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## **Penetration of Cultures, Penetration of Crimes: Who Do Borders Protect?**

**Abstract:** The purpose of this paper is to highlight some implications of the creation of closed, culturally alien communities and the possible consequences of their functioning from a criminological and victimological perspective. Various processes emerging since about the second half of the 20th century, in Europe as well as in the United States of America, have caused cultural transformations leading to the emergence of cultural pluralism (polyculturalism, multiculturalism) in various forms. This represents one of the greatest challenges of the modern world on many levels, including prophylaxis and crime prevention. Of particular concern is the issue of assessing the behaviour of an offender belonging to a closed, culturally different group. variants of such a situation can be considered – when the perpetrator and the victim belong to culturally different communities or the same one, and depending on whether the perpetrator’s behaviour constitutes an act judged negatively in the closed group to which they belong or whether it fulfils the characteristics of a crime in the legal system of the external community.

**Keywords:** borders, crime, multiculturalism

### **Introduction**

The topics of this volume of the journal are primarily associated with cross-border crime, against or by refugees and/or migrants. I would like to propose looking at the border issue from a slightly different perspective. The world of the 21st century is, on the one hand, open and multicultural, and various measures are being taken, at least in some parts of it, to make borders the least possible restriction on the movement of people, goods and services. On the other hand, there are tendencies to divide societies into smaller groups, isolated from the others. The criteria for these divisions

are not necessarily related to race or ethnicity. In Poland, for example, it manifests itself, among other things, in the creation of closed housing estates. When a boundary demarcates a gated enclave, its role becomes particularly important, because it prevents what is inside from getting out (or at least helps control the process) and stops factors from the outside world penetrating inside. One may wonder whether it therefore plays a protective role and, if so, who it protects from whom: members of the community in the enclave or residents of the outside world. The subject of this study is not cultural (or multicultural) changes as such, but their consequences in a specific aspect of social life – committing crimes and bearing responsibility for them. The purpose of this paper is to highlight some of the implications of creating closed, culturally alien communities and the possible consequences of their functioning from a criminological and victimological perspective. One can be tempted to put forward a thesis, based on the observation of phenomena existing in society, that borders are increasingly being created to protect the community inside the enclave – its customs, culture, etc. – before those customs culture, etc. can be assimilated into the outside world. The ‘owners’ of the minority culture are interested in maintaining their own culture in an unchanged shape.

## 1. Borders in postmodern society

Borders in postmodern society are not just artificial lines drawn on maps according to agreements between the countries involved. In the past, they separated communities with different cultures, speaking different languages, having their own specific customs and a specific religious, moral and legal system. Paradoxically, however, despite this diversity, communities living on the European continent – due to remaining under the influence of similar values rooted in Christianity – had similar approaches to what acts should meet with a response in the form of punishment. The societies were homogeneous, but the rules of behaviour in force in them remained obvious to their members and, due to a fairly high degree of social control as well as the severity and inevitability of punishment for conduct inconsistent with them, were considered binding (even if some members of these societies violated them). This article does not have space to trace the social transformations that led to the situation observed today in detail; they are analysed in the sociological literature, to which I refer readers.<sup>1</sup> This text deals with the current state, so to speak, of the consequences of these changes.

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1 E.g. R.K. Merton, *Teoria, socjologia i struktura społeczna*, Warsaw 2002, pp. 198–200; P. Szotomпка, *Socjologia. Analiza społeczeństwa*, Cracow 2002, pp. 29–32. See also M. Budyn-Kulik, *Aksjologiczne podstawy kryminalizacji w społeczeństwie ponowoczesnym*, Lublin 2022 pp. 25–37 and the literature cited therein.

Various processes emerging since roughly the second half of the 20th century in Europe, as well as in the United States of America, have led to the deconstruction of hitherto functioning normative regulations and patterns of behaviour.<sup>2</sup> This trend has been reinforced by the rise of factors that weaken social control.<sup>3</sup> The traditional, homogeneous, place-bound society has been transformed into a postmodern (pluralistic)<sup>4</sup> society, characterized by apparent communality, fluidity of norms and values, internal differentiation and lack of attachment to one's own history, culture and territory.<sup>5</sup> In Poland, these changes appeared a little later – at the end of the 20th century, after the political breakthrough – and proceeded somewhat more slowly.<sup>6</sup> In Europe, these spontaneous 'bottom-up' movements, initiated by members of society, were accompanied by certain formal actions at the level of states and their governments. This is because some kind of unifying action had been taken, allowing the free movement of people and goods between countries. These led to the creation of the European Union, within which the role of borders was significantly reduced; they ceased to perform the function of actually separating states, becoming only formal markers of their territories.

