 1960s, a recent (1973–91) dramatic increase in American criminal punishment of above 200% contrasts with continuing relative stability in Germany, where the 1991 value is almost identical with the 1973 value.

3. Most important, crime and criminal punishment seem to develop causally independently of each other in each country. While the relationship in the United States may be statistically inverse and thus not statistically independent (i.e., a decline in punishment while crime rises during the 1960s and a rapid increase in punishment beginning in the 1970s when crime rates had just begun to stabilize), this can hardly be interpreted as a direct causal relation.

First, it would be difficult to explain theoretically the decrease in punishment during the 1960s as a rational response to rapidly increasing crime rates. This does not mean that decision makers acted without any rationales. The reduction of punishment may well have been a subjectively rational response to crime in the context of emerging labeling theories and community treatment ideas in combination with more relaxed attitudes toward drugs.¹⁶ The question remains why these new beliefs emerged. There is little reason to believe that they emerged as a direct response to the wave of crime during this period.

Second, while increasing punishment in combination with stabilizing crime rates could be perceived as a rational deterrence response, such an interpretation prompts considerable doubt. First, the steepest and steady increase in incarceration rates began in 1980, when the crime rate had already been leveling out during the preceding four years. Second, the incarceration rate increased by more than 50 inmates per 100,000 population between 1980 and 1984 without resulting in any change in the crime rate. In the following five years (1984–89) the incarceration rate grew by an additional 50, again without achieving any change in crime rates. Since 1989 the increase in incarceration rate has again been 50, as in the two preceding five-year periods, without changing the trend in crime rates but at considerable expense in times of a sluggish economy, declining budgets, and an eroding public infrastructure. It appears that this increase in the level of punitive behavior can hardly be causally

¹⁶ Some states, in fact, payed bonuses to counties that reduced their rates of incarceration below expected levels.

interpreted as a rational response to crime rates, a conclusion that is further suggested by the circumstances under which minimum mandatory sentence laws were passed—a theme I explore below. Again, I do not suggest subjectively irrational decision making. Decision makers' potential for the rationalization of decision making, even in the face of challenging evidence, is considerable. Such evidence, however, had emerged during the 1980s.

The descriptive account of crime and incarceration trends in two societies and the conclusions that follow from it thus challenge approaches that explain imprisonment rates directly through crime. While it is not inconceivable that the increase in American crime rates during the 1960s has contributed to the increase in punishment during the 1970s and 1980s, any causal relation between crime and punishment rates would not be direct but would instead be mediated in complex ways by many factors.

The data also cause problems for structural-functionalist and Marxist theories. Two central elements of theories in the Durkheim-Black tradition are questioned: (1) Both theories assume a universal model of development that is incompatible with the empirical differences found in the American-German comparison. Neither theory sufficiently incorporates country-specific differences that occur within the group of industrialized, capitalist, and democratic societies. (2) The dramatic increase in punishment in the United States during the past 20 years challenges both theories. This increase at least demonstrates a need for modifications that provide propositions for the observed trends and countertrends. Again, the data presented do not allow an outright rejection of structural-functionalist and related evolutionist arguments. If the modernization of societies continues, social control may, in the very long term, shift from punishment to compensation and restitution. Yet, the surge of American punitiveness over a period of two decades is sociologically relevant and opposed to those predictions.

The Rusche-Kirchheimer tradition is also challenged. The American development of the 1970s and 1980s contradicts previous correlations between unemployment and incarceration. The unparalleled increase in imprisonment occurred despite a relatively stable labor market. One reservation to this conclusion should be mentioned, though. While unemployment rates have been rather stable in comparison to imprisonment rates, the size of the extremely poor "imprisonable" American population (people completely detached from the labor market), has grown dramatically since 1970. That population is much smaller and considerably more stable in Germany, a fact accounted for in part by the apprenticeship system of vocational training and in part by a more highly developed welfare system. Also, most of the American "imprisonables" are African-

Americans, and the disproportionately high number of blacks among prison inmates has further increased during this period. Yet, while the increase in extreme poverty is mostly concentrated in a few large northern cities (Wilson 1991, p. 2), incarceration rates have increased steeply in most states (Cahalan 1986, p. 32).¹⁷ The latter fact again seems to point to the limits of a purely structuralist neo-Marxist explanation.

In short, structural-functionalist approaches may have explanatory power for very long-term processes of criminal punishment; legalistic, crime-centered factors may play a very indirect role in the recent American surge in imprisonment; and conflict approaches may help explain some of the American surge and international difference in imprisonment. Yet, all of these explanatory approaches are challenged by the data presented above. We need to search for other factors and for more complex approaches.

DEVELOPING NEW HYPOTHESES: KNOWLEDGE AND DOMINATION

Structural and evolutionary theories suffer from two major drawbacks. First, they do not take seriously the particular institutions of specific nation-states. Second, they do not sufficiently incorporate the complex processes of knowledge or ideology construction that intervene when sociostructural features, such as social inequality and labor-market needs, influence such concrete decisions as the passing of a determinate sentence law in the legislature or the sentencing in court.

