Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Vienna, 10 – 17 April 2000

Agenda items 5 and 6

Effective crime prevention: keeping pace with new Developments

Offenders and victims: accountability and fairness in the justice process

Crime and Punishment, by Noriyoshi Takemura (Japan)

Statements submitted by experts*

Note by the Secretariat

1. In its resolution 53/110 of 9 December 1998, the General Assembly emphasized the importance of the workshops to be held within the framework of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and invited Member States, non-governmental organizations and other relevant entities to support financially, organizationally and technically the preparations for the workshops, including the preparation and circulation of relevant background material.

2. In its resolution 54/125 of 17 December 1999, the General Assembly encouraged Governments to make preparations for the Tenth Congress, including by establishing national preparatory committees, with a view to contributing to a focused and productive discussion of the topics and to participating actively in the organization of and follow-up to the workshops, the submission of national position papers on different agenda items and the encouragement of contributions from the academic community and relevant scientific institutions. In the same resolution, the Assembly called upon the specialized agencies and other relevant United Nations bodies and institutes and other intergovernmental and non-governmental organizations to participate effectively in the Tenth Congress and to contribute to the formulation of regional and international measures aimed at preventing crime and ensuring justice.

3. Pursuant to rule 60 of the provisional rules of procedure for United Nations congresses on the prevention of crime and the treatment of offenders (A/CONF.187/2), written statements related to the work of the Congress submitted by the designated representatives, individual experts or observers are to be distributed by the secretariat to all delegations in the quantities and in the languages in which the statements are made available to the secretariat for distribution, provided that a statement submitted on behalf of a non-governmental organization is on a subject in which it has a special competence.

---

* The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Informationology of Crime and Punishment:

April 2000

NORIYOSHI TAKEMURA
Associate Professor of Criminology
Toin University of Yokohama
Japan

NORIYOSHI TAKEMURA
Associate Professor of Criminology
Dept. of Law, Faculty of Law
Toin University of Yokohama
1614 Kuroganecho, Aobaku
Yokohama, 225-8502 Japan
phone: +81-45-974-5034   fax: +81-45-974-5007
e-mail: takemura@cc.toin.ac.jp

Informationology of Crime and Punishment

CONTENTS

I INFORMATION CONTROL
AND ABSENCE OF CRITICAL PERSPECTIVE
IN VICTIM SUPPORT AND POLICY IN JAPAN

A Introduction

In Japan concerns of victim services and victimologies have undergone changes from monetary relieves to mental aftercares, and now to information about processings. Analysing these developments from an aspect of political economy, we can find many problems as follows.

B Development of Victim Support and Policy:
Critical Analysis

First on monetary relieves although the Money Supplying Act for Crime Victims was put into operation in 1981, we have to pay attention to its conditions. Victims or their bereaved family have to apply to the police for supplying if they want to get money. But policemen don't have an obligation to inform an existence of this act and right. As most people don't know the existence of the act, I'm afraid that they can't get money. I think that this act has been nothing but "pie in the sky." Scarce sources of revenue may have caused this grave situation.

Second recently mental aftercares have been recognized as important factors of victim services. Many institutions and people such as hospitals, psychologists and community-based organizations have constructed networks for mental aftercares under initiatives of police. But this may conceal problematic situations of insufficient money supplyings. Moreover these networks may function as surveillance institutions exceeding as crime prevention.

Third within last few years we introduced two information systems: both on a level of police and on a level of public prosecutors' office. But in these systems policemen or public prosecutors notice victims only limited information and victims don't have "rights to know" about an advancement of the cases with which he/she was concerned. Even if they have discontents, they can't bring actions in the courts. These systems are formed not as right but as benefit. In addition Japanese Ministry of Justice has recently begun to make public also only limited information on execution after execution: not the name and place but only the day, time and number. Information on crime and criminal justice system is totally controlled.

C Context of Criminal Justice Policy in Japan

It is important to analyse reasons why critical perspective hasn't developed. There are many reasons which has made up this grave situation.

First on the situation of society, Japanese society has been believed to be safe all over the world although there have been lots of problems and sacrifices. That means there has been a "safety-myth" in Japan and this myth has been loudly spoken again and again by governments and media. They appealed to sensitivities of people and made people blind to problems of criminal justice system. As a result people affirm status quo, present criminal justice policies. However, as many serious crimes have occured in recent years, it is said that climates of crime situation have strikingky changed. In this occasion the government and conservative parties developed "law and order" campaigns and made the legislature

1

pass many important bills which are in danger of violation of human rights and freedoms: law against organised crimes which widely permits police officers wire tappings without strict control and so on. Japanese society has become a more and more surveillant society. In this situation we also find mulfunctions of criticism.

As for the academic society and research conditions, many ex-government officers, ex-bureaucrats, become university professors after retiring and teach conservative criminology. So it is not easy for young scholars to get positions at universities. In addition, as Japanese academic society is very conservative, it doesn't like to accept young scholars who have done critical researches. Japanese academic society has the structure to exclude critical criminologists. As a long run, as we see at present, there are many near scholars patronized by governments.

Moreover our society has a factor which accelerate this situation. As our government and its organizations are extremely closed, it is very difficult to get enough data concerning criminal justice practices except for some publications such as white papers. As they enclose data, only researchers who belongs to government institutions can use enough practical data. If scholars outside governmental institutions want to get enough information to do their researchs, they have to edge up to those people who belongs to governmental institutions.

Until recently governments and bureaucrats have shown contemptuous attitude to general people and made people believe that authorities never make mistakes.Recent years, however, with occurings of lots of serious crimes which showed corruptions of power elites, Japanese people have their eyes opened to the stern realities and want to express their opinions and be involved in policy makings. Although governmental institutions competedly made their homepages, opened windows and collect opinions, there aren't any circuits to respond or feedback to opinions of people, if there are, at most superficial public hearings. A predisposition of legislations and policy makings behind closed doors peculiar to Japan has not changed.

In addition it is said that Japanese people have a peculiar cultural or educational background. A Japanese proverb "harmony is the greatest of virtues" express this clearly. In school teachers don't welcome different opinions from others and dislike disputes or arguments because Japanese industrial society has put educational systems under an obligation to make silent uniform workers. This system works as restriction or control of individual behavior. As Japanese students are well breeded, it is hard for them to form critical minds.

D Conclusion

In conclusion victims have not received sufficient services in Japan. The most serious problem is that these victim services have been developed not by movements of citizens but by initiatives of criminal justice institutions. As a result developments of victim services contribute to interests of criminal justice system rather than victims. In addition only one sort of victimology which is intimate with a criminal justice policy has developed in Japan. This has accelerated the development of criminal justice oriented victim service policy. Now we have to introduce critical perspectives and create a situation in which many views and policies compete each other. In so ding, we can bring victims' rights to fruition and may suggest conditions to change the state of victimology and victim support policy in Japan: from victimology serving people in power and wealth to victimology of, by and for weaker people, from management of criminal justice led by and indebted to government to justice system open for suppressed people.

II THEORETICAL ANALYSIS OF DISCLOSURE/ENCLOSURE ON CRIMINAL JUSTICE INFORMATION

A Introduction

In the criminal justice system, on the one hand, incidents are recognized as crimes and taken into it as crime information. Criminal justice system coded information is accumulated, preserved and used/ made profit/ disposed as property.

On the other hand, in the mass-media, information of crime and punishment is filtered through a news value "consumerism" and made into media coded information. As exchange values are thought higher than use values, this information is selected, processed, over/under-estimated, partially amplified and transmitted to people. With limited information sources, people are obliged to consume media coded information. As a result, their recognition on the situation of crime and penal problem is confined in this narrow framework.

Criminal justice system coded information and media coded information generally attach inportance to different values: the former use values and the latter exchange values. Both join together and raise the whole values of information property.

With the diffusion of internet, we can get many kinds of information easily. So the stock control of crime and information decreased its value. As all kinds of informatin including crime and penal are floating in the cyber/ virtual/ rhizome space, the flow control gets more and more importance. At present it is necessary to study information of crime and punishment: discourse analysis, changes of control patterns, etc. and to create "the informationology of crime and punishment."

B Present Situation in Japan

Why we need the disclosure of criminal justice information?

On 4th November 1998, Japanese Minister of Justice made clear that Ministry of Justice were considering to make public about the day, time and the number of execution (of capital punishment/death penality) after execution and weren't considering the name and place of execution. Although the annual statistics which register only the number of execution in each year are published, at present, Ministry of Justice doesn't make clear about each case whether executed or not.

Up to recent years problems on disclosure of criminal justice information have so scarecely discussed that the criminal justice has been treated as a 'sanctuary'. Under the name of human rights of criminals and protections of their privacy, the criminal justice has been administered in a closed and separated space from persons concerned other than the criminal and criminal justice agencies. Whether such a way of administration is consistent with its aim and function has been overlooked. With an increasing awareness of protection of human rights on the site of crime victims, at present, such a problematic situation has begun to be brought into question. As we live in a democratic country, it is necessary for us to get sufficient information about crime, punishment, criminal justice, etc. A disclosure of criminal justice information is placed as one of important measures.

In this paper I would like to range extensively over the theoretical literatures concerning a disclosure of criminal justice information in order to establish a theoretical basis for the comparative research. But I won't restrict my paper to disclosure because we need a wider awareness of the issues involved to get a correct understanding of the meaning of information about crime, punishment, criminal justice, etc. This paper

consists of three parts: Criminal Justice and Media, Mode of Crime Control and Postmodern and Social Control.