These processes have also caused cultural transformations, leading to the emergence of cultural pluralism (polyculturalism, multiculturalism) in various

- 2 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 31–33; H. Boutellier, *Crime and Morality: The Significance of Criminal Justice in Post-Modern Culture*, Dordrecht/Boston/London 2000, p. 5.
- 3 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, p. 31; Z. Bokszański, O indywidualistach w społeczeństwie współczesnym, 'Studia Socjologiczne' 2009, no. 1, pp. 151–168; J. Mariański, *Moralność w procesie przemian*, Warsaw 1990, pp. 69–70; M. Jarosz, *Problemy dezorganizacji rodziny*, Warsaw 1979, pp. 22–39.
- 4 T. Paleczny, *Stosunki międzykulturowe: modele pluralizmu w społeczeństwach 'ponowoczesnych'*, (in:) K. Golemo, T. Paleczny, E. Wiącek (eds.), *Wzory wielokulturowości we współczesnym świecie*, Cracow 2006, pp. 14–24.
- 5 J. Mariański, *Moralność w procesie...*, *op. cit.*, pp. 33–75; I. Borowik, *Pluralizm jako cecha przemian religijnych w kontekście transformacji w Polsce*, (in:) I. Borowik, T. Doktor, *Pluralizm religijny i moralny w Polsce*, Cracow 2001, p. 25; Z. Bauman, *Płynna nowoczesność*, Cracow 2006, pp. 282–312; J. Oniszczyk, *Ponowoczesność: państwo w ujęciu postnowoczesnym (kilka zagadnień szczegółowych)*, 'Kwartalnik Kolegium Ekonomiczno – Społeczne Studia i Prace' 2012, no. 1, pp. 11–40; P. Pieniążek, *Transgresje nowoczesności*, 'Kultura i Społeczeństwo' 2018, no. 2, p. 206; also see M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 38–48 and the literature cited therein.
- 6 W. Wrzesień, *Współczesne oblicza anomii*, 'Ruch Prawniczy Ekonomiczny i Społeczny' 2017, vol. 4, p. 292; J. Mariański, *Postawy Polaków wobec norm moralności obywatelskiej i społecznej*, 'Uniwersyteckie Czasopismo Socjologiczne' 2017, vol. 20, no. 3, p. 10; M. Leciak, *Konflikty międzykulturowe w Polsce w ujęciu karnoprawnym – próba diagnozy problemu*, 'Studia Iuridica Toruniensia' 2014, vol. 15, pp. 115–118; J. Warylewski, *Wybrane zagadnienia problemów wymiaru sprawiedliwości karnej w Polsce wobec zróżnicowania kulturowego społeczeństwa*, 'Studia Iuridica Toruniensia' 2014, vol. 15, p. 199; G. Dziamski, *Hybrydyczna tożsamość Europy Środkowej po 1989 r.*, (in:) W. Kalaga (ed.), *Dylematy wielokulturowości*, Cracow 2004, pp. 163–176.

forms:<sup>7</sup> relativization, ethnic assimilation, the so-called melting pot of nations or cross-cultural approaches.<sup>8</sup> In Poland, a dualism is clearly marked. In part of the population, as a reaction to the emergence of other cultures, there has been a revival or an intensified sense of ties to one's own territory and a recourse to national identity.<sup>9</sup> In the remaining group, however, there have been tendencies to deny one's own social and/or national identity, accompanied by a questioning or even rejection of native cultural norms which were replaced by eagerly imitated incoming patterns.<sup>10</sup>

Opinions on the consequences of multiculturalism vary. The positives of learning about other cultures, drawing from them and possibly also incorporating immigrant elements into one's own culture, which could lead to the creation of a new quality in the form of original cultural patterns that meet the needs of new pluralistic societies, are emphasized.<sup>11</sup> But little by little, doubts have begun to arise.<sup>12</sup> It has turned out that cultural assimilation is difficult not only because of the possible lack of openness of societies to accepting people with different ethnic roots, but also because of the attitudes of these people. One might be tempted to say that at the time, when cultural differences were significant, cultural mixing did not occur. Incoming persons,<sup>13</sup> especially in large groups, formed their own rather hermetic enclaves within the established community. Typically, these people came from regions of the world that were ethnically attractive to Europeans, who were open to incorporating elements of the immigrant culture into their own, adopting certain