Recent work has reminded us of the relevance of state institutions for the understanding of societal development (Evans, Rueschemeyer, and Skocpol 1985) and of the explanatory power of culture and knowledge (Swidler 1986; Tarrow 1990; Münch and Smelser 1992). Decisions are associated with and legitimized by knowledge for micro- and macro-sociological reasons. On the micro level, cognitive dissonance results when decisions are made that are contradictory to firmly held beliefs. On the macro level, the legitimacy of political and legal systems or dominant groups is endangered when their decisions regularly conflict with public beliefs. Following Mannheim's classical example (1986), students of sociological themes have recently rediscovered the issue of legal knowledge (one example is the 1989 meeting of the Working Group on the Legal

¹⁷ The increase between 1970 and 1984 was especially steep (around 200% or more) in a few northern states, including New York State and Illinois, and in Washington, D.C. (an indicator that might support the racial poverty hypothesis). Yet, similarly high increases are reported for almost all southern states and for several northwestern states (Montana, Idaho, Wyoming, and Washington). The increase for most other states was, on the average, around 100% during the same period (Cahalan 1986, p. 32).

Profession, Research Council for the Sociology of Law, ISA). More specifically, the sociology of scientific knowledge (Knorr-Cetina 1981; Lynd 1986; Zuckerman 1988) has finally been applied to criminology (Laub and Sampson 1991). Yet, none of these endeavors has so far been related to general theories of criminal punishment.

As a first step in applying these recent advances in theory to the issue of criminal punishment, I propose four basic axioms or theoretical assumptions.

AXIOM 1.—*The society-specific institutionalization of knowledge production causes society-specific dynamics of knowledge within different sectors of societies and distinct patterns of knowledge diffusion between sectors.*

AXIOM 2.—*Changes in knowledge development influence changes in macro-outcomes of political and legal decision making.*

AXIOM 3.—*The way and degree to which knowledge affects macro-outcomes of political and legal decision making depends on the country-specific institutionalization of domination, especially the degree of bureaucratization of political and legal institutions.*

AXIOM 4.—*The substantive direction that change takes is a function of fundamental conflicts within social structures and between societal groups.*¹⁸

As this fourth axiom indicates, I do *not* argue that social structure and the resulting conflicts between societal groups are irrelevant. Instead, I argue that they are only part of the story.

Social Structure and Conflict: The Substance of Knowledge and Law

Knowledge concerning crime and criminal punishment is held and developed in all sectors of society—by the general public, news media, and special groups such as lawyers, politicians, and academics of different disciplines. It consists of numerous, complex, and often contradictory analytical and normative assumptions concerning various aspects of society.

One set of assumptions concerns the nature of offenders and the causes of crime. Images of typical offenders are associated with ideas about

¹⁸ In these axioms and throughout the text I use formulations such as “A causes B,” “A influences B,” “A affects B,” “B is a function of A,” or “B depends on A.” In all of these instances I mean causation as opposed to correlation. I refer to a causal model according to which influences produce effects. Rarely can these influences be considered sufficient conditions in the social sciences. Finally, I agree with Marini and Singer (1988, p. 401) that “external influences often interact with internal processes in producing effects. Moreover, mental processes are a major focus in the social sciences because they mediate most human action.”

class, sex, race, and age. In addition, criminals may be imagined as free and rational actors or their behavior may be viewed as more or less determined by innate qualities, early socialization, or their place in society. Other assumptions concern the quantity and seriousness of crime in society.

Further, individuals and specialized groups hold diverse beliefs regarding the functioning and justification of different strategies with which state and society respond to crime. Some follow retributive philosophies in the tradition of Kant and Hegel, believing that evil should be responded to by evil, independent of the effects of punishment. Others, in the tradition of Bentham and Beccaria, believe in the deterrence function of punishment. If punishment is sufficiently severe and certain, they argue, crime yields more costs than benefits and becomes unlikely. Yet others favor incapacitation, the theory that separating offenders from society is a strategy to prevent crimes. A more technical and recent version of this orientation is “selective incapacitation.” Its proponents believe that we can identify future recidivists and prevent crime by separating them from society for especially long periods. Finally, believers in rehabilitation suggest that crime can be prevented if offenders are cured of the traits of failed socialization or other psychological ills. And social reformers argue that improving communities and societies—for example, reducing poverty and extending legitimate opportunity—reduces crime in society. Related sets of knowledge concern the types of institutions that can best fulfill these functions—for example, prisons, mental hospitals, communities, schools, workplaces, or welfare offices.

In addition, there are assumptions about different modes of decision making, such as the effectiveness and justice of determinate versus indeterminate or discretionary sentencing schemes.

Opinions or beliefs about crime and punishment are intense, widespread, and varied (Garland 1992, pp. 215–19). Assumptions on the different dimensions outlined above are interrelated, and beliefs about crime and punishment are part of more general belief systems concerning the nature of humans and society, and the functions, capacity, and legitimacy of the state. Three belief systems are based on the distinction between formal-rational and substantive-rational orientations (Weber 1978) and socialist and conservative brands within the substantive orientation (Mannheim 1986; see table 1).¹⁹ For example, a formal-rational or libertarian belief system is rooted in Enlightenment philosophy. It entails the

¹⁹ These knowledge systems are ideal-types. For example, most conservative sets of beliefs in modern societies are mixtures of substantive-conservative and formal-rational systems. Similarly, most socialist and Social Democratic belief systems are combinations of substantive-socialist and formal-rational beliefs.

