

Max-Planck-Institut  
für ausländisches und internationales Strafrecht  
Freiburg im Breisgau

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# Criminal Law in Reaction to State Crime

Comparative Insights into  
Transitional Processes

A Project Report



## **I. Introduction\***

“Criminal Law in Reaction to State Crime – Comparative Insights into Transitional Processes,” the international research project showcased here, was made possible by financial support from the *Volkswagen Foundation* and the *Stifterverband für die deutsche Wissenschaft*. This brochure introduces the project, explains its objectives and presents preliminary results.

The project addresses the question of how different legal systems have reacted to state crime committed prior to a change in political system. Over twenty countries in Europe, Latin-America, Africa and Asia are included in the study.

## **II. Project concept**

### **1. Questions presented**

Following the collapse of socialist systems in 1989, the countries of central, eastern and southeastern Europe (many of which are in the process of developing legal systems based on the rule of law) face a myriad of challenges and tests to their use of the criminal law in the attempt to come to terms with the past. The situation is particularly difficult when criminal justice authorities must decide how to deal with criminal acts that were committed prior to the regime change but that were not prosecuted then, primarily for system-related reasons. Moreover, it must not be forgotten in this context that, of the instruments available, the criminal law is a particularly sensitive device for measuring the influence of the rule-of-law in the aftermath of political upheaval.

- How does the law react, especially the criminal law, to state-supported crime committed before a political system change? Are political and state-sponsored crimes actually being prosecuted and punished after the fact or are there rule-of-law principles or legal institutions standing in the way of such efforts?
- Can it be said that the political will to prosecute exists or is a clean break with the past – achieved by granting offenders amnesty – preferred?
- How are the interests of victims of political crime accommodated?
- To what extent can future state-supported crime be prevented? To what extent must national criminal law yield to supranational criminal law in order effectively to prosecute the political and state-supported crime of a fallen political system?

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\* Translated by *Emily Silverman*, J.D. (Berkeley), LL.M. (Freiburg), Senior Researcher, Max Planck Institute for Foreign and International Criminal Law, Freiburg.

- How many different models for dealing with the crimes of a political system can be identified? What lessons gleaned from these models can be applied to a human rights-oriented national criminal law? What lessons can be applied during the transitional period to a criminal law-based model “policy for the past” (*Vergangenheitspolitik*)?<sup>1</sup>

These are only some of the questions that cannot be addressed satisfactorily without engaging in a process of comparative legal stock-taking. They are closely connected to an indispensable task of legal policy, namely, the search for methods that not only prevent and combat future political and state-sponsored crime but that do so without at the same time rendering reconciliation impossible.

Indeed, these problems are not unique to the post-socialist context; rather, they arise in all western European, Latin American, African and Asian countries that are either in the process of transition from dictatorship to democracy or have completed such a transition.

## 2. Significant methodological points

Although over 20 countries participated in the study, we do not claim to have produced a comprehensive, longitudinal survey of all the transformation- and transition-related research undertaken in the 20th century. Furthermore, in addition to the fallen socialist systems of eastern Europe, which constitute the starting point and the main focus of the project, a group of non-communist dictatorships and authoritarian systems has been included for comparative purposes.

The study is limited, first of all, to transitions. Our use of the term “transition” follows the lead of recent system-change research, conducted in the fields of social and political science, that has investigated primarily the change from a dictatorial or authoritarian system to a democratic one. Second, we have concentrated solely on regime changes that took place in the second half of the 20th century. This timeframe applies not only to the transition processes that began in eastern Europe in 1989 but also to the regime changes in various non-communist but non-democratic European countries such as Spain, Greece and Portugal. These *restrictions and limitations* were undertaken not least for purely practical reasons, i.e., we were interested in a project concept that involved a manageable amount of information and one that could be realised in a reasonable period of time.

Moreover, in the context of research on totalitarianism and authoritarianism, the following ambivalence must not be ignored: as massive human rights violations are associated with virtually all past totalitarian and authoritarian systems, our

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<sup>1</sup> The term “Vergangenheitspolitik” comes from the book by *Norbert Frei*, *Vergangenheitspolitik. Die Anfänge der Bundesrepublik und die NS-Vergangenheit*, München 1996.

goal is, on the one hand, to work out a theory of how the criminal law should respond to human rights violations committed during a dictatorship or, in other words, to develop guidelines for a human rights-oriented national criminal law. Thus, the limitation of the study to regime changes in the second half of the previous century does not necessarily take away from the validity of its conclusions. On the other hand, the varying degrees of magnitude of crime committed and the resulting need for differentiated legal responses must be taken into consideration. The crimes committed may be so different in terms of severity and type that the formulation of generally applicable guidelines may appear to be problematic. Thus, the scope and type of crime are important indications for the role of the law, particularly of the criminal law, in the confrontation with crime committed by totalitarian systems.