7 P. Sztompka, *Socjologia*, Warsaw 2009, p. 245; D. Bek, *Obrona przez kulturę. Analiza na gruncie polskiego prawa karnego*, Warsaw 2018, pp. 53–56; M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 48–49; A. Szahaj, *Wielokulturowość: za i przeciw (kilka uwag)*, (in:) D. Pietrzyk-Reeves, M. Kułakowska (eds.), *Studia nad wielokulturowością*, Cracow 2010, pp. 25–30; P. Mazurkiewicz, *Wielokulturowość a multikulturalizm*, 'Chrześcijaństwo, Świat, Polityka: Zeszyty społecznej myśli Kościoła' 2020, no. 24, pp. 242–262; P. Chmiel-Antoniuk, M. Duda, M. Ickiewicz-Sawicka, *Kultura a zbrodnia*, Czeremcha 2018, pp. 14–28.

8 A. Giddens, P.W. Sutton, *Socjologia*, Warsaw 2012, pp. 643–646; P. Sztompka, *Socjologia*, *op. cit.*, Warsaw, p. 245; P. Mazurkiewicz, *Wielokulturowość...*, *op. cit.*, p. 246; M. Leciak, *Konflikty...*, *op. cit.*, pp. 112–113; K. Krzysztofek, *Pogranicza i multikulturalizm w rozszerzonej Unii*, 'Studia Europejskie' 2003, no. 1, pp. 77–94.

9 M. Grzyb, *Przestępstwa kulturowo. Aspekty kryminologiczne i prawne*, Warsaw 2016, pp. 23–24.

10 E. Wnuk-Lipiński, *Świat międzyepoki. Globalizacja. Demokracja. Państwo narodowe*, Cracow 2004, pp. 219–227; A. Pasieka, *wielokulturowość po polsku o polityce wielokulturowości jako mechanizmie umacniania polskości*, 'Kultura i Społeczeństwo' 2013, no. 3, pp. 129–154; J. Nikitorowicz, *Tożsamościowe skutki wielokulturowości. Wielość kultur w jednym człowieku czy ekstremizm i separatyzm kulturowy?* 'Lubelski Rocznik Pedagogiczny' 2017, vol. 36, no. 3, pp. 13–22.

11 A. Sadowski, *Wielokulturowość jako czynnik zrównoważonego i inteligentnego rozwoju polski*, 'Optimum: Studia Ekonomiczne' 2016, no. 4, pp. 69–82.

12 A. Szahaj, *Wielokulturowość*, *op. cit.*, pp. 25–30.

13 I purposely do not use the terms immigrants, refugees, etc., to avoid controversy; for the considerations presented in this study, the formal status of these people is irrelevant.

customs particularly of an external nature (clothing, music, art, food).<sup>14</sup> However, in many cases, it was the newcomers who were not open to assimilation and cultural mixing.<sup>15</sup> This phenomenon can be observed in France or Sweden, among others, and led to so-called ghettoization.<sup>16</sup> In contrast, when newcomers arrived in smaller groups and were culturally similar to the host society, they did not form closed communities, but blended into local life. This was the case in Poland with Ukrainian citizens, for example.<sup>17</sup>

## 2. The impact of trans-cultural diffusion on typification and crime

The legislature of a country decides what constitutes a crime. When a system of law (especially with regard to criminal law) is created, it is based on some system of values, referring to social axiology.<sup>18</sup> In traditional society, the axiological basis of criminal law was morality, having dimensions which are social (customs, traditions, philosophical systems) and individual (a certain philosophy of life).<sup>19</sup> The system of law, although autonomous, depends on external values, which, incorporated into it and processed by virtue of internal rules of rationality, provide it with meaning and fill it with content.<sup>20</sup> In the context of the present considerations, an external circumstance about which there is great controversy is custom (culture,<sup>21</sup>