C Criminal Justice and Media

First, as for the relationship between criminal justice and media, criminal justice has used media so as to control information of crime and punishment. The concern here is how this process proceeds and what results occur. With the increasing control of information, we face the crisis of public sphere. In the following analysis I'll make clear what effects it has.

Schlesinger and Tumber (1994) point to the media politics of criminal justice: The Home Office, lawyers, criminal justice pressure groups, policy makers are concerned to use the media to get their message across solely to the policy-making elite, and so they target the quality press and public service broadcasters with little concern for the public accessibility or educational content of their message. Criminal justice professionals are well advanced in their effective use of publicity, press conferences, etc. There are many instances of improved public relations techniques on the part of the Home Office, the police, and so forth, but non of these appear to support improved public access to information or an enhanced quality of public debate. There are increasingly close relations between the criminal justice system and the media with mutual benefits. We can see the mediatization of politics and the increased importance of promotional culture in the daily operation of criminal justice professions and related unofficial groups.

Reviewing and developing this opinion, Livingstone (1995) warns us of the crisis of public sphere: Crime reporting is an especialy appropriate domain for exploring the contemporary problems of the public sphere, for it raises urgent questions concerning what Habermas has called the 'legitimation crisis' of institutional authority in contemporary society. Crime and crime reporting in recent years has aroused heated debates over the authority and independence of the police and criminal justice system, the political appropriation of crime by Conservative 'law and order' politics, the racist and sexist assumptions that frame popular conceptions of social order. Democratic theorists offer a more pluralist vision of public communication which recognizes the fragmented positions, conflicting interests, and diverse voices of the official and unofficial players in the emerging political public sphere. Little is known of the participatory role the public sphere may offer citizens and, moreover, of how the conception of the public's role is itself strongly contested, often through media reporting, with the public being variously portrayed as fearful, voyeuristic, vulnerable, moralistic, or with criminal leanings, and as either homogeneous (typically, white, male, middle class) or socially stratified. 'Fear of crime' among the public is not only discovered to exist just where broadcasters had sought to reassure but, more significantly, the very debate over fear of crime in relation to crime reporting is shown to deflect legitimate public concern over authority and the abuse of power in society, which often seems to be a more important theme underlying contemporary crime reporting.

Based on both analysis and following some scholars, we can outline the process and problems of criminal policy making: Wiener (1987) insists upon an analysis of discourses that join criminal policy with the wider society. Along this insistence, Garland (1985) did a discouse analysis and found that several criminological debates of early years of this century were shaped and determined by the requirements of policy rather than by the results of scientific discourse. Hulsman and Christie state from the abolitionists' perspective. Hulsman (1986) reminds us of the uncontrollability of criminal justice.

Criminal policy means for him abandoning the notion of crime itself. According to Christie (1977), the direct participants should not be deprived of their conflict. A burgeoning crime control industry feeds off the unlimited natural resource of 'crime'. At last Jones (1993) illustrates the increasing impact upon criminal policy of managerialism, including the rapid growth of commercial interests.

D Mode of Crime Control

1 Politics, Policy and Punishment

Problems of crime control have relevance to politics and policy. Many scholars analyzes this relevance based on each way of thinking.

Scheingold (1997) mentioned that we need an adequate understanding of the lure of punishment which will require looking beyond crime and criminology to politics, economics and culture. On the line of this, Schwendingers analyszed that punishment is presented as the response of an embattled elite to an alienated public -- thus linking punishment through ideology to economic and social conditions rather than crime. The opinion of Melossi is that elites use the threat of punishment as a 'social whip' to maintain discipline within an increasingly alienated workforce. With policy driven by political economy rather than crime, it follows that the data would reveal little if any relationship between crime rates and either punitive policies or rates of incarceration.

Moreover, Castellano and McGarrell (1991) connect the state's economic decline with its resultant fiscal crisis to the emergence of a punitive political ethos. A widely publicized crime wave generated public demands for 'taking back the streets' Scheingold, Olson and Pershing insist that grassroots activists were able to capitalize on 'trigger events' to seize the political initiative. In this instance the triggering events were especially horrific examples. The result was starky punitive and legally suspect legislation that subjected offenders who had served their sentences to further indefinite, and in all likelihood permanent, incarceration.

2 Way of Crime Control

However it is not easy to politicalize crime control. It proceeds through a kind of cunning or tricky strategy.

Concerning on this problem, Brodeur (1994) illuminates the ideological force of crime control discourse. Because community policing functions by means of persuasion ('policing by consent'), it tends to be thought of as preventive, non punitive and liberal. However it has 'profoundly conservative aspect'. It has increasingly been directed more at easing concerns about neighbourhood disorder than at crime reduction per se. There are at least two distinctly conservative implications to this change of direction. First, policing is shifted from criminal to pre-criminal behaviour -- thus justifying increased state intervention or 'widening the net and thinning the mesh'. In addition, it is about what policing appears to do, not what it actually does. Insofar as community policing is misleadingly represented as a successful strategy for coping with crime, attention is diverted from the criminologenic consequences of conservative social and economic policies. At the same time, the state may well be tempted to deliberately play up feelings of insecurity, having discovered, rather adventitiously, that we may have instruments to remedy it.

In Japan there was a case that some condemned criminals were executed some days

after the result of opinion pole had reported. According to the pole, more than half people agree with retaining the capital punishment. Japanese government did executions based on this result, suppressing objections. But, as I mentioned at the beginning of this paper, people don't have enough information about death penality, I doubt that they can correctly judge whether death penality should be maintained or not.

King's comparative research (1989) is very suggestive. The contrast between Thatcher's predilection for punishment and Mitterrand's preference prevention reveals that the politics of crime is not inevitably punitive. For each governments, crime provided an opportunity to distill the issues and offer solutions which promote and sustain its particular collective vision of the ideal society and the way of achieving that ideal. The crime problem permits them to reinforce with increased vigour and enthusiasm those policies which they believe will lead to the realisation of that vision, while, at the same time, dismissing alternative interpretations of 'the causes of crime' or solutions to 'the crime problem'.

3 Cultural Construction of Crime and Punishment

With a close scrutiny, we can find the cultural construction of crime and punishment.

Barak (1994) insists that the mass media has the means to shape the actual world to fit the media image. They do so in a way that constructs a world of frightening and decontextualized violence. The media present as typical the atypical predator who choose to inflict 'animalistic' and 'random' violence on the 'helpless and innocent'. Decontextualized violence is the marginalization and/or distortion of all criminal violence that does not fit the pattern. Another consequence is an idealized portrait of the police that precludes 'a serious exploitation of the underlying cause of police brutality and racism. It is against this decontextualized backdrop of heroes and villains that predatory behaviour is ascribed to 'lower-class and working-class men, congenitally criminal class.

This decontextualization can be seen also in Japan. After the outbreak of a series of heinous crimes suddenly committed by juveniles, many kinds of people (academics, practitioners, etc.) competed others in explaining those phenomena, but this dispute is still unsettled. As a result, the focus of concern has moved against leniency of treatment of juvenile offenders, a call for harsh punishment has become stronger and stronger.

On the contrary, we can also find a controlled, limited contextualization. Stone (1993) discovers a willingness to contextualize but only insofar as the message of contextualization is more or less consonant with prevailing values and institutions. The press was willing to add a hitherto missing feminist understanding of the issue of violence against woman, but only because the feminist critique of lenient sentencing put them in the camp of the punitively disposed conservative mainstream. It was the message of moderate, rather than radical, feminism that made its way into the mainstream press.

4 Struggle for Justice

Crime control is not a onesided sphere, but an arena of struggle for justice.

Ericson (1991) explains this clearly that the public are not passive consumers of media message, and the media are accordingly under constant scrutiny that assures a great opennness to alternative messages. Frames are arrived at through process of discursive struggle and negotiation. The media are ready and willing to police the police by providing 'a continuous commentary on procedural propriety. Media dramatizations of crime and violence prompt a discourse that allows people to 'make moral sense of their

experiences' and 'assess the governing claims of those in power'.

Mass media stories are therefore not accepted by people directly and uncritically, but rather are part of people's strategies, struggles, and pleasures in the production of meaning in various contexts. While mass communications are hierarchical and structured by power, so that particular institutions, people, topics, and formats predominate, they still provide an appreciably open terrain for struggles for justice.

Developing this further Savelsberg (1994) broadens the institutional inquiry, reaching beyond the mass media to the production of knowledge by academic and political institutions.In the United States 'public knowledge' is more influential, while in Germany 'bureaucratic rationales' tend to prevail. In other words, in the United States knowledge is produced in an ethos of free competition, while in Germany knowledge production is dominated by seniority-based bureaucratic institutions linked to one another by neocorporate understanding. Thus 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.

In relation to this analysis Japan has a similar structure to German, a very strict bureaucratic system. And we may indicate the relationship between bureaucracy and enclosure.

E Postmodernism and Social Control

1 Constitutive Legal Pluralism

Recent years the constitutive legal pluralism has strengthen its influence. According to this view, problems of social control can be analysed differently from existing ways.

Hunt (1990) mentions that constitutive legal pluralism takes law as its subject of inquiry by exploring the interrelations 'between legal relations and other forms of social relations'.

Foucault (1977) offered a different and somewhat unique perspective of power. The modern era has seen state control dispersed into the social fabric to become part of a hidden totality of surveillance. Important is 'rule of double conditioning' in which power is exercised, not only from the top, but through distinct, localized machinery, which itself is effective only as part of a general overarching strategy of power.

