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Chapter 3: Criminal Justice in Numbers

Kirstin Drenkhahn, Fabien Jobard and Shain Morisse

Abstract

This chapter provides key figures on the French and German criminal justice system in a comparative and longitudinal perspective. It also gives a quick overview of the vast body of German and French research on the development of domestic criminal justice statistics. These statistics on the input (police), output (convictions) and backend (prisons) of French and German criminal justice also give a hint on whether the intentions of the law (Ch. 2) are fulfilled.

Introduction

This chapter provides key figures on the French and German criminal justice systems in a comparative longitudinal perspective from the 1970s onwards. As the way that criminal justice statistics are collected changes over time and differs between the two countries, this chapter can only give an estimate. Still, this is an estimation of the input into the criminal justice system, the processing, and the output into prisons and probation on which criminal justice policy is – sometimes – based, the administration bases the planning and running of the system, and that the public hears and reads about in the news. Statistics only show data but do not explain. Therefore, the chapter also provides a brief overview of the vast body of German and French research on the development of domestic criminal justice statistics.

The Organization of Criminal Justice: Federalist vs. Centralized

The way in which criminal justice statistics are collected and published not only has to do with ideas of transparency of government activity, but also with the organization of the criminal justice system itself. In Germany with its federalist polity, the administration of justice is situated on both the federal level and the level of the states (*Länder*). Thus, each state has its own Minister of Justice, in addition to the federal Minister of Justice. However, it is the *Länder*

that have the main responsibility for the administration of criminal justice including police, prosecution services, courts, prisons, and the probation service. Although there are federal courts with the Federal Court of Justice as the last instance in criminal law and the Federal Constitutional Court as the most relevant judicial institutions for the development of criminal law, there are no federal prisons. Most of the law relevant to criminal justice is federal law with the notable exception of prison law which was devolved in the reform of the federal system in 2006. In addition, the *Länder* have their own legislative powers in the areas of security, public order, and police. The German police system is therefore also highly decentralized and takes the form of a sum of regional police forces spread over the 16 *Länder*, including three city-states (Berlin, Bremen, and Hamburg). Police is not coordinated by the federal Minister of the Interior, but by the conference of the 17 Ministers of the Interior (*Länder* and federal). However, there are also federal organizations with jurisdiction over the entire territory: The Federal Criminal Police Office (*Bundeskriminalamt*) is responsible for transnational organized crime and supports local criminal investigations, and the Federal Police (*Bundespolizei*, until 2005 *Bundesgrenzschutz* – Federal Border Police) is responsible for border protection, railroad police and air safety. Both are under the authority of the federal Ministry of the Interior.

By contrast, France has a highly unitary and centralized model of criminal justice administration, managed by the French government, and marked by a long bureaucratic chain, even if the differences in penal practices between jurisdictions in the different regions may be greater than between German *Länder*. The Ministry of Justice is responsible for the operation and management of the prosecution services, courts and prisons throughout the country. In addition, beyond a residual territorial police force (municipal and rural), France has a powerful centralized police service, controlled by the Ministry of the Interior, whose two main bodies are the national police (civilian) and the national gendarmerie (military).

One of the major differences between the French and German judicial systems is the resources allocated to them respectively. French justice is known to be structurally slow because it is underfunded compared to its European counterparts and in relation to national wealth. The European Commission for the Efficiency of Justice (CEPEJ) notes this in each of its evaluation reports on the efficiency and quality of justice, which compares 45 Council of Europe member states. Thus, the dashboard report of the budget of judicial systems shows that in 2018, for the operation of all of its courts and tribunals, the prosecution service and legal aid, France spent 69.90 Euros per capita – almost half of what Germany spent (131.20 Euros per capita). The situation in France is also critical in terms of human resources, since it has only eleven professional judges per 100,000 inhabitants, compared to 24.5 in Germany and 17 as the European median, and less than half of the number of prosecutors per 100,000 of the population than Germany (3 vs. 7) and a quarter of the European median (11.2). Moreover, French prosecutors are also among those who have the most cases to handle with currently 6.6 incoming cases per 100,000 of the population or 2,201 cases per prosecutor. The respective numbers for Germany are 5.92 and 836.2, the European median is 2.1 and 189.6 respectively. So, French prosecutors seem to have to deal with a lot more work than German prosecutors even when taking into account that the investigating judges in France do some of the work that German prosecution services do. This distribution of work also contributes to the problem because the investigating judges are part of the smaller workforce of the judiciary. Still, in both systems the number of discontinued cases per prosecutor is remarkably higher than the European median which means that in any form of written conclusion of a case, prosecutors and judges save time that they otherwise would have to spend in the trial hearings. In Germany, it is 475 cases, in France 1503, and the European median is 74.5. While these numbers are also a reflection of the distribution of competences in different criminal justice systems and discontinuance of proceedings on the level of the prosecution service is one of the ways that

criminal justice system deal with overload (Jehle and Wade 2006; Wade 2019), this shows that this stage is crucial for both France and Germany.