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- 14 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 88–89; National Geographic, Polacy pokochali Festiwal Kolorów. Gdzie i kiedy odbędą się następne imprezy? <https://www.national-geographic.pl/traveler/artykul/festiwal-kolorow-kiedy-i-gdzie-sie-odbywa-na-czym-polega-i-kto-pojawil-sie-do-tej-pory-na-scenie> (18.09.2022).
- 15 E. Kuźlewska, A. Piekutowska, The EU Member States' Diverging Experiences and Policies on Refugees and the New Pact on Migration and Asylum, *'Białostockie Studia Prawnicze'* 2021, vol. 26, no. 1, pp. 24–27.
- 16 Dziennik.pl, 'Szwecja szokuje raportem o przemocy. "Rząd skapitulował i oddał władzę"', <https://wiadomosci.dziennik.pl/swiat/artykuly/8173406,szwecja-przemoc-raport.html> (19.09.2022); P. Mazurkiewicz, *Wielokulturowość...*, *op. cit.*, p. 244.
- 17 The situation has changed somewhat and has become more complex after the outbreak of the war in Ukraine, but this is due to specific, extraordinary temporary circumstances (although its duration is, of course, difficult to determine). On the Polish approach to the issue of migrants, see M. Zdanowicz, Poland's Stance on the Refugee and Migration Crisis in the European Union, *'Białostockie Studia Prawnicze'* 2021, vol. 26, no. 1, pp. 87–101.
- 18 A. Kalisz, Klauzula moralności (publicznej) w prawie polskim i europejskim jako przykład regulacyjnej, ochronnej oraz innowacyjnej funkcji prawa, *'Principia'* 2013, no. 57–58, p. 197.
- 19 D. Bunikowski, Idea neutralności moralnej prawa we współczesnych systemach prawnych, (in:) S. Janeczka, A. Starościc (eds.), *Etyka, cz. 2*, Lublin 2016, p. 543; M.E. Stefaniuk, Skuteczność prawa i jej granice, *'Studia Iuridica Lublinensia'* 2011, vol. 16, p. 65.
- 20 K. Pałeczki, Zmiany w aksjologicznych podstawach prawa jako wskaźnik jego tranzycji, (in:) K. Pałeczki (ed.), *Dynamika wartości w prawie*, Cracow 1997, pp. 27–28.
- 21 See for example J. Helios, W. Jedlecka, Kultura jako czynnik legitymizujący prawo europejskie, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), *Konwergencja czy dywergencja kultur i systemów prawnych?* Warsaw 2012, pp. 189–198.

customary law<sup>22</sup>), that is, the possibility of allowing the so-called ‘cultural defence’ in Polish law.<sup>23</sup>

In a traditional, cohesive society, it is possible to identify a system of values and moral norms that is accepted by the majority of its members; in a postmodern society, this is virtually impossible.<sup>24</sup> It is very difficult to find justification for the threat of punishment, especially for acts of a symbolic nature.<sup>25</sup> When new cultural influences blend seamlessly with the existing culture, society evolves, creating a new quality, and the legislator, observing social behaviour, may notice the need for modifications in the field of criminal law. Of course, it remains a matter of choosing a particular direction for criminal policy, whether the legislator views these perceived changes as beneficial and reinforces them, shaping criminal prohibitions and orders accordingly, or whether they consider them undesirable and seek to stamp them out, maintaining the status quo.<sup>26</sup> The protection of indigenous cultural patterns is achieved by preserving existing criminal laws or even tightening them.<sup>27</sup> This is so-called conservative multiculturalism.<sup>28</sup> It does not mean that finding justification for the criminalization of certain behaviours is simple. The choice of axiological basis will then involve a departure from the so-called traditional morality characteristic of a homogeneous society. Since a pluralistic society represents a new, peculiar quality, axiological bases have to be created from scratch. Arguably, they have to be minimalist, and

22 See for example A. Gutkowska, *Prawo karne wobec wyzwań wielokulturowości. Przepięstwa kulturowe na przykładzie wymuszonego małżeństwa*, (in:) M. Lubelski, R. Pawlik, A. Strzelec (eds.), *Idee nowelizacji kodeksu karnego*, Cracow 2014, pp. 239–270.

23 See for example J. Van Broeck, *Cultural Defence and Culturally Motivated Crimes (Cultural Offences)*, ‘European Journal of Crime, Criminal Law and Criminal Justice’ 2001, vol. 9, no. 1, pp. 1–32; A. Kleczkowska, *Rola cultural defence w wymiarze sprawiedliwości karnej*, ‘Ruch Prawniczy Ekonomiczny i Społeczny’ 2012, vol. 2, pp. 71–83; O. Sitarz, *Culture defence a polskie prawo karne*, ‘Archiwum Kryminologii’ 2007–2008, vols. 29–30, pp. 643–652; P. Chmiel-Antoniuk, M. Duda, M. Ickiewicz-Sawicka, *Kultura...*, *op. cit.*, pp. 32–35; M.M. Kania, *Spory wokół obrony przez kulturę w kontekście debat na temat wielokulturowości*, ‘Polityka i Społeczeństwo’ 2016, vol. 2, no. 14, pp. 151–161; D.C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, ‘California Law Review’ 1994, vol. 82, no. 4, pp. 1053–1125; J.M. Donovan, J.S. Garth, *Delimiting the Culture Defense*, ‘Quinnipiac Law Review’ 2007, vol. 26, no. 1, pp. 109–146; J. Bojarski, M. Leciak, *Polskie interkulturowe prawo karne(?) – niektóre aspekty tzw. obrony przez kulturę*, (in:) A. Adamski, J. Bojarski, P. Chrzczonowicz, M. Lecia (eds.), *Nauki penalne wobec szybkich przemian socjokulturowych. Księga jubileuszowa Profesora Mariana Filara*, Toruń 2012, pp. 75–96.