Fitzpatrick (1988), developing his theory of integral plurality, points to a integration of state and non-state as follows: The interrelations between state law and non-state normative orders form new entities as a common discourse and common set of practices, worked out between participating arenas of power. In the process of the synopsis of existing rules and practices, the participating networks retain their own relative autonomy; however, 'integrating homologies' (corresponding structures) are formed which merge selected elements of the component networks into an emergent whole that becomes the new law.

Moreover O'Malley (1991) proceeds his analysis further to the legal synthesis. Legal synthesis as 'synoptic projects' are characterized by the emergence of a common and integrating discourse and set of practices worked out between interacting agencies. Such negotiation involves suppression of incompatible elements of the different participating agencies' knowledges and practices, translation of other elements into more compatible forms, and the integration of all into a workable whole, albeit often inconsistent, labile and conflicting. In this process emergent, synthetic or synoptic social practices and

7

knowledges may appear. Such 'synoptic projects' are most likely to occur where changing conditions, such as the emergence of obstacles to the continued effectiveness of existing arrangements, make their continued operation problematic.

Concerning on this matter, according to Teubner (1992), the process is one of 'interdiscursivity' where intraorganizational legal discourse 'productively misunderstands' and misreads (through its rereading, reinterpreting, reconstructing and reobservation) 'organizational self-production as norm production and thus invents a new and rich "source" of law'. A similar misreading occurs when the organization reincorporates legal rules developed and refined in disciplinary proceedings and makes use of them to restructure its organizational decision making.

Henry (1994) analyzes that developments in constitutive legal pluralism have taken a postmodernist stance, arguing that law is mutually constitutied through social relations and discursive misreading. The discursive processes of non-state social control, with which state law is interrelated and interwoven, provide a significant context of synoptic projects wherein old power is moulded into new forms.

Although constitutively critical of this new legal pluralism from the perspective of legal autopoiesis, Teubner insists that relations between the legal and the social are characterized by 'discursive interwovennness', are 'highly ambiguous, almost paradoxical: separate but interwined, closed but open'. This new legal pluralism is no longer defined as a set of conflicting social norms in a given social field but as a multiplicity of diverse communicative processes.

2 Constitutive Criminology

The constitutive criminology has increasingly had influence on the sphere of criminology. There are many kinds of thought: newsmaking model, peacemaking model, postmodern approach, etc. Let's see contents of these thoughts.

Henry and Milovanovic (1991) present an integrated (macro-micro) constitutive theory of crime as the outcome of discursive production. Human agents, acting purposefully to generate a replacement discourse on crime based on peacemaking, can effectively reduce levels of crime.

Barak (1988) examins the media's role in the production of crime, arguing that radical criminologists need to step forward and use the media to demystify the ideological pictures presented there (a practice Barak calls 'newsmaking criminology'). Criminologists, acting as human agents, can use the media to shape and change discourse about crime.

Quinny (1993) argues in favour of a compassionate criminology informed by humanism and the desire to heal and reintegrate. This view stands in direct opposition to the actual practice of criminal justice which is based upon the infliction of pain and separation of the offender from society. This practice (separation and doing violence to criminals) has failed to reduce crime in modern era, while it has achieved even less in controlling criminal justice practices and the violence they generate.Radical and liberal criminologists seek some mechanism for controlling criminal justice processes. Understanding the nature of society and how structural forces direct the growth of criminal justice mechanisms, we can only begin to control the expansion of criminal justice mechanisms. We can employ human agency or informed human action in our attempts to correct the situation. This form of consciousness or recognition leads to the call for criminologists to act in a humanistic manner.

In detail, Henry and Milovanovic (1996) suggest the postmodern approach and

propose displacement discourse. The role of language is important to constitutive theory because it signals how dominant, hierarchical relations are conceived, legitimated and reproduced through and within the word we speak. Postmodern discourse analysis is significant to constitutive thought because it suggests the possibility of establishing more inclusive replacement discourse. We are led to ask what specific grammar or coordinated language system is in use when articulating our thoughts. Through the metaphysics of presence, certain value of positions (for example, white, objective, good, man, sane) are spoken, dominant and priviledged while their binary opposites (for example, black, subjective, bad, woman, insane) are absent, repressed and subjugated even while implied. The metaphysics of presence produces hierarchical arrangements which are primordially embedded in the speech we use to discribe phenomena. Postmodern discourse analysis catapult language into an entirely new dimension of relevance. In the first instance, we are presented with a postmodern affirmative vision of how disire in language contains the possibility to liberate human agency and to validate new vistas of meaning. In the second instance, we are faced with a postmodern sceptical vision of how language absorbs and devours both the 'real' and its media-generated appearences. Replacement discourses are a rallying cry to reclaim the voices of those whose subjectivity would otherwise be lost within the desperation of silence and the harm brought about through language. The new languages would require a 'transpraxis' in which the reconstitutive effects of relations of production, of domination and of despair, are not unwittingly reproduced by simply reversing existing hierarchicalrelations. Instead, these oppressive relations need to be newly codified in ways which are more fully affirming of a desiring subject's longings for recognition and legitimacy.

3 Critical Review

Concerning these thoughts, after being considered critically, advantages and drawbacks are indicated.

According to Arrigo (1997), we need integration. In a world saturated by the codes and sound bytes of media, subjects' notions about law and criminology are formed in such a way that images of the real become more authentic than reality itself. Cybernetically manufactured and celluloid-induced appearences of objects and agents become more conspicuously authentic than the objects and agents. The integration of constitutive thought with postmodernism, media and cultural studies, and sociological work which explores rather than denies overlapping dimensions of gender, race and class -- all of this points in new directions for forging replacement discourses and conceiving of 'transpraxis'. This orientation bodes well for both the promise of emancipating desiring subjects and for establishing a more humane response to legal and criminal disputes.

In opposition to this, Lynch (1997) had an insight into shortcomings as follows: Although postmodernist approaches have had an increasing influence, a number of issues remain unaddressed or neglected. One glaring problem concerns the association between language production and political economy. Much postmodern criminological analysis has become so caught up in identifying and assessing the linguistic network of discursive production related to crime that it has failed to take the next step: connecting crime-related discursive production to political economy.

Second, the imported phrases may have little or no meaning in the cultural and political economic circumstances into which it is imported. This 'lack of meaning' (or even loss of meaning) is compounded by a lack of analysis of the differing political economies between the culture from which language/meaning is taken and that into which it is

incorporated.

F Conclusion: Quest for "Informationology"

In Japan our present situation of criminal justice information disclosure is so poor that only minimum imformation is fragmentarily and partially disclosed based on the needs of each criminal justice system (police, public prosecutors office, court, prison, etc.). It is important to throw the 'disclosure light' upon the criminal justice which as sanctuary hasn't been touched. The disclosures should be met demands not only of criminal justice but also of whole persons concerned (criminal, victim and his/her family, criminal justice agencies, people, mass-media, etc.).

In addition, as mentioned earlier, we need wider understanding about information of crime, punishment, criminal justice, etc. As a disclosure of information presupposes an accumulation, it is indispensable to analyse an enclosure as well: why criminal justice enclose information, its aim, function, history, etc. In so doing, we can understand the essential meaning of disclosure. And if we think both disclosure and enclosure in set, we are confronted by another problem to clear the flowchart of information of crime, punishment, criminal justice, etc. I would like call that kind of science "informationology of crime and punshment".

At last I'd like to notice that we need much more researches on the present practical situation of criminal justice disclosure in Japan.

References

Arrigo, B.,"Review: Constitutive Criminology and Explanations in Law and Society," *Theoretical Criminology*, Vol.1, 1997, pp.392-396.
Barak, G.,"Newsmaking Criminology: Reflections on the Media, Intellectuals, and Crime," *Justice Quarterly*, Vol.5, 1988, pp.565-587.
Barak, G.,"Between the Waves: Mass-Mediated Themes of Crime and Justice," *Social Justice*, Vol.21, 1994, pp.133-147.
Brodeur, J.-P.,"Policing Appearances," *Journal of Human Justice*, Vol.5, 1994, pp.58-83.
Castellano, T.C., and E.F. McGarrell," The Politics of Law and Order: Case Study Evidence for a Conflict Model of Criminal Law Formation Process," *Journal of Research in Crime and Delinquency*, Vol.28, 1991, pp.304-329.
Christie, N.,"Conflicts as Property," *British Journal of Criminology*, Vol.17, 1977, pp.1-15.
--- *Crime Control as Industry: Towards GULAGS*, Western Style? London: Routledge, 1993.
Ericson, R.V.,"Mass Media, Crime, Law, and Justice: An Institutional Approach," *British Journal of Criminology*, Vol.31, 1991, pp.219-249.
Fitzpatrick, P.,"The Rise and Rise of Informalism," in R. Matthews (ed.), *Informal Justice?* London: Sage, 1988.
Foucault, M., *Discipline and Punish*, Harmondsworth: Penguin, 1977.
Garland, D.,"Politics and Policy in Criminological Discourse: A Study of Tendentious Reasoning and Rhetoric," *International Journal of the Sociology of Law*, Vol.13, 1985, pp.1-33.
Henry, S. (ed.), *Social Control*, Aldershot: Dartmouth, 1994.

Henry, S., and D. Milovanovic," Constitutive Criminology: The Maturation of Critical Theory," *Criminology*, Vol.29, 1991, pp.293-316.

Henry, S., and D. Milovanovic, *Constitutive Criminology: Beyond Postmodernism*, London: Sage, 1996.

Howitt, D., *Crime, the Media and the Law*, Chichester: John Wiley and Sons, 1998.

Hulsman, L.H.C.,"Critical Criminology and the Concept of Crime," *Contemporary Crises*, Vol.10, 1986, pp.63-80.

Hulsman, L., et J. B. de Celis, *Peines perdues: Le systeme penal en question*, Paris: Centurion, 1982.