Documenting the work of the criminal justice system: Official statistics

Although both France and Germany have statistics on a broad range of aspects of the criminal justice system, a meaningful comparison of the data is easier said than done. On the French side, there are problems with the availability of some statistics even though they have been collected over a long period of time because the entity that is responsible for collecting the data has changed or the name and scope of the statistics itself has changed. Also in recent years, the data usually differentiate between France Métropolitaine (Continental European France) and France Entière including the overseas territories (Insee 2017). We are using the data relating to France Metro unless indicated otherwise and thus exclude the overseas territories because of the longer periods that we are referring to.

On the German side, we work with the data of the old Federal Republic of Germany and re-unified Germany. Thus, no data from the German Democratic Republic are included. In the light of the literature on the political economy of punishment as well as geo-politics, East and West Germany were different countries with different systems: the East a socialist planned economy and the West a capitalist conservative-corporatist state. Statistics for the West were and are collected by the Federal Statistical Office (*Statistisches Bundesamt*) except for the police statistics that are put together by the Federal Criminal Police Office. The material is available online either since the early 1950s (registered crime since 1953, convictions since 1950) or since the start of the collection (prison population). Also, it has taken several years after the re-unification to integrate data from the East German federal states into the federal statistics (convictions only since 2007) and there are important aspects of the criminal justice

system where there are no integrated statistics at all (probation since a few years, forensic psychiatry).

In Germany, data on crime is recorded in a police statistic that relates to all criminal offence (felonies and misdemeanours), so the category of petty offences/contraventions of the French Code pénal is excluded. It should be noted, though, that the legal definitions of petty offences, misdemeanors and felonies are different in France and Germany (see. Ch. 2). Since 1971, the data have been recorded at the end of the police investigation right before the files are sent to the prosecution service or the court. All reports since 1953 are available online at the Federal Criminal Police Office's website (Bundeskriminalamt 2022).

The French police have been collecting data about registered crime in a uniform way since 1972 in an administrative document that is called "état 4001". The data are collected monthly and – as in Germany – at the end of the police investigation and relate to felonies and misdemeanours, contraventions are excluded as well even though they are processed in the criminal justice system. Since 2014, a newly created Statistical Service with the Ministry of the Interior (SSMSI) is in charge of collecting the police statistics (Estival and Filatriau 2019, 224 f.). The monthly data are published online on the Open Platform of French Public Data going back to 1996 (data.gouv.fr 2020). Earlier data were published on paper by the Ministry of the Interior, but we were able to rely on digitalized data from colleagues in the *Centre de recherches Sociologiques sur le Droit et les Institutions Pénales* (Cesdip).

The outcome of criminal trials in Germany is recorded in a data collection by the Federal Statistical Office which is published online. French statistics on judgements ("Les condamnations") is collected by the Statistics and Research Unit of the Ministry of Justice (*Sous-direction de la Statistique et des Études*). The data that are available online go back to 2004. For earlier years, there are paper publications.

No comparison is possible for the large area of probation and parole because the data collection on the federal level in Germany has stopped in 2009, so for more than ten years now there are only figures for some federal states. There is a large publication by Heinz (2022), though, with unpublished data about more than 50 years of probation. A quantitative comparison of other community sanctions and measures is also not possible because of the huge differences in the array of these sanctions in the two countries (Ch. 2).

The Federal Statistical Office also collects the data on the prison population, since 1961. The main annual reference date is March 31. Flow statistics have only been included since 2019. The data are available online for 1991 or 2003 onwards depending on the specific statistical series (Statistisches Bundesamt, ongoing). For earlier years, there are paper publications. In France, data on prisons are collected by the Directorate of the Prison Administration (DAP) at the Ministry of Justice. The stock and flow data were collected and published monthly on the website of the DAP until 2018, since 2019 data are presented for four dates per year (January 1, April 1, July 1, and October 1; DAP 2019). These current statistics are available online from 2007 on. Data from 1980 to 2014 are available in a separate publication online (DAP 2014). Earlier data were taken from a report by Tournier (1985) to the Ministry of Justice. In French publications, usually data from January 1 are referenced.