24 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 169–179.

25 L. Gardocki, *Zagadnienia teorii kryminalizacji*, Warsaw 1990, pp. 54–76; M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 198–200.

26 J. Warylewski, *Wybrane...*, *op. cit.*, p. 197.

27 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 191–192.

28 D. Bek, *Przepięstwa motywowane kulturowo – kierunki możliwych ocen prawnokarnych*, ‘Chorzowskie Studia Polityczne’ 2015, no. 10, p. 129.

criminal law has to be the *ultima ratio*.<sup>29</sup> This would undoubtedly have an impact on a decrease in crime, as criminal laws would include fewer types of criminal acts, contained in provisions that protect the most basic and universally recognized values, such as life. However, this would not translate into a level of social security. After all, behaviours that are currently perceived as socially harmful and punishable would not cease to be acts that cause actual harm to someone just because the legislature decided so.<sup>30</sup> In fact, therefore, it is likely that the number of behaviours actually causing harm would remain at a similar level as in the current situation, or even increase due to the lack of threatening sanctions. Such a situation would be detrimental to the existence and functioning of society, since it is likely that many of its members would be deprived of state protection. This could lead to social life becoming anarchic, with the emergence of frequent individual efforts to administer justice to the perpetrators of wrongdoing and a lack of obedience to the legal norm, since behaviour in accordance with it would not guarantee safety and security.

Paradoxically, a much more complicated situation is created when one can distinguish culturally different groups within a society; let us call them the local community and newcomers. Each of them uses different cultural codes, a different language, has different customs and a separate system of social norms, including moral and legal ones. This is a situation referred to as cultural conflict.<sup>31</sup> Even within traditional society there was some differentiation in language, culture and customs, but not in law. Meanwhile, in a situation where newcomers form a closed group within the established community, we are dealing with two systems: that of the local community – the ‘legal’ system, guarded by the state, – and that of the newcomers – an informal system, usually at least in some part inconsistent with (and contradictory to) the formally binding system. There is usually no flow of information between these groups. The newcomers often do not know the language of the local community. Usually, the state makes an effort to create opportunities for newcomers to familiarize themselves with the social and legal rules of their place of residence. However, newcomers are not always interested in learning and assimilating the local rules of conduct; they remain in a closed enclave, and so as long as they commit prohibited acts within it, the state in whose territory they remain does not activate the coercive apparatus.<sup>32</sup>

29 M. Budyn-Kulik, *Aksjologiczne...*, *op. cit.*, pp. 174–175, 216.

30 Another question beyond the scope of this study is whether a cultural factor may be relevant in assessing the degree of social harm. See D. Bek, *Znaczenie odmienności kulturowej sprawcy dla oceny stopnia społecznej szkodliwości czynu zabronionego*, *‘Studia Prawnicze. Rozprawy i Materiały’* 2014, vol. 1, no. 14, pp. 109–122.

31 P. Chmiel-Antoniuk, M. Duda, M. Ickiewicz-Sawicka, *Kultura...*, *op. cit.*, pp. 31–32; M. Grzyb, *Przestępstwa...*, *op. cit.*, p. 64; also see D. Bek, *Przestępstwa...*, *op. cit.*, pp. 119–131.

32 A. Kleczkowska, *Rola...*, *op. cit.*, pp. 71–72.

### 3. Selected victimological and criminological aspects of crime in enclaves

Seemingly, such a situation (the existence of an isolated, enclosed community) benefits both the newcomers and the local community. The enclave border protects the newcomers from external crime. It is worth recalling that according to von Hentig, such an immigrant community is more vulnerable to victimization due to unfamiliarity with the language and local rules of conduct (the legal system). He singled it out as a separate general class in the classification of crime victims.<sup>33</sup> Lack of contact with the local community, or only limited contact, undoubtedly reduces the risk of external victimization. The issue of the level of internal victimization, on the other hand, is somewhat more complicated. On the one hand, the state (the local community) has no insight into what is happening inside the enclave, and thus cannot control the level of crime or influence the legal consciousness of local community members to form appropriate attitudes. The level of crime inside the enclave remains undisclosed. However, it must not exceed a certain level, as this could attract the interest of state authorities. This implies the need for the enclave to create its own alternative to the state legal system and the bodies that guard it. Among other things, their task is to ensure that information about criminal acts committed and the types of responses to them is maintained inside the (enclave) borders. From the perspective of the newcomer, the social rules in the enclave are no different from those they would have to respect in their own country. The level and risk of internal victimization should not be significantly higher than before they left their homeland.

