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THE INTERDISCIPLINARY PREVENTATIVE CONTEXT OF CRIMINALITY AND CRIMINALIZATION [1]

In the article criminology's and penal law's approaches to prevention are considered. The necessity of the continuance of the empirical legal education at universities is substantiated.

***Keywords**: prevention, criminology, penal law, legal education.*

I. Criminology's Approach to Prevention

Causal approaches. The etiological *approaches*, both the individually as well as the socio-structurally oriented ones, approve of penal law by and large. Penal law is recognized and even valued as a medium of political control for social crises and conflicts. In this sense, criminology is an ancillary science for penal law and cannot escape its role as a dependent supplier of rationales.

The individual labeling approach. The *individual labeling approach* regards penal law neutrally, or at least indifferently. Because of the fact that it does not discuss the peno-legal conditional program, the structures and dynamics of the processes of state-organized discipline and control which (can) refer to exactly this code of conduct remain out of reach.

Socio-theoretical labeling approaches. Only the *socio-theoretical labeling approaches* take a critical look at the basic outlines of penal law. It is lacking a sufficiently differentiated theoretical instrument, however, as neither the stigmatization nor the labeling aspect alone is enough to analyze control procedures guided by penal law for the purpose of theory development. A theoretical development, and in some cases a re-evaluation, is necessary in order to accurately capture social

[1] *Abstract:* Albrecht P.-A. Securitized Societies, The Rule of Law: History of an Free Fall / P.-A. Albrecht. – Berlin : Berliner Wissenschaftsverlag, 2011. – P. 31 ff.

processes of criminalization in their peno-legal context. The labeling approach has by no means lost its dominant influence on the theoretical discussion in social criminology. It can be credited with raising the awareness for theoretical insights in the analysis of the peno-legal norms through its concentration on the instances of social control.

Peno-legal sociology. Through the insights brought about by the socio-structural labeling theory, the contours of a *peno-legal sociology* can be formulated. In this context the goal is to discover why criminal policy seems to be so resistant to revelations such as the selectivity of crimino-social controls, the growing problems with the principle of legality, the inequality before the law, or the political instrumentalization of law. Penal law clearly adheres to a different logic than that which is typically assumed. It is possible that it will not be swayed no matter how much evidence to the contrary is proven.

Free understanding of penal law. The demand for a reduction of possibilities for the state violating the law and threatening the freedom of the citizens must be justified from a *human rights perspective* with recourse to constitutionally secured, *inviolable guarantees of freedom*. These are expressed in rule-of-law guarantees for trials and in the constitutional protection of the civil rights for freedom and participation, as penal law is potentially tied to destructive legal coercion.

II. Penal Law's Approach to Prevention

No empirical evidence for justifications of punishment. Criminology, as a social science, tries to demonstrate specific preventive successes of state sanctions in order to better serve the desire to prevent criminality. Ideally, a humanitarian orientation is thus given. Empirical criminology, however, finds it difficult to live up to this ideal. In the process of creating the idea of the preventive purpose of sanctions, it is possible that, in the modern criminal law school, the humanitarian wish was father to the thought. It often remains unseen that repressive criminal law cannot be a social repair shop for social and individual problems. No society will ever have enough material and human resources to change the social context of

penal institutions so much that individual and social conflicts can be solved or even prevented.

Negative general prevention. Empirical criminology has even more difficulties in proving the positive effects of deterrence theories, to which the term *negative general prevention is used.* Whether murders or other legal violations are not committed simply because there is a criminal code cannot be known. Whether one believes that the individual is able to exercise enough self-control to respect the rights of others depends one's view of human nature. But whether the existence of the threat of severe punishment has ever prevented crimes from being committed remains a mystery, even after an overview of all empirical studies.

Integrative prevention. From its beginnings, *integrative prevention* has skillfully avoided socio-scientific evidence of its effects. Symbolic law-making, which provides solely a symbolic answer for the risks of an industrial society, does not need empirical evidence for its intended effects. The individual is no longer the focus of this theory; instead, the goal is the norm-stabilizing consciousness of the general public. This kind of mega-construction eludes any kind of empirical testability. One can only give theory-intrinsic criticism or praise based on plausibility.

Penal theories: More approaches of belief than knowledge. In general, the preventive legitimation approaches of penal law represent statements of belief rather than knowledge according to the standards of empirical social research. This is something which the law-maker and legal practitioner must always bear in mind. Whether this vague hope is worth trading in a repressive-limiting criminal law for a preventive-ordering one is very questionable. The price is that the principle of legality changes to the principle of opportunity, and the increasing informalization of the law leads to «law» becoming an empty term, the violation of the equality of all people, and, finally, an arbitrary application of the law.