TABLE 1
IDEAL-TYPES AND CATEGORIES OF LEGAL AND RELATED KNOWLEDGE

DIMENSIONS	FORMAL-RATIONAL	SUBSTANTIVE-RATIONAL	
		Socialist	Conservative
Assumptions about:			
Individuals	Natural condition of rational actor	Natural condition constrained by social forces	Natural condition constrained by innate qualities
The state.....	Autonomous, restrained	Nonautonomous, interventionist, redistributionist	Nonautonomous, interventionist, guarding privileges
Justification of domination	Legal (natural law)	Economic	Teleological-mystical
Society.....	Based on contract	Based on class struggle	Based on tradition and history
Methods of thought.....	Reason, deduction, general validity, general applicability, atomism, static thinking	Social class, generalization within class, applicability by historical stages, dynamic thinking	History, irrationality, particularity, organism, totality, dynamic thinking
Conclusions for crime, criminal law, and justice:			
Offenders	Rational offenders	Socially deprived/constrained	Innately bad/constrained
Appropriate reactions	Retribution, general deterrence	Social reform, treatment	Revenge, incapacitation, correction
Legitimation	Reason and law	Extralegal reasoning, social justice	Extralegal reasoning; conservatism
Institutions	Prisons	Parole, probation, welfare or community programs	Prisons, therapy
Mode of decision making	Determinate	Indeterminate	Indeterminate

idea of humans as rational actors, the state as autonomous, not interwoven with society, and restrained, not interfering in free societal exchange. Society is based on a social contract, domination on natural law, thought on reason, and the economy on free markets. The associated beliefs concerning punishment are those of rational offenders, retribution and general deterrence, prisons as adequate institutions, and determinate modes of decision making. People are justly punished for their offenses.

Further, these belief systems are not free floating, but are at least loosely tied to societal conditions. Historically, we observe simultaneous shifts of power structures, belief systems, and legal forms. They have been discussed as transformations from repressive law and conservative ideology to autonomous law and the libertarian ideology of the bourgeois democratic state, and from there to responsive law and socialist ideology (Nonet and Selznick 1978). Stryker (1989, 1990) has argued that working-class formation contributes to the emergence of technocratic law (i.e., interventionist, based on scientific expertise and associated ideologies). Elsewhere (Savelsberg 1992) I have discussed the transformation from formal-rational law to substantive-rational law as a function of changing power structures, especially as demonstrated in the organization and parliamentary representation of working classes, and changing ideologies and knowledge systems, for example, in the institutionalization of the social and economic sciences in academic and state institutions.²⁰

In sum, knowledge about crime and punishment is part of more general belief systems that are neither clear-cut nor self-contained. Instead, they are associated with forms of law and social structure (see axiom 4 above).

In the middle range of this empirical comparison, knowledge about crime and punishment in Germany was rather stable over the past 25 years. While the principles of individual guilt and retribution were maintained by German criminal law, the idea of offenders as victims of society continued to be influential among policymakers, academics, and the public. This was even true for the 1970s, when violent crime rates doubled, and for the early 1980s, when conservatism regained political power. By contrast, beliefs of many on crime and punishment in the United States have moved over the same period toward rational and biologically or psychologically determined offenders, toward strategies of general deterrence, retribution, and (selective) incapacitation, and toward determinate decision making. Americans turned toward imprisonment and capital punishment.

²⁰ Driven by socialist forces, the increasing weight of substantive rationales in law may also open avenues for conservatism, irrationality, and repression (Nonet and Selznick 1978, p. 86; Unger 1976, pp. 216–20; Weber 1978, pp. 886–87, 892–93).

Explanations for the American development are only tentative. They have been sought in the nature of crime, group interests, and racial and class struggle. For example, Stinchcombe et al. (1980) observe that punitive attitudes in America intensified following the increase in crime rates of the 1960s. Yet, cross-sectional analyses show that some groups especially threatened by crime—for example, African-Americans and women—are less punitive than other parts of the population. These authors conclude that the causal relation between exposure to crime and knowledge is uncertain. While it is possible that punitiveness in some areas (the suburbs) follows increased threats in others (inner cities), it remains questionable that the increase in neoclassical and punitive beliefs can be sufficiently explained by the crime wave of the 1960s.

Further, crime-related attitudes did not develop in isolation, but in harmony with the neoconservative movement. In the area of welfare and economics as well, responsibility for success and failure was reassigned from “society” to the “autonomous and rational individual.” General beliefs shifted, in terms of our typology, toward a combination of formal-rational and substantive-rational conservative thought.

The direction of these changes in the United States is attributed by some authors to professional group interests. For example, Cullen, Maakestaad, and Cavender (1987, p. 18) interpret the neoclassical movement, the recent emphasis on formally equal justice, as a revitalization movement of the American legal profession. They suggest the profession felt threatened by increasing doubts about individualized decision making, the disparities that resulted from it, and the growing role of psychologists, psychiatrists, and social workers in criminal law. Greenberg and Humphries (1980, p. 206) argue that neoclassicism was initially advanced as part of a larger radical program to transform American society, and that this program is laid out in influential reports (American Friends Service Committee 1971; Von Hirsch 1976). Yet, according to Greenberg and Humphries, libertarian intentions were absorbed by conservatism and integrated into repressive agendas. The latter point is further developed by Chambliss and Sbarbaro (1989), who explain the new criminal justice philosophies as (1) an expression of increasing resistance against the success of the civil rights movement and (2) a response to the intensifying racial conflicts of the late 1960s. Chambliss and Sbarbaro analyze presidential and congressional campaign rhetoric of the 1960s and argue that the crime issue in combination with the radicalized civil rights movement was transformed into a social order issue. The “war on crime” theme was first raised by Barry Goldwater in his 1964 presidential campaign, then promoted by a conservative alliance in Congress responding to a liberal Supreme Court and a radicalized civil rights movement.