However, maintaining such an enclave as a kind of 'extraterritorial area' would not be appropriate for a number of reasons. Allowing the cultivation of customs that are completely foreign to the local community in the name of a misconceived openness to foreign cultures could lead to a number of negative social consequences.<sup>34</sup> One of these could be an increase in crime and a change in its structure. This is clearly seen when the various possible arrangements of perpetrator and victim are analysed: the perpetrator and the victim belong to the newcomer community; the perpetrator belongs to the newcomer community and the victim to the local community; the perpetrator belongs to the local community and the victim to the newcomer community; both perpetrator and victim belong to the local community. The last situation is beyond the scope of the subject of this paper. In the case where the perpetrator belongs to the local community and the victim does not, one can consider the commit-

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33 H. von Hentig, *The Criminal and His Victim: Studies in the Sociobiology of Crime*, New York 1948, pp. 414–418.

34 M. Grzyb, *Wymuszone małżeństwa – kryminalizować, czy nie kryminalizować? 'Biuletyn PTK' 2010/2011, no. 19, pp. 67–85; M. Dudek, Czy każda kultura zasługuje na obronę? Kilka wątpliwości dotyczących cultural defence i prawa karnego w dobie multikulturalizmu, 'Archiwum Filozofii Prawa i Filozofii Społecznej' 2011, no. 2, pp. 47–59.*



ting of a so-called hate crime, which is also outside my scope.<sup>35</sup> The other two options will be discussed below.

### 3.1. Committing of a criminal act when the perpetrator and the victim belong to the same cultural circle

If both the perpetrator and the victim belong to the same cultural circle and are members of a closed community, the likelihood of disclosure of information about the committing of the criminal act is low. The contractual boundaries of the enclave determine the extent of the 'internal' jurisdiction of informal bodies. At the same time, they also provide a barrier, so that members of the local community remain relatively safe. From their point of view, covert, internal behaviour is indifferent. However, the question arises of whether the state should also remain indifferent.<sup>36</sup> A lack of interest in the internal functioning of the newcomer community means acceptance of possible behaviour that does not comply with national criminal norms and the emergence of an alternative legal system within the state. This is an unacceptable state of affairs from the perspective of the proper functioning of the state, which loses control over compliance with the law in its own territory. Depending on the assessment of the behaviour in question in the law of newcomers and that of the local community, the consequences of such a situation will vary somewhat.

If the perpetrator and the victim belong to the same cultural circle, the following options are possible: when the committed act is a crime under local law but not in the newcomer group; when the committed act is a crime under newcomer law but not under local law; and when it is a crime under both local and newcomer law. For obvious reasons, it is outside the scope of consideration when the act is not a crime in any of these communities.

The first state of affairs is that the perpetrator and the victim belong to the same cultural circle, and the act is a crime under local law but not in the group of newcomers. It is important to remember that even if a given behaviour is accepted in the community of newcomers and is not threatened with punishment, this does not mean that it is not perceived as inappropriate and the person against whom it is directed does not perceive it as a harm. In such a case, the victim is deprived of legal protection both inside and outside the enclave. It seems that, among other things, this was the situation that von Hentig had in mind when he created the general class of immigrants and minorities. The enclave's border restricts the aggrieved person from seek-

35 See for example M. Duda, *Przestępstwa z nienawiści w świetle teorii i praktyki orzecznictwa*, (in:) W. Pływaczewski, P. Lubiewski (eds.), *Współczesne ekstremizmy. Geneza, przejawy, przeciwdziałanie*, Olsztyn 2014, pp. 68–79; P. Chmiel-Antoniuk, M. Duda, M. Ickiewicz-Sawicka, *Kultura...*, *op. cit.*, pp. 53–74; M. Leciak, *Konflikty...*, *op. cit.*, pp. 119–120.

36 A. Śliz, M.S. Szczepański, *Pożądane, dozwolone czy zakazane? Refleksje o granicach wielokulturowości*, (in:) M. Biernacka, K. Krzysztofek, A. Sadowski (eds.), *Spółczesność wielokulturowa – nowe wyzwania i zagrożenia*, Białystok 2012, pp. 37–56.

ing help – not only because of the language barrier and lack of knowledge about the structure and functioning of the authorities obliged to provide assistance and about the rights to which they are entitled, but primarily because of the internal imperative of loyalty to one's own group. In this case, overstepping the mark in seeking help could entail serious consequences for the victim – from being thrown outside the community to loss of life.