If one has a closer look at the French and German criminal justice statistics, it becomes clear that any data-based comparison will have to use very broad indicators because the data that the national statistics for police, prosecution service and courts, judgments in criminal trials and prisons provide differ considerably. In addition, when we look at the outcome of criminal trials, the wide range of sanctions in French criminal law as opposed to the relatively narrow range in German criminal law make it difficult to do a meaningful comparison for all sanctions. Also, the population size in the two countries differs considerably. In order to neutralise the different population sizes, we are using numbers per 100,000 of the population. The population statistics

were retrieved from the Federal Statistical Office for Germany (Statistisches Bundesamt, n.d.) and for France from the National Institute of Statistics and Economic Research (Insee, 2020). The numbers for Germany are provided for December 31 of the given year, the numbers for France for January 1. We are using the data for Germany of December 31 for the beginning of the following year, January 1.

The Official Picture of Criminal Justice

So, with all the limitations and potential pitfalls in mind, we present the input into the criminal justice system in terms of the caseload that the police pass on to the prosecution service and the courts, the outcome of criminal trials in terms of convictions as well as convictions carrying a prison sentence with direct imprisonment or probation and the number of incarcerated persons. The number of cases per 100,000 of the population that the police hands over to the next in line in criminal proceedings (Fig. 3.1) is higher in Germany than it is in France – but the French police statistics do not include petty offences, which nonetheless reach the prosecution service. In both countries, the trend line shows that the rate of cases has been growing for the period documented, although there are ups and downs as well as a decline that is more pronounced in France than in Germany since the early 2000s. Still, this rise from 1970 to around 2000 does not mean that there was a massive and crime surge in both countries. Even though there probably is an increase of seemingly illegal behavior (e.g. drug trafficking), a lot of the increase rather has to do with changing social practices about suspicious behavior. Social control has been formalized and transferred more and more from persons in the immediate social environment to police and other officials, so behaviours that would not have been reported earlier are now reported and registered in the police statistics (Schwind et al. 2001). Still, the rise in the number of cases in Germany during the 1990s is usually attributed to the difficulties after the reunification. The bump in Germany in 2015 and 2016 is a result of the large number

of criminal immigration law violations of refugees crossing the borders. The prosecution services dropped almost all these cases immediately. Still, the police had to register these cases because only the prosecution service decides about whether to pursue or not (see Ch. 2).

<insert Figure 3.1 about here >

As for the outcome of criminal proceedings, there are more ways to describe the handling of criminal cases by prosecution services and courts than just looking at the number of convictions. For example, in Germany, a very important number is the percentage of cases where the prosecution service could indict but dismisses the case because of negligibility in cases of misdemeanours up to medium severity – that is about 50 percent (Jehle 2009, 19). In France, about the same percentage of cases that are indictable do not go to trial, too (Sous-direction de la Statistiques et des Etudes 2018, 14), but the proceedings are different from those in the Germany system (Ch. 2). Still, in both countries only half of the cases that could go to trial do so. Fig. 3.2 and 3.3 show the filtering process for 2019 – before the Covid 19-pandemic – in both countries. Since petty offences do not appear in the French police statistics, but the statistics for the prosecution services, Fig. 3.3 provides the entries at the prosecution service as the starting point. These figures not only show the massive loss of cases at the prosecution level, but also hint to an important difference in the outcome of the proceedings – the different number and percentage of prison sentences.

<insert Figure 3.2 about here >

<insert Figure 3.3 about here >

For the outcome of these trials, the indicator that does not need further clarification is the number of convictions. Fig. 3.4 shows the number of convictions per 100,000 of the population. In Germany, the convictions statistics provide such a number, but since 1994, this is the number of convictions of German citizens per 100,000 German citizens. Before, foreign nationals were included. As we are using longitudinal data, we calculated the number of convictions per 100,000 residents from 1994 onwards. Until about 2007, this number was a lower in France than in Germany, since then the development is almost parallel and shows a decline that is a bit steeper in Germany than in France. Still, the trend for both countries is a decline in the number of convictions. For Germany, this development somewhat mirrors the development in the police statistics, while in France, the input into the system by the police has remained on the same level for some years with the decline in the police statistics having stopped already in 2011 (see Fig. 3.1).