These studies point to possible reasons for changes in crime-and-

punishment-related knowledge in the United States. They give new weight to conflict approaches as they recognize how group interests are pursued through the redefinition of reality and the reshaping of societal knowledge. The correlation between social structure, conflict, legal forms, and knowledge found on a larger historical scale is repeated within this shorter time frame. Axiom 4 is again supported at the same time that knowledge and ideology are introduced as mediating factors. While these studies show that knowledge intervenes before structural conflicts influence new practices of punishment, the way in which knowledge intervenes is yet to be thoroughly examined. We can, so far, neither fully explain the degree of change nor the turbulent dynamics of the American development in international comparison. We need to consider the comparative dynamics of knowledge and decision making.

Knowledge Construction and Domination: The Comparative Dynamics of Knowledge and Punishment Decisions

The United States and Germany differ with regard to the institutionalization of knowledge production. This is true in each of the sectors through which knowledge concerning crime and punishment is produced and distributed. Statements on crime and punishment are published in campaign speeches and other political addresses (the polity), news media, public opinion polls, and testimony of lobby groups (the public), sociology and criminology journals, and law reviews (academia). Little is known about the dynamics of knowledge, its diffusion between these sectors, and its effects on decision making. Each of the above sectors in the United States, however, is distinct from its counterpart in Germany in terms of its internal structure, the way it generates knowledge, how it transfers and receives knowledge to and from other sectors, and in its relation to decision-making agencies. I argue that these institutional differences cause the differences in the development of beliefs and influence the impact these beliefs have on criminal punishment (see table 2).²¹

The public sector. Several institutional forces participate in the formation and measurement of public opinion in all modern Western societies:

²¹ In addition, there is variation in some institutional sector variables over time within each society. For example, the weakening of political party machines in the United States and the simultaneous enforced bureaucratization of German political parties over the past three decades has increased the institutional difference between both countries. This may explain the increasing difference in policy output observed during the past two decades. Future research should also be directed at (a) how institutional conditions, expressed, e.g., in interorganizational network structures, relate to patterns of social inequality, and (b) the interactive effects of network structures and social inequality on the flow of knowledge and political decision making.

TABLE 2

SOME IDEAL-TYPICAL DIFFERENCES BETWEEN THE SYSTEMS OF INEQUALITY,
KNOWLEDGE PRODUCTION IN THE PUBLIC, POLITICAL,
AND ACADEMIC SPHERES, AND DOMINATION

Dimensions of Ideal-typical Comparison	United States	Federal Republic of Germany	Axioms/Hypotheses
Social structure and conflict	Relatively much social inequality, racial divide, absolute poverty, and occupational disqualification	Relatively little social inequality, racial divide, absolute poverty, and occupational disqualification	Axiom 4
Institutionalization of knowledge production:			
Public sphere	Diversity of organizational interests, private mass media, and intense public opinion polling	Large neocorporate organizations, controlling important mass media, little public opinion polling	Axiom 1 and hypotheses 1-4
Political sector/government	Personalistic universalism, frequent exchange of personnel between private sector and academia, elective offices in judicial branch	Bureaucratic universalism, rare exchange of personnel between private sector and academia, civil service appointments in judicial branch	Axiom 1 and hypotheses 5-7
Academia	Tradition of pragmatism, intense competition	Historical and theoretical tradition, less competition	Axiom 1 and hypotheses 8-11
Institutionalization of domination	Personalistic universalism, frequent exchange of personnel between private sector and academia, elective offices in judicial branch	Bureaucratic universalism, rare exchange of personnel between private sector and academia, civil service appointments in judicial branch	Axioms 2 and 3 and hypotheses 12-15

mass organizations, public opinion polls, and the mass media. Public opinion as formed and expressed through these institutions presents and diffuses assumptions about crime and punishment. Each of these institutions has a specific quality in a given society, with consequences for the formation of knowledge about crime and punishment. I characterize these differences ideal-typically.

The German public is organized in large neocorporate organizations—that is, organizations with a monopoly of interest representation, compulsory membership, and involvement in the implementation of policies. American society, on the other hand, is characterized by a more pluralistic form of organization (Halliday 1989; Schmitter 1982). I expect neocorporate organization to result in relatively stable public attitudes expressed in parliamentary testimonies of public organizations on issues of crime and punishment. I also expect the strong representation of neocorporate welfare organizations to result in a more consistent presentation of welfare-oriented rationales (treatment and reform).

Closely related, the news media reflect and form public opinion. While almost all news organizations in the United States are private and controlled by market forces, major portions of the German news media (until recently all radio and television stations) are publicly organized. They are controlled by governing boards which include all major neocorporate organizations, for example, political parties, churches, unions, and employers' associations. I therefore expect knowledge expressed in the German news media to present more welfare rationales and to be characterized by more continuity than the knowledge set forth by the American media. The neocorporate arrangement of German radio and television is complemented, however, by privately owned newspapers and magazines. This dual system results in relative diversity in news and commentary, thus modifying—but not refuting—my argument.

Further, public opinion in Germany is less steadily monitored by pollsters. Therefore, the self-enforcing power of public opinion is weaker and its spread into other institutions less likely. To the degree to which public opinion is measured, I expect the monitored trends to be relatively stable and welfare oriented owing to the stronger institutionalization of welfare concerns, the impact of neocorporate organization on public opinion, and the lesser degree of social inequality.