On the political utility of prevention. The unfulfilled hope of an orientation toward prevention in penal law is reflected in the increasing retreat of the state's claim to control (deregulation, privatization). *Classic penal law had no claim to*

control. The absolute penal theory understood itself to be only a retributive reaction to *legal violations* in the sense of necessary legal coercion. With the sanction, the legal order was to be restored. Ideally, a *rigorous connection to the crime* was found which was connected to the law broken and guilt produced by the crime. Guilt limits the state's power to punish, which is understood exclusively as repressive. A strict principle of legality is therefore a hallmark of the repressive-limiting model of law in classic criminal law. Only in the context of the *modern penal law school* did a *perpetrator-oriented criminology develop* which was exclusively concerned with the idea of prevention in penal law. The guiding thought of a rigorous connection to the crime was the *social utility* in the sanctions provided by penal law. Besides the individualization and moralization of the perpetrator, his readiness to adapt was demanded. This preventive model of law resulted in an opportunity – albeit influenced by the social state – for the application of laws. In the course of the development of the modern criminal law school, the tension between legality and opportunity shifted against the general applicability of law and the equality of the application of law, and in time also again the principle of legality.

III. On the Disadvantage of the Retreat and the Necessity of the Continuance of the Empirical Legal Education at Universities

Empirical science as a requirement for understanding. The differentiated list of scientific insights into the causes of criminality and conditions of criminalization given above shows the necessity of inter- and intra-disciplinary research and teaching approaches in the university setting. Unfortunately, in this area only a continual retreat has been witnessed.

Necessity of a broad legal education. A comprehensive reform would be in order. The legal education in German universities faces great challenges. Starting anew in light of the European-wide developments is essential and urgent. Here we are talking about a reform of scientific teaching which should not and may not become vocational training. We are talking about a well-founded education, about the inter-disciplinary understanding of the broad social picture of the legal professions,

and about the development of the ability to critically reflect – and to do all of this in a European context. This is a Herculean task.

Inter-disciplinary aspects of legal education. The progressive shortening and efficiency-orientation of the legal education up to the present is the wrong path, and this must be recognized. An orientation on the basics and inter-disciplinary studies require a complementary general education. It must include, amongst other subjects, legal sociology, legal philosophy, argumentation, and logic as well as a differentiated understanding of European legal cultures. At the same time, knowledge about the functions and limitations of law in social sub-systems must be generated. In addition, economic and political competencies must be acquired. The two-staged traditional education with a strong tendency toward shortening the length of studies and strict requirements of the subjects to be studied is not at all suited to this. The hallmark of German education policy is that these kinds of demands are made by international universities such as that in Luxembourg[2].

International focus of the legal education in connection with reflection on the effects for the praxis. If training in the comparison of European laws and legal communication abilities – i.e. the ability to articulate oneself and competency in legal language (including foreign languages) – are to be acquired, then a coupling of academic teaching and a practical education is essential. In light of the lengthening life expectancies, it is not necessary to have reached the zenith of one's career by one's late twenties. The goal of a scientific university education – of many classes, not just the elite (!) – must be to give the students, besides law and within law:

– *analytical competencies,*

– *social sensitivity,*

– *perspectives for general social contexts, and*

– *readiness to critique.*

[2] Braum S. Perspektiven europäischer Juristenausbildung / S. Braum // KritV. – 2007. – № 3. – P. 266 ff.

Only these kinds of jurists can withstand the challenges of unleashed globalization. Those who are herded through the «entrepreneurial university»[3] will not be able to fulfill their social roles. It is a serious shortcoming of the current education and university policy that it denies young students the education to which they are entitled.

Socio-theoretical basis for the legal education. *Developments in European law, which are imbedded in processes of economic development, are increasingly opaque, informal, fragmentary, unjust, and at the same time transnationally enmeshed and interwoven. Human dignity and freedom – those postulates of European social development which were fought for and are supposed to be above the law – are thereby subject to a continual decay. At least for this reason, society owes itself to put an enormous effort into a scientific university education for their functionaries. Only through education can society get past its immaturity and social problems. That is my personal conviction which I have gained through decades of experience with the academic and judicial systems.*

Альбрехт Пітер-Алексіс. Теорії злочинності і криміналізації та недостатність дидактики з їх академічного викладання

У статті розглядаються кримінологічні та кримінально-правові підходи до розуміння превенції. Обґрунтовано необхідність розвитку прикладного юридичного навчання в університетах.

***Ключові слова**: превенція, кримінологія, кримінальне право, юридична освіта.*

Альбрехт Питер-Алексис. Теории преступности и криминализации и недостаточность дидактики по их академическому преподаванию

В статье рассматриваются криминологические и уголовно-правовые подходы к пониманию превенции. Обоснована необходимость развития прикладного юридического обучения в университетах.

***Ключевые слова:** превенция, криминология, уголовное право, юридическое образование.*

[3] Albrecht P.-A. Anmerkungen zum Verfall der Wissenschaft an deutschen Universitäten / P.-A. Albrecht // KritV. – 2009. – № 3. – P. 266.