Hunt, A.,"The Big Fear: Law Confronts Postmodernism," *McGill Law Journal*, Vol.35, 1990, pp.507-540.

Jones, C.,"Auditing Criminal Justice," *British Journal of Criminology*, Vol.33, 1993, pp.187-202.

King, M.,"Social Crime Prevention a la Thatcher," *The Howard Journal*, Vol.28, 1989, pp.291-312.

Livingstone, S.,"Review: Reporting Crime: The Media Politics of Criminal Justice. By Philip Schlesinger and Howard Tumber (Clarendon Studies in Criminology. Oxford: Oxford University Press, 1994. 287 pp.)" *The British Journal of Criminology*, Vol.35 No.4, 1995, pp.649-651.

Lynch, M.J. (ed.), *Radical Criminology*, Aldershot: Dartmouth.

Melossi, D.,"Gazette of Morality and Social Whip: Punishment, Hegemony and the Case of the USA, 1970-92," *Social and Legal Studies*, Vol.2, 1993, pp.259-279.

O'Malley, P.,"Legal Networks and Domestic Security," *Law, Politics, and Society*, Vol.11, 1991, pp.171-190.

Potter, G.W., and V.E. Kappeler (eds.), *Constructing Crime: Perspectives on Making News and Social Problems*, Prospect Heights: Waveland, 1996.

Quinny, R.,"A Life of Crime: Criminology and Public Policy as Peacemaking," *Journal of Crime and Justice*, XVI, 1993, pp.3-9.

Rain, J.W., and M.J. Willson, *Managing Criminal Justice*, New York: Harvester Wheatsheaf, 1993.

Savelsberg, J.J.,"Knowledge, Domination, and Criminal Punishment," *American Journal of Sociology*, Vol.99, 1994, pp.911-943.

Scheingold, S.A. (ed.), *Politics, Crime Control and Culture*, Aldershot: Ashgate/Dartmouth, 1997.

Scheingold, S.A., T. Olson and J. Pershing,"Sexual Violence, Victim Advocacy, and Republican Criminology: Washington State's Community Protection Act," *Law and Society Review*, Vol.28, 1994, pp.729-763.

Schlesinger, P., and H. Tumber, *Reporting Crime: The Media Politics of Criminal Justice*, Oxford: Oxford University Press, 1994.

Schwendinger, H., and J. Schwendinger,"Giving Crime Prevention Top Priority," *Crime and Delinquency*, Vol.39, 1993, pp.425-446.

Stojkovic, S., J. Klofas and D. Kalinich (eds.), *The Administration and Management of Criminal Justice Organizations: A Book of Readings (3rd ed.)*, Prospect Heights: Waveland, 1999.

Stone, S.D.,"Getting the Message Out: Feminists, the Press and Violence Against Woman," *Canadian Review of Sociology and Anthropology*, Vol.30, 1993, pp.377-400.

Teubner, G.,"The Two Faces of Janus: Rethinking Legal Pluralism," *Cardozo Law Review*, Vol.13, 1992, pp.1443-1462.

Wiener, M.J.,"The March of Penal Progress?" *Journal of British Studies*, Vol.2, 1987, pp.83-96.

III   QUEST FOR "INFORMATIONOLOGY
OF CRIME AND PUNISHMENT":
CRITICAL ANALYSIS OF INFORMATION CONTROL

A   Introduction

In Japan the criminal justice system has been administered in a closed and separated space from persons concerned (especially victims) other than criminals and criminal justice agencies under the name of human rights of criminals and protections of their privacies. With an increasing awareness of human rights on the site of victims, such a problematic situation has begun to be brought into question. It is necessary for us to get sufficient information about crime, punishment and criminal justice because we live in democratic countries.

According to my research, however, our present situation of disclosure in Japan is so poor that only minimum information is fragmentarily and partially disclosed based on the needs of each criminal justice system (police, public prosecutors office, court, prison, etc.). Disclosures should be met demands of whole persons concerned (criminals, victims and their families, criminal justice agencies, people general, mass-media, etc..).

Moreover we need a wider awareness of the issues involved to get a correct understanding of the meaning of information control: why do criminal justices control information, what are their aims, how do information controls function, how can we trace their histories, and so on. I would like to call this kind of science "informationology of crime and punishment".

B   General View

In Japan the criminal justice system has been administered in a closed and separated space from persons concerned (especially victims) other than criminals and criminal justice agencies under the name of human rights of criminals and protections of their privacies. With an increasing awareness of human rights on the site of victims, such a problematic situation has begun to be brought into question. It is necessary for us to get sufficient information about crime, punishment and criminal justice because we live in democratic countries.

According to my research, however, our present situation of disclosure in Japan is so poor that only minimum information is fragmentarily and partially disclosed based on the needs of each criminal justice system (police, public prosecutors office, court, prison, and so on). Disclosures should be met demands of whole persons concerned (criminals, victims and their families, criminal justice agencies, the general public, mass-media, and so on).

Moreover we need a wider awareness of the issues involved to get a correct understanding of the meaning of information control: why criminal justice systems control information, what their aims are, how information controls function, how we can trace their histories, and so on. I would like to call this kind of science "informationology of crime and punishment".

C   Present Situation and Problems on Disclosure
of Criminal Justice Information in Japan

1   Not Disclosure but Offer based on Enclosure

13

Concerning the offer of information to victims in recent years diverse countries have established systems which offer a victim information about outline of his/her case and a progress of criminal procedure, not to mention information about victim supports such as a compensation, a consultation and so on.

In Japan although there have been cases that an investigator informs a victim about the arrest of suspect and so on, and the Criminal Procedure Act provides that a notice of prosecution/non-prosecution to a complainant and so on and of reason of non-prosecution based on his/her demand, these measures have not been made use of sufficiently. On the police level in 1996 the notification to victim system was established and an investigator in charge offers information about whether a suspect is arrested or not, his/her identity and a situation of disposal to a victim of crime against body (murder, injury, robbery and so on), a hit-and-run case and a traffic accident with death. In addition in 1999 the Criminal Investigation Standard has been amended and new provisions on consideration of victim and notification to him/her have been established.

On the public prosecution level, the number of public prosecutors offices which introduce the notification-to-victim and others system has increased since 1991. In April 1999 the national standard has been established and begun to be used since then. According to it, when an investigation into victim or his/her relatives and others is made, a result of disposals, a date for public trial, result, settlement, appeal of trial are informed them if they want to know. In case of serious cases such as with death, even when an investigation into victim or others is not made, a public prosecutors office makes a notification under confirmation of existence of his/her/their desire.

Concerning the juvenile case it has been indicated that a victim can't know even an outline of his/her case. The Bill of Amendment of Juvenile Law, which was submitted to the Diet in 1999, Japanese national assembly, and under deliberation, has following provisions: names and addresses of jevenile and his/her legal representative and the text and grounds of decision can be notified under a request from a victim or others except for cases which are in danger of preventing a sound nurture of juvenile and not appropriate.

As to information on whereabouts and release of a prisoner serving his/her sentence in criminal institution, there is no system or practices to inform such information to victims.

In sum I think it is problematic that criminal justice information is not disclosed but offered based on enclosure. We have to change our mind from a criminal justice agencies centered policy to a general public centered strategy, from a passive receive of information offered by criminal justice agencies to an active activity of recapturing information.

2 Narrowing the Meaning and Function of Information Disclosure: Problems of Victim-Centered and Police-Guided Policy

In Japan the recently established notification system is centered around victims and administered by police and public prosecuters office. As a result criminal justice information is still strictly controlled and only a few part of it is offered to very limited people under discretions of these organs.

As a victim support policy has been led by police, it has a strong tinge of welfare policy to social weakers by police. This holds true for information offer and there is some doubt about an information offer led by police with a view of policy consideration. As an intensification of victim policy by police functions to make up for retreats of welfare administration with a positiveness and a power expansion of police, whether it is appropriate or not that only the police and the public prosecuters office are agents of information offer should be put into question.

14

Moreover whether it is legitimate or not that the police and the public prosecuters office offer information as "victim policy" should also be put into question. As contents and ways are put into hands of discretions of police and public prosecuters office, there is a danger that conveniences of law enforcement agencies would be given the highest priority. In offering information it is inevitable to compare a promotion of rights and interests with violations, but whether this judgement might be put into hands of discretions of law enforcement organs based on circulars or rules and regulations restricted within organs should be discussed. At present as the offer system is approved with a view of victim policy, there is no system of complaining discontents about non-offer or way of offer.

Considering a great need of information, usefulness for self-restoration, access to national organizations and so on, it is not sufficient to make up information offer as "policy". As it is a foundation for positive excercises of rights by victims such as a participation into procedure, a demand for compensation for loss and so on and is related to a restoration of subjectivity of victim, it should be constructed not as a discretion of investigative organ but as a right of victim.

Beyond these legal problems a disclosure has many functions such as follows: a guarantee on fairness of investigation and prosecution through a removal of secret enforcement, a watch and control of criminal procedures by citizens. It is necessary to examine whether a disclosur of information is a victim's own problem or not.