Some evidence suggests that public knowledge about crime and punishment has indeed changed much more radically in the United States than in Germany, even when we control for increasing crime. For example, the proportion of Americans who believe that courts do not deal harshly enough with criminals has increased from 48% (April 1965) to 66% (March 1972) and again to 85% (March 1978). Ever since, this value has only rarely and slightly dropped below the 80% line (Niemi, Mueller,

Smith 1989, p. 136). Approval of the death penalty for persons convicted of murder has steadily increased from 42% (May 1966), to 53% (March 1972), to 66% (March 1978). Since 1982 this value has remained in the 70% range, with a peak of 76% in March 1985 (Niemi et al. 1989, p. 138).

In Germany punitive attitudes seem to be more consistent. They hardly change for some crimes. Four percent of the population demanded jail or prison terms for thieves in both 1970 and 1987; for tax evaders, prison was called for by 28% of the population in 1970 and 29% in 1987. Yet, punitive attitudes have changed for selected offenses: they have increased regarding domestic assault, from 2% in favor of a jail or prison term (1970) to 23% (1987); conversely, they have decreased for hashish consumption, from 14% in favor of incarceration (1970) to 8% (1987) (Reuband 1990, p. 293). The proportion of those principally favoring capital punishment has declined almost consistently from values in the 50% range throughout most of the 1950s and 1960s to the 30% range in the 1970s. This trend is accounted for in part by the emergence of new birth cohorts, but it also occurs within all cohorts and in all social classes (Reuband 1980, p. 541). Yet, in the cases of murderers to whom no mitigating circumstances apply, the percentage of those who favor capital punishment is considerably higher. During the 1960s the value varies between 65% and 71%, moves down to 53% (1973) and 44% (1974), and then goes back up to 58% in 1978 (Reuband 1980, p. 542).

The available data partly confirm theoretical expectations. Theoretical deduction and some empirical indicators suggest that the German system of public knowledge is more stable and less likely to call for severe punishment than the American system. Four hypotheses can be formulated.

HYPOTHESIS 1.—The greater the involvement of neocorporate organizations in the production of public knowledge, the more stable that knowledge will remain over time.

HYPOTHESIS 2.—The less frequently the public is monitored by opinion polls, the more stable public opinion remains and the more limited the impact of public opinion will be on the development of knowledge in other sectors of society.

HYPOTHESIS 3.—The more intensely mass media—television, radio, newspapers, and so on—are controlled by public neocorporate organizations (as opposed to market forces) the more stable is the knowledge those media present to the public.

HYPOTHESIS 4.—The more that public knowledge is created by actors under the control of neocorporate welfare organizations, the more consistently that knowledge is characterized by welfare rationales.

The political sector. Actors in the political sector are among the powerful producers and carriers of knowledge, including knowledge about

crime and punishment. Again, important institutional factors may shape the knowledge presented by these actors, and these same factors may have an effect on the way that knowledge is influenced by other sectors and the dynamics of its development. These factors may contribute to the explanation of considerable differences between the United States and Germany as well as radical shifts within the United States. The institutionalization of political and legal decision making in these countries is marked by clear—and widening—differences. Roth (1987) contrasts the U.S. political system of increasing universalistic personalism with the universalistic bureaucracies in the Federal Republic of Germany. Universalistic personalism in the American legislative system means that representatives and senators are relatively independent from their political parties, but personally accountable to their constituency. These political actors are greatly and immediately dependent on their constituency whenever an issue is highly politicized.

Representatives in the German legislature are more oriented toward party platforms and faction discipline and relatively independent from public opinion. Their nomination depends on intraparty decisions and their election depends on party membership, since voters, in practice, vote for a candidate as the member of a political party rather than for an individual with a particular voting record.

In the executive branch as well, political actors in the United States are more closely related to the public and to different sectors of society. At the same time they are less firmly integrated in the political system than their German colleagues. The administrative leadership is more strongly exposed to public opinion given the presidential election by nationwide, popular vote (as opposed to parliamentary elections of chancellors in Germany). In addition, many U.S. administrators change positions relatively frequently between the public, private, and academic sectors (Bendix [1949] 1974; for a more recent discussion, see Dye [1990, p. 175] and Roth [1987, p. 44]). Their views on policy issues are more influenced by loyalty to the current administrative leadership or to outside institutions, law firms, and academic or business institutions to which they may return than to political parties and the political bureaucracy, as in the German case.

Differences between the United States and Germany in the judicial branch resemble those in the legislative branch. While most judges and prosecutors in the United States are either elected or nominated and confirmed in political processes, those in the Federal German Republic are appointed as civil servants with tenured positions, early in their professional career, and usually according to academic achievement tests. They are more firmly embedded in the political-administrative system (Rueschemeyer 1973; Halliday 1989) than their American counterparts.

They do not depend on public approval and are therefore more independent from public opinion.

In sum, U.S. legislators, civil servants, and criminal justice lawyers are much more exposed to shifts of public knowledge, ideology, and resulting political pressure than their German counterparts, who base their decisions on bureaucratically produced knowledge. Public knowledge is more dynamic—that is, more volatile—than bureaucratic knowledge. I expect this volatility to create much more unstable patterns of criminal justice knowledge and decision making in the American than in the German political sector.