The behaviour which is a crime outside the enclave can also be perceived in the community of newcomers as perfectly acceptable, unquestionable as to moral judgments, and not socially harmful. From an external, victimological point of view, we are dealing here (respectively) with a so-called victimless crime. Although for an objective observer a person is harmed, subjectively he/she does not perceive it that way, but rather he/she approves of (or condones) the perpetrator's behaviour.

The problem arises as to whether the local community (and the state) should interfere in such a situation. It seems that neither the fact of belonging to the same cultural group nor the fact that the person concerned has given consent to such behaviour against him/her should determine the legality of the behaviour in question. An example of this could be sexual intercourse with a minor under the age of 15.<sup>37</sup> The rationale for the relevance of consent to harm functioning in criminal law would have to be applied here, respectively. If the perpetrator's behaviour harmed things that cannot be freely disposed of under criminal law (such as life or health), the victim's consent would remain irrelevant. The situation would have to be evaluated similarly if other requirements, such as the age of the consenting party, were not met. Making a failure to hold the perpetrator criminally liable dependent on the customs of the group of newcomers would result in different treatment of residents of a given state, which would be incompatible with the standard of equal treatment and non-discrimination.<sup>38</sup> In Poland, this derives from Article 32 of the Constitution.

The circumstance that the victim gave consent, valid from the perspective of his/her own ethnic group but irrelevant under domestic criminal law, could in some cases be taken into account on general principles as a mitigating circumstance affecting the penalty. However, it should be borne in mind that, in the case of certain crimes, the state may be obliged to omit cultural justification by conventions to which it is a party. This is the case, for example, with violence against women.<sup>39</sup> In such a personal arrangement, the question of the applicability of the so-called culture defence becomes relevant.

The second situation is that the perpetrator and the victim belong to the same cultural circle, and the act is a crime under the law of the newcomers but not under

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37 M. Leciak, *Konflikty...*, *op. cit.*, p. 121.

38 M.M. Kania, *Spory...*, *op. cit.*, pp. 153–155; O. Sitarz, *Culture...*, *op. cit.*, pp. 647–649.

39 Art. 12 pkt 5, Konwencji Rady Europy o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej, sporządzona w Stambule dnia 11 maja 2011 r. (Dz.U. poz. 961).

local law. In this case, the perpetrator's behaviour itself is outside the interest of the state. On the other hand, possible acts of repression inflicted by the informal internal justice organs in the enclave, if they meet the criteria of a crime (e.g. deprivation of liberty, flogging, mutilation), should trigger state interference. If these internal sanctions do not fulfil the hallmarks of the type of criminal act, the fact of imposing some kind of sanctions on the perpetrator should be treated on a similar basis to disciplinary punishment within a professional corporation.

Another situational arrangement is that the perpetrator and victim belong to the same cultural circle and the act is a crime under both local and newcomer laws. If the perpetrator's behaviour fulfils the hallmarks of a crime, they should be punished under the rules of the local community (in the state), regardless of whether they have suffered any sanctions inside their own community, under its laws. What remains relevant is the question of whether representatives of the internal justice system should be held accountable if they violate the provisions of state criminal law.

### **3.2. Committing a criminal act when the perpetrator is a newcomer and the victim is a member of the local community**

This group can also include cases where the perpetrators belong to the same enclosed community (or to two different enclosed communities), but the act is committed beyond the enclave – outside. This is a situation where the enclave boundary is not a barrier to internal crime. From the point of view of the local community, it is the least desirable and most dangerous situation.<sup>40</sup> The enclave boundary in this case