Criminal justice information is consists of general information and individual information. The former concerns justice institutions and procedures and the latter concerns cases, suspects and so on. A promotion of a better understanding of justice system, and an increase of access and availability of justice are problems which concerns not only victims but also the general public. In this sense a disclosure of general information is a problem of democracy in justice.
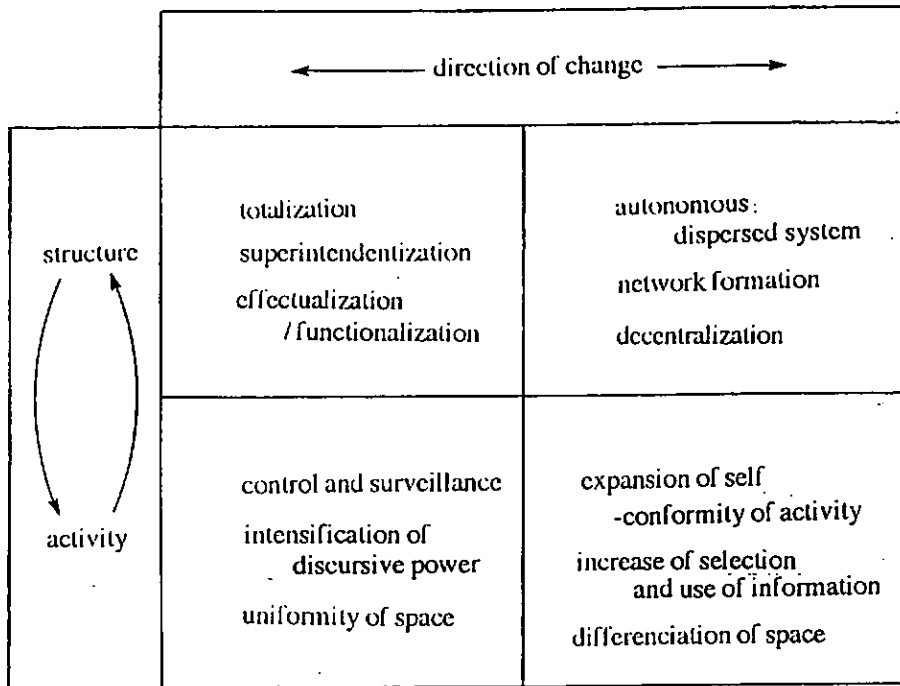
D Structure and Logic of "Informationalization of Society"

1 Structure and Power Promoting "Informationalization of Society": Characteristics of Social Space opened by Informationalization

It is difficult to make clear the relationship between structural changes of contemporary society and multiple logics and powers advancing informationalization. A reality of "informationalization of society" is advancing while conflicting logics and powers such as followings are being interwined and complicated: a phase of "informationalization" introducing information technologies as effective apparatus to manage and control contemporary compound social systems, a level of informationalization as technical means to support the "rearrangement of sicial relations," phases of informationalization on the one hand as producing a "expansion of selecting ability" of individual on the other hand as enlarging effects of anonimous power concealed in a construction of marks and symbols within a rise of self-conformity of actions, a process of simultaneous advance of "standardization" and "differenciation" under restructuring of time and space, and so on. Without being appropriately connected to extensive changes all over the spheres: social, scientific, technical, cultural and so on, the historical meaning of informationalization will not be cleared.

Ambivalents of informationalization advancing under complex relations of competitive logics and powers can be schematically expressed as figure 1. This figure is constructed by two axes: the level of structure and action in change of social system and the direction of social change through informationalization. However this figure is expediently made

Figure 1   Characteristics of Informationalization and Social Change

	← direction of change →	
structure	totalization superintendentization effectualization / functionalization	autonomous: dispersed system network formation decentralization
activity	control and surveillance intensification of discursive power uniformity of space	expansion of self -conformity of activity increase of selection and use of information differenciation of space

Source: Itoh, M., and T. Hanada, 1999, p.215, figure 3 (in Japanese).

and two directions indicating informationalization don't exclude a coexistence and a mutual supplement. We can't cut off a paradoxical relation between "control" and "freedom" on information. In an amplitude of ambivarent fluctuations policies and movements of each country against a background of different social constructions provide each direction of informationalization and construct what it should be. We need to decipher politics of social subjects such as negotiations, oppositions and conflicts through social, political, economical, technical and cultural powers concerning a social construction of information and media.

Inquiring into a problem of informationalization in contemporary Japanese society, in a field of political and administrative system, although informationalizations for a control of residents, an efficiency of administrative affairs and activities of publicity have advanced, informationalizations as means of performing tasks such as disclosure of information, residents' participation and decentralization of power have been left untouched. Social conditions to create plural discourse spaces and enjoy multifarious media cultures have not been argued out thoroughly yet. The Informationalization in Japanese society for a last quarter of a century has been constructed with a certain kind of bias. It has advanced with taking the form in the figure not of direction of expanding first and fourth quadrants but of result of expanding second and third ones. It is noteworthy that the structural arrangement of informationalization on material level corresponds to characteristics of discursive space in Japan which has advanced informationalization only within highly- industrialization.

2   New Discursive Hegemony on Informationalization

a) From Logic of Information Production
to Logic of Articulation to Communicative Activities

The problem of production of information has been argued only in relation to technological innovation and has not analysed in relation to social factors. On that account it is forgotten that all the process of production and consumption of information presupposes communications among public people. Although it is indispensable for the theory of information society to analyse three constituent factors, a milieu of production of information, a quality of information and social conditions of consumption of information including communication ability of recipients, it has hardly been done.

In Japan we can see an extrication of a logic of production and consumption of information from communicative activities and social relations. Being subjected to a logic of production and consumption of information the informationalization has advanced without examining fundamental problems such as what information we transmit through information media, how we share it and how we create cooperative relations. It is necessary to connect a process of production, circulation and consumption of information with plural constructions of new social relations among social subjects such as senders and recipients, that is to place information in a context of relations (Dahlgren).

b) Excluded Problems and their Restoration

The task to be restored is an articulation of informationalization with a task of establishment of throughgoing democracy. The paradox that while many people say that highly-informationalization and an introduction of computers into administrative organizations has advanced, disclosures of information stored in governmental and administrative organization have scarecely advanced clearly indicates a "strangeness" of informationalization in Japan. Although we have already acquired technical means to actualize "disclosures of information" which is indispensable to exercise our rights as sovereign in a contemporary complex society, the task to make good use of information technology for actualizing disclosures has been left unsolved.

It is necessary to disclose information to the citizens, to secure a "pellucidity" in design and use of systems and to create "public space" corresponding to the age of contemporary electronic networks. Tasks which we are facing need not logics which attach importance to production of information property but logics and practices which connect production of information with communicative relations among social subjects. These tasks, moreover, with establishing new values which construct more horizontal social relations through information networks, are related to an opening of possibilities of another informationalization ranging following matters: from a construction of structure and function of social systems in 21th century, through a reconstruction of public space for citizens, to a creation of new media culture. We need to comprehend and envision informationalization as conflicts of discursive practices in diverse dimensions and processes of construction of new logic of informationalization which result from such conflicts themselves.

E Logic of Informationalization and Contemporary Society

1 Informationalized Society and Alienation of Human Beings

The invention of information technologies itself is an apparatus created in the modern

or in the movement of capitalism as a system which incessantly stimulates and reproduces desires. An informationalized society is defined as a society in which capitals become to produce information as important resources in order to proceed productions and circulations effectively and organize consumptions positively as correlated with production. Corresponding with an enlargement of administrative affairs and an expansion of control of residents, being accompanied by an enlargement of properties and services controlled by states, a task to construct a huge information system is offered. Information systems as social apparatus to manage and control were called for and have been created (Castells, 1989).

An introduction of information technologies gave rise to a new process of mode of production in which information positively intervenes into a production of information in order to yield much higher productivity. Strongly regulated by movements of capital, information is produced as resource and property and consumed just like a material commodity.

The informationalization has been advanced under the strong capital movements in contemporary society. The Informationalization of a chain of economic activities such as production, circulation and consumption has generated "a society consuming marks and symbols" which is suggested by Baudrillard. In the contemporary society in which productions and circulations of 'marks and symbols' through media such as movies, T.V. and printed matters have made rapid increase, even our knowledge, feeling and sensibility are based on consumptions of 'marks and symbols' as commodity and reproduced through consumption of 'marks and symbols' (Baudrillard, 1968).

2 Problems of Human Beings in the Informationalized-Capitalistic Society

It is true that a transformation of knowledge into 'information as line of marks/symbols' or a databasenization of knowledge contributes to a rapid increase of intellectual activities of human beings, but information within the abstract space which is emancipated from limits of time and space, context, and detached from bodies would reduce fundamentals of intellectual activities of human beings. Here we can see the paradox that the more an amount of received and consumed information increases, the more a "povertinization" of knowledge of human beings advances.

A development of information technology have produced crucial effects on a thinking process of human beings and a construction of social reality. Poster indicates that characteristics of electronic mode of language expression construct a world of simulacra in which marks and symbols don't have refering objects in the outside world of reality and reiterate a proliferation in a self-refering circle. This space is not only a virtual space which doesn't have refering objects in a real world but also a de-contextualized space departed from an ordinal face-to-face situation of human beings. Technological possibilities which would open a new creation for human beings might block up people in a place detached from others, decrease their abilities of making relations with others and delute personal relations (Poster).

We can see a more and more spreading of information process in which users are keepers of information as well as sources of information, and become objects controlled and ranked by this information: credit cards, library users cards, a cardnization of health insurance. Minutely analysing a modern surveillance society, Lyon gives us a warning that all sorts of organizations, including states and consumers' markets, construct surveillance systems which record and register everyday activities of people, and markedly reinforce their surveillance abilities. In concert with this, a formation of social order which has never seen before has already begun. In short information technologies

have been changing a formation of modern social, economic and political institutions (Lyon).