Although much research needs to be done, preliminary empirical information supports our theoretical expectations. Beliefs in the German political system have been rather stable during the time period under consideration, despite the change from a conservative to a Social Democratic majority in 1967 and back to conservatism in 1982. In the United States, however, the instability of knowledge and the punitive tendency in the public are repeated in the political sector. Consider, for example, beliefs on crime and punishment as expressed in presidential addresses. These beliefs have changed dramatically during the period under consideration as originally documented by Chambliss and Sbarbaro (1989). Eisenhower referred to crime and delinquency problems in the context of urban problems. His purpose, he said in 1960, was to “destroy . . . the conditions which breed crime and delinquency” (Eisenhower 1961, p. 14). During the 1960s the issue of crime became detached from concerns with social conditions. Johnson, in 1967, while continuing his war against poverty, also urged “an all out effort to combat crime” (Johnson 1968, p. 6). While Johnson still pled for parallel but institutionally distinct wars against poverty and crime, Nixon’s addresses exclusively stressed the crime issue. In 1970 Nixon argued: “We have heard a great deal of overblown rhetoric during the sixties in which the word ‘war’ has perhaps too often been used—the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area in which the term ‘war’ is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives” (Nixon 1971, p. 12).

The logic of presidential addresses further changed during the following years, until Reagan, in 1985, declared: “There can be no economic revival of the ghettos when the most violent ones are allowed to roam free” (Reagan 1988, p. 134). Two major changes have occurred during these 25 years. First, the concern with the social roots or causes of crime has given way to a concern with “criminal elements” and the “most violent ones.” Second, the causal chain has been reversed. The analytical logic has been turned upside down. Changing social structure is no longer

seen as a condition for the abolishment of crime. Instead, the fight against crime is regarded as a precondition for the change of social and economic deprivation ("economic revival of the ghetto"). Again, theory and preliminary data suggest a set of hypotheses.

HYPOTHESIS 5.—The more the legislative branch of government is characterized by personalistic universalism, the more likely it is that changes in public knowledge will influence changes in political knowledge.

HYPOTHESIS 6.—The more available the executive branch is to other sectors of society through the exchange of personnel, the more likely it is that changes in other sectors will influence changes in political knowledge.

HYPOTHESIS 7.—The more the judicial branch is characterized by personalistic universalism, the stronger the impact of changes in public knowledge will be on legal knowledge.

The academic sector.—Academia has long been prominently involved in the production of knowledge on crime and punishment, especially in sociology and in the "legal realism" side of jurisprudence. In recent decades, particularly in the United States but also in Germany, criminology and criminal justice studies have become institutionalized, with their own journals and university departments.

As in other societal sectors, U.S. and German academic institutions differ, and these differences suggest that U.S. institutions experience more dynamic trends and greater impacts from other societal sectors than do institutions in Germany.²² The American academic tradition is strongly rooted in the philosophy of pragmatism (Vidich and Lyman 1985). This philosophy favors the practical orientation of academia and results in a closer adaptation to issues and perspectives put forth in the political-administrative sector. For several reasons, academic life is also more autonomous in Germany than it is in the United States. Scholars at German universities are much less exposed to competitive pressure. While both systems have tenure rules, salaries in the German system increase with age. Fringe benefits secure professors comfortably against income losses in cases of illness, injury, and retirement even on the lower ranks of the academic hierarchy. And, even though this is now changing, German academic journals have historically been less subject to anonymous reviewing procedures than American publications. The social status of German professors continues to rank among the second or third highest of all professional groups. All universities are state schools. Wages are identical at all institutions. Compared to the United States,

²² Also, this juxtaposition of two academic systems is ideal-typical.

differences in reputation between institutions are minimal. The higher competitive pressure in the United States results in academics' attempting to increase salaries, social status, and their market value by gaining outside funding from academically governed funding agencies as well as from policy-making institutions. When research is funded by political agencies, which to a large degree is the case in criminology and criminal justice studies, then it is rather likely that academically produced knowledge will follow political knowledge. This underlying resource-dependency theory has been exemplified for particular cases. State-funded research on domestic assault, for example, is more likely to deal with individual rather than sociostructural factors (Schacht and Eitzen 1990). I expect, following Mannheim's (1986) observations, that the adaptation of academic knowledge to that of powerful groups is stronger where intellectuals are less independent. This certainly appears to be the case in U.S., as opposed to German, criminological and criminal justice studies.

A special point needs to be made on jurisprudence. While the German legal profession is closely affiliated with the state (Rueschemeyer 1973), its American counterpart is relatively autonomous. For example, access to the bar in Germany is controlled by state examinations; bar association examinations provide access in the United States. Individual rights, as reflected in the U.S. Constitution, are more strongly rooted in American, than in German, jurisprudence. The same holds for the notion of individual responsibility. I therefore expect knowledge produced by U.S. jurisprudence to be more strongly associated with formal-rational law.