40 Sweden is currently struggling with this problem; see PolskieRadio24, 'W Sztokholmie działają 52 zorganizowane grupy przestępcze. Gangi są coraz brutalniejsze', <https://polskieradio24.pl/5/1223/artykul/2842157,w-sztokholmie-dzialaja-52-zorganizowane-grupy-przestepcze-gangi-sa-coraz-brutalniejsze> (19.09.2022); Szwecja.net, '“Zakazane dzielnice” w Szwecji', <http://szwecja.net/NOW/fs-now/2017/Zakazane.html> (19.09.2022); Nettavisen Nyheter, 'Oto cała prawda o szwedzkich strefach “no-go”', <https://www.nettavisen.no/polsk/oto-ca-a-prawda-o-szwedzkich-strefach-no-go/s/12-95-3423368624> (19.09.2022); TVN24, 'Muzułmański problem Szwecji. Płonące przedmieścia Sztokholmu', <https://tvn24.pl/swiat/muzulmanski-problem-szwecji-plonace-przedmiescia-sztokholmu-ra472381-3413500> (19.09.2022); TVP.info, 'Wzrost przestępczości w Szwecji. Szef policji podał przyczyny', <https://www.tvp.info/57904971/szwecja-szef-policji-anders-thornberg-wzrost-przestepczosci-wynika-z-migracji-i-braku-integracji> (19.09.2022); Forsal.pl, 'Rekordowa liczba strzelanin w Szwecji. “Potrzebujemy przelamać negatywny trend”', <https://forsal.pl/swiat/aktualnosci/artykuly/8082046,rekordowa-liczba-strzelanin-w-szwecji-potrzebujemy-przelamac-negatywny-trend.html> (19.09.2022); M. Gębski, 'Szwecja na czele niechlubnego zestawienia... czas na zmianę?', <https://www.forum-ekonomiczne.pl/szwecja-na-czele-niechlubnego-zestawieniaczas-na-zmiane/> (19.09.2022); Dziennik.pl, 'W Szwecji ginie najwięcej na million mieszkańców osób w strzelaninach w Europie', <https://wiadomosci.dziennik.pl/swiat/artykuly/8240499,szwecja-przestepczosc.html> (19.09.2022); Dziennik.pl, 'Szwecja szkodzi... , op. cit. On Norway, see PolskieRadio24, '“To może się powtórzyć”. Po ataku w Kongsbergu norweskie służby wskazują na problem “otwartego” społeczeństwa', <https://polskieradio24.pl/5/1223/artykul/2833322,to-moze-sie-powtorzyc-po-ataku-w-kongsbergu-norweskie-sluzby-wskazuja-na-problemy-otwartego-spoleczenstwa> (19.09.2022).

works to the advantage of the enclosed group, making it difficult or impossible to capture the perpetrator, helping them to avoid external justice.

When an act targets a member of the local community, the state usually tries to activate the criminal justice system. The committing of the act may or may not be related to cultural or ethnic differences. The perpetrator may commit a criminal act belonging to 'ordinary' crime, such as theft. In some cases, the newcomer's behaviour may result from a lack of knowledge of local customs or social norms and an inappropriate, culturally anchored, interpretation of, for example, body language. The perpetrator's conduct may then be viewed as an error, primarily in law. In such a situation, it seems that invoking the culture defence is not justified.

The most difficult situation arises when crime from the enclave 'comes out' in a wide area, for example, two organized crime groups formed within two different enclosed communities fight for influence and territory. Although, ostensibly, members of the local community are not the focus of the perpetrators, they may become accidental victims, and their quality of life and sense of security is reduced.

## Conclusions

Multiculturalism and the diffusion of cultures represent some of the greatest challenges of the modern world, on many levels. One of them is crime prevention and prevention. None of the presented attitudes towards different cultures (assimilation, relativization, etc.) and none of the adopted models of multicultural society allow the avoidance of problems<sup>41</sup> or guarantee that existing differences in customs, beliefs and social rules will not generate situations leading to the committing of criminal acts. Openness to new cultural patterns must be balanced with the need to ensure security – both for newcomers and members of the local community.

The smooth interpenetration of cultures, when they are characterized by significant diversity in terms of adopted moral and legal systems, may be unfavourable from the perspective of building the legal awareness of society and shaping appropriate attitudes to the observance of the law. Finding an axiological compromise may turn out to be impossible or very difficult, which may lead to negative consequences in the form of disobedience to a law perceived as unjust.

The existence of a closed, isolated community within the state, different from the 'indigenous' inhabitants in terms of culture, customs and law, may lead to situations that are complicated in terms of victimology and criminology. The most problems arise when the perpetrator and the victim belong to two different groups, the enclave and the local inhabitants. Allowing a state to exist within the state, as an 'extraterritorial' group governed by its own laws and not recognizing local laws, is danger-

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41 See more in D. Mikucka-Wójtowicz, R. Kopeć (eds.), *Kwestie narodowościowe w świetle procesów integracyjnych w Europie*, Cracow 2009.

ous in many respects. It can even lead to undermining the sovereignty of the state. It seems that the solution that potentially causes the fewest negative consequences is relatively conservative multiculturalism, consisting in introducing into the domestic legal order those solutions that are not obviously inconsistent with domestic regulations. This study is of a contributory nature; a thorough analysis of the presented issues would require a much more extensive monographic study.

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