3 Construction of New Representation System: From Information to Communication

In a construction of text offered as drama program or information program, through exclusions of use of certain words and sentences and selected markaization or symbolization, an cultural power constructing a specific representation system functions. Powers which represents ideologies of ruling groups through discourse composition based on defined language code, showing to follow neutral procedures, are transmitted and consumed in a great volume within huge media markets. Information media not only function as organizations which transmit information and reflect public opinions but also are "subjects of discourse" which intentionally set up to be focuced problematic spheres in advance and perpetually reproduce selected results which is unconscious to recipients of information. Today, through an organization of diverse kinds of social organs and systems as their own agents of information sending and receiving, extensive manipulations of cultural code advance than ever before (Hall).

Computers and information systems created as huge social apparatus, while expanding and changing a place of opaque social intervention by capital and power, have a great influence on what our own knowledge should be. On the one hand a quantitative expansion of information may lead to a povertinization of human knowledge, on the other hand a convenience of information networks may create a new controlled society. Under communicative relationships information would exhibit its real ability. If the essence of communication is a process of "self-consciousness" and "self-transfiguration" through finding "others," and is a trial to create a collabolation within difference, what is demanded to media communications which use computers and various kinds of information systems is a means of mutual finding of self and others and of reconstructions of relationships between self and others.

F Conclusion: For Construction of New Social Relationships

A modern schema of recognition and action made nature subordinate to "technological rationality" through grasping nature as an objective object from a cognitive and instrumental viewpoint, and organized a social space which regards human beings as objects of manipulation like nature while regarding human beings as subjects of action. Through this process a productivity has been substantially strengthened and effective, highly-productive and functional social systems have been created.

But contemporary social systems are groping for creating social structures and functions which enable a higher differentiation and an integration based on mutual and reciprocal relationships in each level of individual, group, organization and institution. In order to respond to this, it is necessary for us to become conscious of a new framework called "self-refering knowledge" and concretely weave this framework into social relations. In such concrete movements and practices rearranging social relations we need to make sure of a dialogue space in which a communicative reationality conceptualized by Habermas as one resisting against colonialization of life world is actualized. In other word, based on individual responsibility individuals have to join communications, reciprocal actions for symbiosis of heterogeneous plural actors without depending on institutions.

In short we need a reconstruction of relations through communications and a

19

rearrangement of modern without depending on institutions and organizations. This means a thorough "democratization" of networks of all social relations. Meanings of informationalization, that is meanings of developments of information systems and their fixation in society which technically enabled reciprocal communication networks and a creation and pool of information, are ascertained when it is served as communication tools for individual use in accordance with a historical change from modern to post-modern new social order. Through the integration of information and processes of production, dealing, accumulation and circulation of enormous information into a new place of information production which is created in reciprocal actions of communication, we can change a technical power of information to new social value (Melucci). A "paradigm change" from information to communication is both theoretically and practically demanded.

References:

Baudrillard, J., *Le systeme des objets*, Paris:Gallimard, 1968.

Baudrillard, J. (tr. S. F. Glaser), *Simulacra and Simulation*, Ann Arbor: The University of Michigan Press, 1994.

Bogard, W., *The simulation of surveillance: Hypercontrol in telematic societies*, Cambridge: Cambridge University Press, 1996.

Castells, M., *The Information City: information Technology, Economic Restructuring and the Urban-Regional Process*, Oxford: Basil Blackwell, 1989.

Castells, M., *The Rise of Network Society, The Information Age: Economy, Society and Culture, Vol.I*, Oxford and Malden: Blackwell, 1996.

Castells, M., *The Power of Identity, The Information Age: Economy, Society and Culture, Vol.II*, Oxford and Malden: Blackwell, 1997.

Castells, M., *The End of Millennium, The Information Age: Economy, Society and Culture, Vol.III*, Oxford and Malden: Blackwell, 1998.

Dahlgren, P., "Ideologiy and Information in the Public Sphere," in D. S. Jenifer and F. Fejes (eds.), *The Ideology of Information Age*, Ablex, 1987.

Giddens, A., *The Nation State and Violence: Volume Two of a Contemporary Critique of Historical Materialism*, Cambridge: Polity Press, 1985.

Giddens, A., *Modernity and Self-Identity: Self and Society in the Late Modern Age*, Cambridge: Polity Press, 1991.

Hall, S., et al. (eds.), *Culture, Media, Language*, Lomdon: Hutchnson, 1980.

Harvey, D., *The Limits to Capital*, Oxford: Basil Blackwell, 1982.

Harvey, D., *The Urbanization of Capital*, Jons Hophkins Univ. Press, 1985.

Harvey, D., *The Condition of Postmodernity*, Oxford: Basil Blackwell, 1990.

Itoh, M., and T. Hanada,"Structure and Logic of 'Informationalization of Society'," in K. Kojima (ed.), *Lectures on Sociology Vol.8: Social Information*, Tokyo: Tokyo University Press, 1999, pp.193-237 (in Japanese).

Lyon, D., *The Electronic Eye: The Rise of Surveillance Society*, Minneapolis: University of Minnesota Press, 1994.

Lyotard, J.-F. (tr. G. Bennington and B. Massumi), *The Postmodern Condition: A report on Knowledge*, Minneapolis: University of Minnesota Press, 1984.

Melucci, A., *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*, Temple Univ. Press, 1987.

Poster, M., *The Mode of Information: Poststructuralism and Social Context*, Cambridge: Polity Press, 1990.

IV   CRIME INFORMATION AND ITS CONTROL
IN POSTMODERN SOCIETY:
FUNDAMENTAL UNDERSTANDING
ON CONTROL MODE OF CRIMINAL INFORMATION

A   Introduction

In the highly-informationalized society all incidents are informationalized and processed as information. As a distance between information and reality shrink, a boundary between reality and fiction becomes blurred. In the world of hyper-reality a representation is constructed more really than reality. In such an hyper-real world, there exist only plural latent possibilities and a so-called reality is only one hypothesis of those possibilities. What is selected and agreed as "reality" depends on "contingency." A discourse system selects one out of plural latent possibilities and establish it as reality.

Postmodern knowledge puts a self-organizing view of order against mechanical view of a modern science. It suggests a generic model of decentralized and paralogical order. According to Ilya Prigogine, it is necessary for a system to be open to its environment and coordinate itself through exchanges with its environment in order to maintain its order. We can imagine an open-system in which its order and structure are maintained through inputs and outputs of materials, enegies, information, and so on between a system and its environment. An amplification of uncertainty on the micro-level produces a pattern on the macro-level and, as a consequence, a self-organization of general order emerges. Such an order formation apparently differs from a control from the center with certain aims. In the postmodern situation, there appears not a results-oriented control but a "rhizome" in motion which eternally pursue an articulation of differences and a self-compilation of meanings.

B   Informationology of Crime and Punishment

In the criminal justice system events/incidents are recognized as crime and taken in it as criminal information. Criminal justice coded information is accumulated, preserved and used/profitted /disposed as a property. On the other hand in mass-media criminal information is transformed into media coded information through a filter of news value based on consumerism. Accumulated and preserved information is transmitted to people through selection, process, over/under estimation, partly-amplification and so on. People are obliged to accept and consume media coded information as they have only limited sources of information. As a consequence their recognitions on problems of crime and punishment are confined to the framework limited by criminal justice system and mass-media.

Generally speaking criminal justice coded information and media coded information each has attached importance to different values: the former use-value the latter exchange value. With development of information society, however, both interact each other and a total value increased all the more. Moreover with a diffusion of internet it becomes easy to get lots of and multifarious information and a stock control of criminal information reduces its value. As all kinds of information are floating in "cyber, virtual and rhizom space," a flow control becomes more and more important. In this situation we need to investigate information of crime and punishment through discourse analysis, pursuit of control mode and so on and to construct informationology of crime and punishment.

C   Relationship between Reality and Information: Multiple Concealed Possibilities

In the highly-informationalized society all events are informationalized and processed as information. As the distance between information and reality dwindles, events transmitted there are changed into "shows," the boundary between reality and invention becomes obscured, and conditions distinguishing truth from fault are lost. In a world of hyper-reality in which representations are constructed more realistically than reality a dualistic premise which establishes relations between reality and information, that is a relationship in which a real world pre-exists before information and information is acquired to make possible its recognition does not exist any longer.

It is nothing else but a suspicion against epistemological premises of modern science. A reality does not independently exist in the external world, but is constructed through mental works of human beings. A world which is made a subject of scientific research is articulated by the language of recognizer and its recognition is mediated by the analysis of language structure.

Realities which are made with the intention of being reported and reproduced from the outset, which Boorstin call "para-events," permeate through news programs. The world in which para-events increase and images are in flood symbolically appeares in a world of advertisement which make a distinction between reality and fiction void. In a close relation with organizing principle of consumerism media tend to be concerned with creating desires rather than distinguishing realities.

Thinking in this way a reality exists only in a symbolic space organized based on the specific code and it becomes meaningless to distinguish representations of reality from original object. There, without circumstances in which events are interpreted in the real order, it is impossible to define cause and effect in a simple meaning. There exist only signs and symptoms with diverse interpretation potentials and any interpretation can not exist as a place of genuin reality or a privileged place.

In a hyper-real world there exist only multiple potential possibilities. What is choosed and comes to an agreement as "reality" depends on "contingency." A discourse system choose one from multiple possibilities and establish as reality.

D Simulated Surveillance: From Accumulation to Projection

Daily activities in our time leave traces of information. With their accumulation a profile of each person is made, and more and more detailed image of each person is refined. In this way accumulated and formulated data-bases not only intensify controls of individual through making-up and piling up an identities of individual, but also replace original individuals through rearranging realities and making-up and adding new identities.