<insert Figure 3.4 (conviction per pop) about here>

For convictions carrying a prison sentence (Fig. 3.5), absolute numbers in France are almost triple the numbers in Germany: 275,739 in France vs. 102,539 in Germany in 2019. In both countries in only one third of the cases, the sentence carries an unsuspended prison sentence – two thirds of these convicts effectively receive a community sanction (Fig. 3.6). Still, the very high number of prison sentences in France is remarkable given the strong emphasis on individualization in sentencing as opposed to finding a measure for the individual guilt in Germany and the large variety of sanctions that the French sanctions system provides (see Ch. 2). This strongly suggests a distance between penal theory and practice, especially in France.

<insert Figure 3.5 (no of prison sentences) about here>

<insert Figure 3.6 (prison and probation) about here>

The constant and relatively high input into the French prison system has led to a range of problems in the prisons including overcrowding. France has been admonished for this by the European Court of Human Rights with a view to respect for the dignity of inmates which has led to several options to serve custodial sentences outside, e.g. under electronic surveillance (Lévy 2012). From about 1,000 in 2005, the population of people sentenced to prison serving their sentence outside prison has risen to 5,000 in 2010 and 10,000 in 2019. Now about 80,000 people are counted as prisoners, but the number of persons actually in prisons is at about 70,000, which is still more than in Germany with its larger population size. For the longer term, the development is remarkably different, as Fig. 3.7 shows, even though France and Germany are generally considered to have quite similar prison population rates. But this is not the case.

<insert Figure 3.7 (prison pop rate) about here>

The trend lines since 1970 show a small increase of the number of prisoners per 100,000 of the population in Germany and a marked increase in France. Still, one has to keep mind that the prison population rate in France in the 1970s was a lot lower than in West Germany, even though the criminal law reform in West Germany at the end of the 1960s/early 1970s abolished short term detention for petty offences and thus limited the potential input. The increase until the mid-1980s is usually explained with an increase in drug offenses and related crime as well as increased activities of the law enforcement agencies against terrorist activities by the Red Army Faction and similar groups (Drenkhahn 2013, 70; 2022, 100; Savelsberg 1994). While Germany then “benefitted” from the amnesties in the late German Democratic Republic in

1989/1990 (Dünkel 1995) and the gradual uptake of prisoners in the new Eastern federal states in the 1990s (included in the statistics since 1992), France did not experience such a relief.

Since the early 2000s, the development started to diverge and has been very different for the past 20 years. While the number of prisoners and the prison population rate have been on a steady decline in Germany since 2004, the absolute number and the rate in France have been rising steadily. The reasons for the development in Germany are manifold with one important factor being the changing demographics with a remarkable decline of the number of births since the reunification and thus fewer young men who usually are the main target group of criminal justice activities (Drenkhahn 2013, 77). Another reason is that there is less input into the system. The number of pre-trial detainees had reached a high in 1994 with 21,785 persons and then declined to 11,359 in 2015. The numbers had risen by about 3,000 again before the pandemic (Drenkhahn 2022, 102 f.). There is also the decline in the absolute number of prison sentences since 2010 and the decline of the rate of prison sentences since 2004 with a stable percentage of sentences for prison on probation (Fig. 3.5 and 3.6). Other reasons may be the diversion of convicts with serious crimes from the prison system to forensic psychiatric hospitals including custodial drug treatment. Unfortunately, there is no federal data on this branch of the system of sanctions since 2012, but from 1995 to 2011 the number of forensic patients more than doubled from less about 4,200 to about 10,000. There also seems to be a considerable proportion of plea bargains in court that probably lead to shorter sentences (Drenkhahn 2013, 74 ff.; Dünkel and Morgenstern 2010; Heinz 2012).

In France, the steady increase since the mid-1970s sped up during the early 2000s. From 2001 to 2005, the prison population grew by 10,000 which is half of the overall increase since then. For many French authors (Salas 2005; Danet 2006; Wacquant 2009; Lameyre 2012; see also the contributions in Harcourt and Mucchielli 2009), the French development deserves the notion of a “punitive turn”. But this notion of a “punitive turn” is highly dependent on the