Again, no systematic, comparative empirical research is available. Even research on country-specific trends of knowledge is insufficient. The development of criminological knowledge, for example, has only been described impressionistically. Wheeler (1976) and Cressey (1978) both observe a trend away from research on the causes of crime and punishment and toward policy concerns, for the 1960s and early 1970s; a trend which has involved both policy-supporting and policy-critical scholars (Polk and Gibbons 1988). These authors offer insightful, but not systematically researched, information on the course of criminological knowledge production, and they speculate on the causes of this development. Laub and Sampson (1991) go further when they analyze and explain the triumph of the sociological Sutherland school over the interdisciplinary Glueck school in American criminology. They find that the emergence and development of ideas is largely unknown and conclude that this "is perhaps nowhere more true than in criminology where 'new' developments are constantly offered in what seems to be a collective amnesia about the past" (Laub and Sampson 1991, p. 1435). They argue that Sutherland's "victory" over the Glueck tradition was not due to

the validity of his theory but to institutional factors, especially the involvement of Sutherland in graduate education (p. 1435). Yet, Laub and Sampson face an explanatory dilemma as they see many of the Gluecks' ideas return to prominence in criminology during the 1970s and 1980s. While Laub and Sampson believe that scientific validity explains the late success of the Glueck school, their own institutional approach can be applied to explain this latest shift of the pendulum as well. Possible factors influencing changing—or dynamic—beliefs include the evolving philosophies of political-administrative funding agencies and the creation of numerous departments of criminal justice with applied orientations and graduate curriculums.

It appears that significant portions of the sociolegal academic sector did follow the change of knowledge in the political sector (see Sarat and Silbey 1988). Until the 1960s, the dominant social scientific approaches to crime emphasized sociostructural features, anomie, opportunities for law-abiding and law-breaking behavior, and learning conditions. Only after 1970 did much-cited academic thought abandon reformist and rehabilitative ideas (Martinson 1974) and turn to neoclassical general deterrence models (Wilson 1975) and retributive or just-desert orientations (Von Hirsch 1976, 1987). In these highly influential writings, sociostructural conditions were considered irrelevant in policy terms, the rational-offender model gained ground, and a return to determinate sentencing was proclaimed.

Social science on crime and punishment in Germany, on the other hand, continued the search for sociostructural conditions of crime. In addition, an institution-critical approach developed that concentrated on the colonizing (Habermas 1975) effects of criminal justice institutions. A rejuvenation of neoclassical ideas occurred only within a rather small group of German jurists (cf. Giehring 1987, p. 7). Again, theoretical considerations and empirical observations suggest several hypotheses.

HYPOTHESIS 8.—*To the degree that academia is rooted in the tradition of pragmatism, political-administrative knowledge will influence academic knowledge.*

HYPOTHESIS 9.—*The more competitive the academic sector and the more dependent it is on funding and recognition from political-administrative agencies, the more it will be influenced by political knowledge.*

HYPOTHESIS 10.—*The more academic departments are organized along the substantive lines of administrative agencies, the more academic knowledge will trail behind political knowledge.*

HYPOTHESIS 11.—*The more the legal profession and the law are rooted in the idea of individual rights (as opposed to state intervention) the more likely it is that interventive phases will be reacted to by formal-rational movements in legal scholarship.*

The Interaction between Knowledge and Domination

Neither sociostructural conditions nor knowledge in the political sector and the legal profession get automatically translated into rates of punishment. Legislative decisions on minimum mandatory sentence laws, sentencing guidelines, and funding for prison construction, prosecutors' charging decisions, probation officers' sentencing recommendations, juries' verdicts, judges' sentencing, and parole boards' release decisions intervene in this translation process. Given our discussion of the interrelation between knowledge and decision making and the trends in punitive knowledge, we expect a more dynamic and more punitive trend in the United States than in Germany. This, indeed, has occurred. Developments in the United States in the past two decades are characterized by increasingly severe sentences, resulting from judges' sentencing decisions, the establishment and raising of minimum mandatory sentencing standards, and the abolition of parole by legislatures. Factors that caused the country-specific construction of political knowledge also influenced political decision making directly. Political and legal decision makers in the American system of personalistic universalism depend on their constituency. Their chances of getting reelected decrease if their criminal justice decision making systematically contradicts public attitudes. Similarly, the chances of many American prosecutors to realize their dreams of future political careers depends to a considerable degree on how they satisfy public sentiment.

Not only is there greater pressure to translate public sentiment into decision making, but the opportunity to do so is also greater in the U.S. legal process. At least two differences in criminal procedure need to be mentioned. First, public sentiment is directly represented in public participation on grand juries and courtroom juries; this participation is missing in German criminal procedure. Public sentiment thus enters criminal justice decision making much more directly in the United States than in Germany. Second, U.S. prosecutors have considerable discretion in their charging decisions while they are bound by the legality principle in Germany. This difference makes American prosecutors much more subject to the pressures of public opinion. A considerable proportion of the increase in incarceration rates may thus result from the growing inclination of prosecutors to press charges.

Four final hypotheses on the interactive effect of the dynamics of knowledge production and decision making can thus be formulated.

HYPOTHESIS 12.—If political knowledge shifts with public opinion, then the same amount of change in public knowledge leads to more dramatic shifts in the macro outcome of political and legal decision making—in this case, in incarceration rates.

HYPOTHESIS 13.—*If the public is directly involved in criminal justice decision making, then changes in public knowledge translate more directly into changes in criminal justice decision making.*

HYPOTHESIS 14.—*If legal decision makers have more discretion, then they are more likely to respond to changing public knowledge—and they are more likely to respond in systems where such responsiveness furthers their political opportunities.*

HYPOTHESIS 15.—*The joint effect of the greater dynamics in knowledge production and in legal and political decision making is multiplicative.*

CONCLUSIONS

The empirical evidence presented in this article is only illustrative. I lack precise data on the degree of changes in knowledge, the categories concerned, the causes, the carrier groups, and their effects on the macro outcomes of decision making (e.g., the prison population). Rigorous empirical research needs to be done in all of these areas. Time series of indicators for the development of knowledge in different sectors of society do not exist. Such data could be gained from content analyses of long-standing public documents, such as news media reports, annual policy statements of key policymakers and lobbying organizations, contributions on particular issues to scholarly journals, or congressional testimony. Research to establish such data sets, however, especially if conducted on an internationally comparative basis, would be costly.