While a data-bases work as "super-panopticon" and make-up identities of individual, according to the program computers treat individuals based on personalities of individuals made-up in such a way. Information on individuals is successively and systematically accumulated in secret like prisons and profiles of individual are made-up. Data-bases keep eyes on us more accurately and perfectly than any other.

Computer-profilings are not simple technologies of surveillance but surveillances before surveillance, that is technologies for "observations before reality." A profile is "a prior ordering" and scans normal cases and exceptional cases with organizing multiple information. It exists in the place on which " something realistic" and "something virtual" are crossing and is more real and important than a case itself. If someone's data (sex, age, type of car, and so on) coincide with the profile, irrespective of whether he/she actually commited a crime, he/she becomes its target. A series of police activities begin with

22

typical criminal images. Such a highly-ordered surveillance technology speeds up data processings and tries to actualize a much more highly "prior controls."

A simulated surveillance aims at a perfect detterent situation and elaborates an anticipated, programmed prior control strategy. When the surveillance become perfect, the panopticon itself which is characterized as careful, inconspicuous, camoflaged and unidentified disappears. Within a smooth mechanism such as self-watching and participatory control, the central tower which shows discipline gradually become only a sign, a symbol, an imitation and at last unnecessary. While conventional, inefficient control technologies are secretly being dissolved, at the same time, the control is reorganized in a more genuine, inconspicuous, diffused and inflated way. With a simulationalization of surveillance, the panoptic surveillance is emancipated from special limitation.

As a scene and a prospect, a real and a virtual begin to merge through simulation and a surveillance comes near the super-speed of simulation, information is not accumulated but projected. A surveillance becomes prior panoptic and scans a scene without object. As a sphere of perception control expands and a distance disappears with a speed of electronic information, a surveillance turns toward anticipation in a genuine form. Surveillance activities reach at the extreme simulation stage and their technology hypernize extremes (visible and invisible, inside and outside, watcher and watched, close and remote, active and passive) which have limited a surveillance. In this manner a surveillance develops from the arrangement of space and visibility to the simulacle of time and space, from a domination of territory and distance to the control of self-organizing, self-reproducing, fractal scene, from a test of sentences within contexts to the test of dichotomy in an ethereal information space.

E De-Centralization and Surmounting the Modern

In a highly-informationalized society multiple realities live together and jostle each other. There the relation between sign and original represented by it no longer exist, and a "subject" who is a source of signifying relation between sign and collated object dissolves. A reality is divested of its superiority, and a subject gets diversified, dispersed and decomposed within a present milieu of information.

Einstein's theory of relativity subverted a Newtonian idea of absolute time and space, Goedel's imperfection/incompleteness principle broke a basis of absoluteness of mathematical recognition and Heisenberg's uncertainty principle explicated the impossibility of existence of objective real world absolutely separated from recognizing subject. Electronic media promote a multiplification and fragmentalization of life space through destructing physical characters of space, and compress, fragment and multiplize irreversible time into reversible and manipulative one. In this situation social images conforming to a physical time and space, homogenous and unlimited space and linear and irreversible time, become incongruous with everyday experiences, and a paradigm change advocating a new social theory is desired.

A centralization of a specific value (production, efficiency, humanity and so on) as a point of conformity, as seen in "a centralization of speaking subject" in western modern, is followed by a creation of power as suppression and expulsion of the marginal and this is legitimatized by the central value. A modern subject is constructed as "a representing subject" in the process in which an expression as event is constructed as discourse through establishing relations with other non-discoursive elements. "Decentralization" of the subject as a way of surmounting the modern can be seen in the estrangement from substantial comprehension on a relation between sign and meaning, signifying and

23

signified, and in the cutting of language from representation and speaking subject. This means the emancipation of discourses tied with modern subjects.

F Postmodern Paralogy and Complexity:
From Closed Equilibrium System to Open Unequilibrium System

The construction of social theory based on a new paradigm starts from the point of "relational thought" based on a structural paradigm. The thinking model of structurism rejects a organic, mechanical "substantial" model and introduce a "relational" model of language. The structural paradigm dissolves a modern framework of thought and re-arranges "a relational knowledge." Contemporary thoughts and knowledges such as post-structurism and postmodern-thought attempt a thorough differentiation and decentralization so as to avoid a re-centralization of structure.

According to Lyotard the modern thought legitimizes itself in accordance with "a ground story" and inclines to a consensus, center and identification. Whereas a postmodern knowledge is characterized by its heterogeneity and de-centralization, and its ground can be found not in a homologie of specialist but in a paralogie of inventors.

This model of paralogie for legitimization is affected by the so-called postmodern sciences such as Tom's "catastrophe theory" which is concerned with something undecidable, uncertain and uncontrollable and Manderbro's "fractal theory" which makes a model for the accomplishment based on a creation of something unknown and heterogeneous. The knowledge such as "scattering structure" in a field of thermodynamics, "autopoiesis" in a field of biology and so on puts a new view of "self-organizing order" against a view of mechanical order of modern science which is derived from a objectivism, determinism, cause-effect theory, evolutionism and so on. There offered a generative principle model of a decentralized, paralogical order.

According to Prigogine, in order to maintain its order, it is necessary for a system as open system to be open to the surroundings and coordinate itself through exchanges with surroundings. With expanding this thought, we can imagine the open system whose order and structure are maintained through input and output of materials, energy, information and so on between system and surroundings. There traditional view of order and system is rejected, and an amplification of "vacillation" on a micro level produces an apperance of pattern on a macro level and as a consequence a self-organization of general order emerges. Such a way of order formation is different from a view of order as control excercised from the central with certain aims. In the postmodern conditions there appears not a outcome-oriented control but a rhizohm movements in which articulations of differences and self-conpilations of meanings are eternally pursued.

G Ambivalence of Information Society

Enormous kinds of observation on lives of citizens, gatherings and accumulations of personal information ranging from consumption disposition to crime careers are not mattters which are assessed on a technological level, a present progress of information technology, but matters which are grasped as a structural problems inherent in the modern society in which a modern established as nation states has particularly been interested in gathering information and controlling (Giddens, 1985).

We can see a qualitative change of surveillance structure in which every organization records and registers individual everyday activities and a surveillance ability of society is remarkably reinforced. A present surveilance structure is constituted of a chain of micro activities in which individuals freely gather and offer information without considering its

meanings. Poster see a contradiction of present society in which functions and grammers of database create relations among factors of information and let people participate in additional construction of themselves, and databases, a kind of mode of information, function as "super-panopticon" (surveillance system without walls, windows and guards). So we cannnot turn our eyes from a qualitative change of micro politics of power, politics being carried by a variety of cultural praxes which are socially placing and arranging technologies and its contemporary mode.

However in a complex societies a binding power of community groups deteriorates and individuals belong to various subsystems and have living spaces in multiple time and space. As a degree of dependence on outer factors in constructing activities decreases, reflections on individual experiences, self-constructions of activities through self-choosing of information, and self-reference of activities increase. On the other hand a new power is complicatedly developed in a process of self-determination of activities through social construction of information. At this point we need an analysis of mode of its activities.

H   Conclusion

In the analysis of contemporary society it is important to recognize the ambivalence: we can see on the one hand an expansion of individual choices through circulation of enoumous information, on the other hand a direct intervention of society into individual mind and body through social formation of discourse. In a present postmodern society anonymous powers are concealed in the production and circulation process of both information containing sets of particular meanings and symbolic resources.

A present society increases self-determination and self-reference of activity on the activity level corresponding to a structural change, that is a new system construction toward autonomy and dispersion. At the same time whenever information is produced and accepted in a certain social arrangement, there exist invisible power relations which are needed cultural and political analysis of discourses. We must focus on a transfigulation of social time and space multiple-stratifiedly composed with informationarization and clear contradictions which are pregnant in it.

References:

Baudrillard, J. (tr. S. F. Glaser), *Simulacre and Simulation*, Ann Arbor: The University of Michigan Press, 1994.
Baudrillard, J. , *Le crime parfait*, Paris: Galilee, 1995.
Bogard, W., *The simulation of surveillance: Hypercontrol in telematic societies*, Cambridge: Cambridge University Press, 1996.
Boorstin, D. J., *The Image: or What happened to the American Dream*, Atheneum, 1962.
Castells, M., *The Information City: information Technology*, Economic Restructuring and the Urban-Regional Process, Oxford: Basil Blackwell, 1989.
Castells, M., *The Rise of Network Society, The Information Age: Economy, Society and Culture*, Vol.I, Oxford and Malden: Blackwell, 1996.
Castells, M., *The Power of Identity, The Information Age: Economy, Society and Culture*, Vol.II, Oxford and Malden: Blackwell, 1997.
Castells, M., *The End of Millennium, The Information Age: Economy, Society and Culture*, Vol.III, Oxford and Malden: Blackwell, 1998.
Ericson, R.V., And K. D. Haggerty, *Policing the Risk Society*, Toronto/Buffalo: University

of Toronto Press, 1997.

Giddens, A., *The Nation State and Violence: Volume Two of a Contemporary Critique of HistoricalMaterialism*, Cambridge: Polity Press, 1985.

Giddens, A., *Modernity and Self-Identity: Self and Society in the Late Modern Age*, Cambridge: Polity Press, 1991.

Harvey, D., *The Limits to Capital*, Oxford: Basil Blackwell, 1982.

Harvey, D., *The Urbanization of Capital*, Jons Hophkins Univ. Press, 1985.

Harvey, D., *The Condition of Postmodernity*, Oxford: Basil Blackwell, 1990.

Lyon, D., *The Electronic Eye: The Rise of Surveillance Society*, Minneapolis: University of Minnesota Press, 1994.