starting point: when exactly does the trend turn? If we look at the last 30 years, there is a real reversal in 2001. But if we consider the last 60 years, when France emerged from its various wars, the picture is a bit different. Indeed some of the early peaks in the prison population were a result of incarceration related to wars (1945: convicted collaborators, mid-1960s: Algerian pro-independence fighters and terrorists supporting a French Algeria). But then, the prison population rates more than doubled from the mid-1970s (49 in 1975) to the mid-1990s (96 in 1996). This slow “punitive turn”, which is not a real turn, had alerted observers already in the 1990s (Kensey and Tournier 1999). But this slowness is somewhat artificial because there were presidential pardons in 1981 and 1988 (Lévy 2006). The 1981 pardon led to the release of one seventh of the prison population. However, this only slowed down the upward development, but did not stop or reverse it. There is a sudden, but short decrease between 1996 and 2001 (96 to 81), followed by this “punitive turn” with a continuously rising prison population rate. If this goes on, France will leave to realm of the conservative-corporatist states with a medium prison population rate and maybe surpass the UK where the numbers seem to be on the decline (World Prison Brief 2022).

Still, the long-term perspective allows us to appreciate that things are not always as bad as they seem. So what appears to French observers as the 2000s punitive turn is a remarkable increase in the number of prisoners and the prison population rate, but this rate is dwarfed by the data from 1945 with 155 prisoners per 100,000 of the population. So, the 2000s punitive turn is part of a long-term development of a steady increase, which still is slow in comparison with liberal countries and French historical experiences.

So, even though in Germany the prison population rate seems to follow a general trend in criminal justice, there are more factors that contribute to this outcome than registered criminality. The French example also shows this very well and it becomes even clearer when taking a closer look at the circumstances surrounding the massive rise from 2002 to 2004

(Aubusson de Cavarlay 2009; Kensey 2010; Alcon-Lignereux and Kensey 2020). During this period, there is most of the initial growth of the punitive turn (+22 percent prisoners), with pre-trial detention as the driving force (+35 percent). But this is not the outcome of rising crime rates – it is an example of a reversal of the law by stakeholders in the criminal justice system. To reduce the number pre-trial detainees, a law was adopted on 15 June 2000 on the “presumption of innocence”, following several condemnations of France by the ECtHR for non-respect of reasonable lengths of pre-trial detention. In October 2001, a recidivist murderer killed two police officers at the scene of a robbery with hostage taking. He had recently been released from prison because of the excessive length of his pre-trial detention. The police and, more surprisingly, the gendarmes who are not allowed to demonstrate took this as an opportunity to go on strike and demonstrate throughout the autumn of 2001. They also burdened the courts with a considerable number of criminal proceedings. The courts and prosecution services followed up on these cases as not to fuel police anger. In this situation, a lot of suspects were put in pre-trial detention. The protest also led to substantial revisions of the law in 2002. After the conservatives won the presidential election in that year, a law was adopted on 9 September 2002 extending the range of offences that could be tried by speedy trial in the *comparution immédiate* proceedings where the delay is 48 hours from arrest to judgement (see Ch. 2). There, the rate of unsuspended prison sentences is much higher for certain offenses than in regular trials (Jobard and Névanen 2009). There are provisions for speedy trials in Germany, too, but this option is rarely used (10,606 trials in 2019) and limited to a maximum penalty of one year of imprisonment (see also Jehle 2009, 19; Provost 2022). In France in 2019, 55,061 verdicts were rendered in *comparution immédiate* proceedings, about 10 percent of the cases that go to court (Sous-direction de la Statistiques et des Etudes 2020a, 11). This same law allows pre-trial detention for a greater number of offences than before. Even though this leads mainly to short term prison stays, these legislative changes fuel the growth in prison entries. However,

this slowed down from 2007 onwards, due to the introduction of a variant of the penal order, *ordonnance pénale délictuelle*, which allows the prosecutor to propose a financial penalty to the offender. In addition, in the same years, electronic monitoring was further developed, offering another alternative to imprisonment. This control mode also contributes to limiting the number of pre-trial detentions, which fell sharply from 2004 onwards. In the end, the general increase in detention began to be contained from 2004 onwards, but started to rise again, in a much more moderate way than in 2001-2002, from 2008 onwards.