Similar research should also be done for other policy areas. It would inform us about the generalizability of the hypotheses developed here. Further, more countries should be included in future comparisons. A challenge to the approach developed here, for example, may be presented by some European countries. The Netherlands and the Scandinavian countries, many of whose institutions resemble those of Germany much more than those of the United States, have experienced rather steep increases in rates of criminal punishment over the past 20 years. Yet, incarceration rates in these countries started off from extremely low levels (incarceration rates as low as 20 inmates per population of 100,000) and have reached, despite these increases, only about half the current level of Germany (Council of Europe 1988, p. 18). It is conceivable that the structural assimilation of these countries to other Western countries eliminated conditions for their extreme exceptionalism in criminal punishment. One example is “depillarization” in the Netherlands, that is, the loss of the traditional structuration of Dutch society along three denominational lines (Calvinist, Lutheran, Catholic) and the related loss of solidarity and informal social control. International comparisons of more

countries could thus further demonstrate the respective power and limits of the competing theoretical approaches discussed in this article.

This article has produced a set of hypotheses to be tested in future research. Several preliminary empirical findings and theoretical conclusions can be summarized. The relative stability of punishment and knowledge in the Federal Republic of Germany contrasts with considerable instabilities in the United States. While further and systematic research is needed, it seems that public knowledge in Germany has been rather stable on some indicators, while, in other cases, issue-specific trends in punitive or liberal directions can be observed. In Germany, knowledge in the media, in the political sector, and in academia seems to be relatively stable as well. In addition, the degree and extent of punishment did not change considerably. The size of the prison population remained rather stable even while crime rates soared and violent crime almost doubled during the 1960s and 1970s and while administrations changed from conservative to Social Democratic and back to conservative.

The United States shows a very different pattern. Public attitudes as measured by opinion polls, media presentation, and knowledge in the political and academic sectors underwent radical changes. The search for sociostructural causes of crime was declared irrelevant by politicians and prominent scholars. Punitive attitudes peaked, and punishment increased to make the United States the world's leader in imprisonment and the only Western country that practices capital punishment. Each successive congressional session in the recent past has resulted in a more punitive criminal code. The current crime control bill alone proposes to turn 52 offenses into capital offenses.

The development of punishment is not sufficiently explained by the wave of criminal behavior during the 1960s and early to mid-1970s. This analysis indicates that changes in knowledge and ideology are necessary conditions for the increase in punishment. My analysis further indicates that neither the substance nor the dynamics of these knowledge changes can be explained by the increase in crime.

Different authors contribute conflicting accounts of the emergence of a new type of crime-and-justice-related knowledge in the United States. Disagreement centers on the time during which this knowledge emerged, the groups primarily responsible for the construction and distribution of this knowledge, and the effect of these groups on criminal justice policy and punishment. It appears plausible that the coincidence of several events caused the initial shift. (1) The politically successful civil rights movement and the liberal Supreme Court of the 1950s and 1960s sparked strong conservative opposition (see Chambliss and Sbarbaro 1989). (2)

Failures and disparities caused by the malfunctioning of the technocratized (Stryker 1989) or substantivized (Savelsberg 1992) law of the welfare-oriented era initiated neoclassical reactions within the legal profession and civil liberties groups (Greenberg and Humphries 1980). (3) The radicalized civil rights movement and subsequent racially motivated violence fueled law and order sentiments. (4) The representation of African-Americans in the Democratic party moved white blue-collar workers (Reagan Democrats) toward the conservative party and thereby created conservative majorities. These majorities promoted law and order platforms, while instrumentalizing the libertarian-initiated neoclassical movement toward determinate decision making. (5) The increase in crime may have supported this process but cannot by itself explain it (Stinchcombe et al. 1980).

While it is plausible that a coincidence between these events and their underlying structural conflicts initiated the new type of punitive knowledge about crime and punishment, these five factors do not sufficiently explain the extreme dynamics observed in the American case. This article indicates through theoretical deduction as well as preliminary empirical evidence that purely sociostructural approaches are insufficient to explain criminal punishment. The nation-specific institutionalization of knowledge construction and domination must be taken into consideration in order to more fully explain the macro outcome of criminal punishment decisions. This institutionalization determines the degree of stability of knowledge and the diffusion of analytical and normative information between sectors. It may cause knowledge trends in different sectors to reinforce or stabilize each other. For example, we find indications for the U.S. case that public opinion polls and speeches of politicians reinforced each other once the punitive trend had gotten under way.²³ Further, political funding seems to have influenced academic knowledge, as academic knowledge further encouraged and legitimized the punitive orientation of political rhetoric and decision making.

In terms of general sociological theory, the data on imprisonment in the United States and Germany join observations in other areas to challenge unidimensional and unidirectional sociological theories. More specifically, this article argues that the explanation of macrosociological phenomena and modernization processes could be improved by taking nation-specific institutional structures of knowledge production and domination into account. Criminal punishment is but one example.

²³ It should be added that, in the opposite causal direction, punishment philosophy may also influence political outcomes. The Willie Horton case is the best-known recent example.

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