Lyotard, J.-F. (tr. G. Bennington and B. Massumi), *The Postmodern Condition: A report on Knowledge*, Minneapolis: University of Minnesota Press, 1984.

Melucci, A., *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*, Temple Univ. Press, 1987.

Norris, C., and G. Armstrong,"CCTV and the Rise of Mass Surveillance Society," in P. Carlen and R. Morgan (eds.), *Crime Unlimited? Questions for the 21st Century*, Houndmills: Macmillan, 1999.

Pavlich, G., "Criticism and criminology: In search of legitimacy," *Theoretical Criminology*, Vol.3 No.1, 1999, pp.29-51.

Poster, M., *The Mode of Information: Poststructuralism and Social Context*, Cambridge: Polity Press, 1990.

Prigogine, I., and I. Stenger, *Order out of Chaos: Man's New Dialogue with Nature*, New Yolk: Bantam Books, 1984.

V EPISTEMOLOGICAL INVESTIGATION ON INTERNET CRIMES AND THEIR CONTROL STRATEGIES: GENEALOGY, ARCHAEOLOGY AND HERMENEUTICS

A Introduction

In this chapter I would like to consider the epistemology of internet crimes and their control strategies. Although a large number of researches have been carried out into practical problems, little is known about theoretical, especially epistemological problems. This is a theoretical study and consists of three parts: genealogy, archaeology and hermeneutics.

B Genealogy

The first question we have to ask is whether internet crimes and their control strategies have changed with the times. This question is one of assigning proper coordinates to clarify present crucial problems.

Hollinger states that the history of computer crime and deviance can be divided into four period: the discovery of computer abuse (1946-76), the criminalization of computer crime (1977-87), the demonization of hackers (1988-92) and the censorship period (1993-present). During first period, scholarly writings focused on describing the nature of the phenomenon. The principal focus of the second period was concentrated on correcting through legislation the numerous deficiencies in the criminal law related to computer-related abuse. The third period was characterised by several less-than-successful law enforcement efforts to identify and sanction the computer deviant, especially hackers and crackers. With the advent of the internet, the fourth period focus of criminal justice concern has been directed towards limiting the access to both classified information and various dangerous collections of material such as the sexually deviant and pornographic pictures.

I think the latter two periods are more important for us to clarify what are present crusial problems because we can find the ingenious development of control and regulation strategies.

During the third period, Hollinger explains, although the real threat of computer crime has been from organization insiders, computer security professionals have feared a malicious computer cracker gaining unauthorised access to a important institutional computer system --- stealing, damaging or destroying its stored information and programs. With the permission of remote access to virtually every computer system in the world, there appeared some who wish to severely limit the free exchange of information and images. Hollinger keenly analyzez that the justification for radical atempts at global computer network censorship is based on some of the very oldest reasons, namely fear of crime, sex and violence.

I should point out very briefly that we must recognize the slow but steady movement towards strict control strategies against computer and internet crimes.

C Archaeology

The second point that requires clarification is that the focal concern and discourse has changed with the times.

Chandler examined the changing definition and image of hackers in popular discourse. She argues that although the term 'hacker' has not always had criminal connotations, it

has changed in definition. These changes have culminated in a negative and criminal image, e.g. hackers being compared to burglars and even murderers. Her conclusions are that representations and images of hackers in the media and film are negative. In Britain news reports and accounts portray hackers' activities as dangerous and potentially subversive through the use of criminal, psychopathic and alien imagery. Thus an activity which once attracted admiration, even respect, is now portrayed as murderous and treacherous. British newspapers filled with negative headlines, e.g. loss attributable to computer crime, virus alerts, threat to human life, demand for legislation against internet crimes. The hacker has joined the rogues gallery of modern folk devils.

Wallace and Mangan, based on their historical analysis, state that in the war for control over cyberspace, the initial optimism quickly gave way to a moral panic over the potential abuses that it could engender. However the global, instantaneous nature of the internet makes it unlikely that governmental regulation could succeed in its aim as it interprets censorship as damage and re-route its lines of communications. They emphasize that we should preserve the pluralistic worlds of small communicators and that the internet must remain free.

These investigations serve to strengthen the claim that there exist moral panics in the movement to harsh control strategies.

D   Hermeneutics

The third argument deals with the way how to explain control and regulation strategies.

Duff and Gardiner, analyzing strategies for control and regulation, come to the conclusion that the reason for criminalization of unauthorized hacking has been symbolic. The media have, as conveyers of contemporary symbols, had a crucial role in this criminalization. It is not the disenchanted employee as the insider, or the operations of organized crime, but middle class youth, who have been criminalized as the perpetrators of computer crime. In addition they indicate the paradox that although the most new technology will liberalize man and open up new horizens, increasingly it has been used to control information. The criminarization of hacking has resulted in restriction of information and exclusion. The information technology has facilitated the spread of techniques of social control. Electronic surveillance is insidiously encompassing our lives.

Lyon examins the major dimensions of surveillance in society in which computers and other electronic technologies permit personal data to be collected. According to his examination, four aresas experiencing a tremendous expansion of surveillance capability are government administration, policing and security, the capitalist work situation and the consumer marketplace. In practice, these distinctions are blurred because data gatherd for one sphere find their way into databases related to other areas. Understanding the survaillance society requires several kinds of debate, across several disciplinary areas.

Grabosky, Smith and Russel mention regulatory dilemmas that on the one hand the pursuit of a strict regulatory agenda is not feasible because of the limited capacity of the state, on the other hand over-regulation may stifle commercial and technological development.

Similarly, Grabosky, Smith and Wright, after examining opportunities for crime and its prevention within the exploding field of digital telecommunications, suggest the way how to control telecommunications and cyberspace illegalities. They state that no single crime prevention strategy will be sufficient. For telemarketing fraud and similar internet offences, self-help by an informed public might be most useful. For electronic money

laundering, direct governmental intervention would be required. Interceptions and theft of services would be controlled most effectively by technological intervention such as encryption. The prevention of telecommunications crime should attempt to minimize coercion, maximize privacy, and minimize barriers to the further development of technology.

These investigations share certain similarities in that we expose ourselves to danger of a perfect surveillance. Such a present surveillance spread society was called "maximum security society" by Marx, "electronic panopticon" by Gordon. There the distinction between public and private is blurred and citizens become subject to constant inspection. As Hollinger mentions, the computer and internet are liberating technologies that afford all citizens, rich and poor alike, greater access to information than ever before. I agree with his opinion that we must set for more battles over the regulation and control of this new technology.

E Conclusion

So far we have outlined the way in which control strategies against internet crimes have devised, developed and formulated. Before we come to a conclusion, it will be useful, rather necessary, to discuss the way how to perceive information.

As the information-oriented society develops, the mode of information become more important than the mode of production. Whereas from the viewpoint of the mode of production a commodity has a use value and a exchange value, from the viewpoint of mode of information, I think, information has a stock value and a flow value. In the internet flow information is more valuable than stock information because in so-called "rhizome space" it is difficult to control and regulate all informatin. Information of crime and punishment is floating in the real-and-virtual-mixtured cyber space. This is the state of affairs in the our present information-oriented society.

So, we arrived at our conclusion that we need to postulate a completely different paradigm to explain all these phenomena. In other words, we need a paradigm change from a modern- to postmodern paradigm. Based on our analysis, we can postulate the science of crime and penal information. We may call this science the "informationology" of crime and punishment.

Critics may argue that all these results are very abstract. But I believe that our results will change the direction of researches on internet crimes and their control strategies. The future direction of this study will be one that develop an even more detailed examination of the concept of informationology of crime and punishment.

References

Barrett, N., *Digital Crime: Policing the Cybernation*, London: Kogan Page, 1997.
Chandler, A.,"The Changing Definition and Image of Hackers in Popular Discourse," *International Journal of the Sociology of Law*, Vol.24 No.2, 1996, pp.229-251.
Denning, D.E., and W.E. Baugh Jr., *Encryption and Evolving Technologies: Tools of Organized Crime and Terrorism*, Washington D.C.: National Strategy Information Center, 1997.
Duff, L., and S. Gardiner,"Computer Crime in Global Village: Strategies for Control and Regulation --- in Defence of the Hacker," *International Journal of the Sociology of Law*, Vol.24 No.2, 1996, pp.211-228.

Gordon, D., *The Justice Juggernaut: Fighting Street Crime, Controlling Citizens*, New Jersey: Rutgers University Press, 1990.

Grabosky, P.N., and R.G. Smith,"Telecommunications and crime: regulatory dilemmas," *Law and Policy*, Vol.19 No.3, 1997, pp.317-341.

Grabosky, P.N., R.G. Smith and P. Wright, *Crime in the digital age: controlling telecommunications and cyberspace illegalities*, New Brunswickand Leichhardt: Transaction Press and Federation Press, 1998.

Hollinger, R.C. (ed.), *Crime, Deviance and the Computer*, The International Library of Criminology, Criminal Justice and Penology, Aldershot: Dartmouth, 1997.

Lyon, D., *The electronic eye: the rise of surveillance society*, Minneapolice: University of Minnesota Press, 1994.

Marx, G., *Undercover: Police Surveillance in America*, Berkeley: University California Press, 1988.

Wall, D.,"Policing the Virtual Community: The Internet, Cyberspace and Cyber-Crime," in P. Francis, P. Davies and V. Jupp (eds.), *Policing Futures: The Police, Law Enforcement and the Twenty-First Century*, Houndmills: Macmillan Press, 1997, pp.208-236.

Wallace, J., and M. Mangan, *Sex, Laws and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution*, New York: Owl Books, 1997.