This new increase was mostly due to short sentences. Indeed, in those years, legislation focused on recidivism of petty crime with two laws on recidivism on 12 December 2005 and 10 August 2007. This 2007 law had not the desired effect, but it still contributed to the increase (Gautron, 2016): it limited the discretion of judges and the potential for the individualisation of sentences by requiring judges to impose a mandatory minimum sentence in the event of a second repeat offence. Less implemented than initially expected, due to resistance from judges (Leturcq 2012), it was abolished in 2014 under the socialist presidency of François Hollande. In the meantime, there were other events in legislation and in the society that had limiting and expanding effects on the prison population. But as an overall result, prison is increasingly populated by petty offenders. Convicts with sentences of at least five years represent 28 percent of those sentenced in 2010, whereas they represented 41 percent in 2002. It is now the offences of non-lethal violence that are punished by unconditional imprisonment (a quarter of convictions in 2010, i.e. four times more than in 1996). Overall, violent offences (non-lethal violence, homicide, sexual offences) accounted for almost half of all convictions in 2010, compared to barely a third in 1996. This effect is very interesting in comparison to Germany because there, the percentage of sentence to more than five years of imprisonment is even lower (1.3 percent of all prison sentences in 2010), but prison sentences account for less than 20 percent of all sentences (80 percent are fines) whereas it is more than 50 percent in France,

including in both cases executing the sentence in the community. This may have to do with the relatively little use of fines as a principal punishment in France (33 percent of all condemnations) – these are still formed as lump sums and not like in Germany as day fines (Ch. 2). In a system where punishment is primarily measured in (prison) time, day fines have the advantage of using the same gauge as prison sentences while lump sums have their own and different logic. Still, one must keep in mind that about 4,500-5,000 prisoners in Germany are serving a substitute prison term for not paying a fine and thus comprise about 10 percent of the sentenced prisoners (Drenkhahn 2022, 109 ff.)

The next push in France started with the tightening of anti-terrorist legislation in 2014 and the terrorist attacks of January and November 2015 which led to police overactivity and a sharp increase in pre-trial detention: from 2015 to 2020, the prison population increased by 6.5 percent. This is mainly due to pre-trial detention which was expanded by the six laws on the “state of emergency” (2015-2017) while the number of convictions and sentence length remained stable. Then as part of the repression of the “Gilets Jaunes” movement, 3,000 prison sentences were pronounced, including 450 convictions without probation. Two other types of “new” offences have been added to the stock in recent years: domestic violence and offences against the police and gendarmes. Continuing the trends of the 2000s, a quarter of detainees are now in prison for sentences of one year or less, and half of detainees are in prison for more than one case. As Ch. 6.3 will show, there was also a lot of legislative activity in Germany during that period, but since there is no general provision for an increase in penalty for recidivism, even the net-widening in criminal law did not push the number of prison sentences and prisoners.

Conclusion

The analysis and comparison of the statistical data creates an ambivalent picture with – again – important similarities but also significant differences. First of all, it is striking that the German criminal justice system has around one fifth more input in terms of registered cases per 100,000 of the population, but the rate of convictions has only been slightly higher (less than 10 percent) during the past few years. However, precaution is necessary, as these figures do not give sufficient information on e.g. the kind and quality of registered crime and the French police statistics do not include contraventions which are nonetheless included in the conviction statistics. Yet, moving along to the deep end of criminal justice – prison: the absolute number of prison sentences in France is more than double the number in Germany and the rate per capita more than three times higher. Considering the French sanctions system (see Ch. 2), this is quite surprising – one would think that a larger variety of community sanctions would reduce the allure of prison sentences drastically. But the top-heavy allocation of the scarce resources in France with a lot of checks in felony cases (see Ch. 2), hence few checks on the lower end, the need for written procedures and speedy trials with very little time for investigation and relatively high maximum sentences (two years in *comparution immédiate*) to cope with the overload as well as the problem of the fine as a lump sum provide a mix of problematic rules on sanctions and procedure that contribute to more prison sentences than in Germany. The prison population data show that even the 15 percent of unsuspended prison sentences that are served in the community do not really make a dent in this French penchant for custody. Considering prison sentences as *ultima ratio*, these figures suggest that the French state is more punitive than the German one.

In both countries, however, about 70 percent of all prison sentences are suspended. As the underlying rationale for the suspension of prison sentences is mostly based on the attempt to minimize the negative effects of imprisonment, this high proportion can be seen as a strong commitment to social reintegration in the practice of punishment as well as (notably in France)

the attempt to avoid prison like with execution of prison sentences under electronic monitoring. Prison in both countries stays the *ultima ratio*, the sentence to be avoided, in the domestic logic even if France's preference for short-term incarceration and fast-track justice weighs on the overall fate of the French justice system. Besides, attention to historical scales helps to avoid succumbing to the seduction of the present when analysing prison population trends. Thus, rather than a sudden "punitive turn" in the early 2000s, the development in France has been a steady, but mostly slow increase since the 1970s. Taken together, the data presented in this chapter confirm the ambivalent, multi-faceted and similar picture of the criminal justice system in both countries.

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