In a certain sense, the project is a political one. Since the choice of which method to utilise in dealing with the past appears to depend, to a great extent, on the concrete political system change at hand, a legal assessment of these choices cannot be undertaken in a political vacuum. To claim otherwise would be to indulge in an idealised view of the law, a view that at very least would fail to do justice to the relationship between regime change and subsequent legal responses.

### **3. Country selection**

Initial work on the project consisted in the preparation of country reports. These reports were written, for the most part, by external researchers based in the country under study; the Max Planck Institute for Foreign and International Criminal Law had already had long and fruitful ties with many of these scholars at the time the project began. The following countries, in alphabetical order, were included in the study:

- in Europe: Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Germany, Greece, Hungary, Lithuania, Poland, Portugal, Russia and Spain;
- in Latin America: Argentina, Brazil, Chile, Guatemala and Uruguay;
- in Africa: Ghana, Mali, Rwanda and South Africa;
- in Asia: China and South Korea.

On the basis of the country reports, a comparative legal cross-section will be prepared and legal policy conclusions drawn. Public international law and international criminal law aspects of dealing with the past after a political system change will be analysed in a separate report.

### III. Country rapporteurs and published reports<sup>2</sup>

#### 1. Members of the project group

*Jörg Arnold, Nora Karsten, Helmut Kreicker, Clivia Namgalies, Jan-Michael Simon, Julie Trappe*

#### 2. Included countries and country rapporteurs

**Europe:** Belarus (*Wladimir Khomitch*), Bulgaria (*Nikola Filchev, Lasar Gruev*), Czech Republic (*Lumír Crha, Jiří Pipek*), Estonia (*Jüri Saar, Jaan Sootak*), Georgia (*Otar Gamkrelidze, Siegfried Lammich*), Germany (*Helmut Kreicker, Martin Ludwig, Kai Rossig, Antje Rost, Stefan Zimmermann*), Greece (*Stéphanos Emm. Kareklás, Charis Papacharalambous*), Hungary (*Judit Udvaros*), Lithuania (*Siegfried Lammich, Vytautas Piesliakas*), Poland (*Ewa Weigend, Andrzej Zoll*), Portugal (*Peter Hünerfeld*), Russia (*Ludmila Obidina*), Spain (*Carlos Pérez del Valle, Miguel Torres Ayuso*)

**Latin America:** Argentina (*Marcelo A. Sancinetti, Marcelo Ferrante*), Brazil (*Fauzi Hassan Choukr*), Chile (*Salvador Millaleo Hernández*), Guatemala (*Jan-Michael Simon*), Uruguay (*Gonzalo D. Fernández*)

**Africa:** Ghana (*Novisi G. Vukor-Quarshie*), Mali (*Kumelio Koffi A. Afandé*), Rwanda (*Neil J. Kritz*), South Africa (*Clivia Namgalies, Barbara Huber*)

**Asia:** China (*Thomas Richter*), South Korea (*Byung-Sun Cho*)

#### 3. Published country reports

*Albin Eser/Jörg Arnold* (Hrsg.): *Strafrecht in Reaktion auf Systemunrecht – Vergleichende Einblicke in Transitionsprozesse. Criminal Law in Reaction to State Crime – Comparative Insights into Transitional Processes.*

S 82.1: *Internationales Kolloquium – International Colloquium.* Freiburg i.Br. 2000.

S 82.2: *Deutschland* (*Helmut Kreicker, Martin Ludwig, Kai Rossig, Antje Rost, Stefan Zimmermann*). Freiburg i.Br. 2000.

S 82.3: *Argentinien* (*Marcelo A. Sancinetti and Marcelo Ferrante* in collaboration with *Kai Ambos and Jan-Michael Simon*). Freiburg i.Br. 2002.

S 82.4: *Griechenland* (*Stéphanos Emm. Kareklás and Charis Papacharalambous* in collaboration with *Helmut Kreicker*). Freiburg i.Br. 2001.

S 82.5: *Polen* (*Ewa Weigend and Andrzej Zoll* in collaboration with *Helmut Kreicker*), *Ungarn* (*Judit Udvaros* in collaboration with *Julie Trappe*). Freiburg i.Br. 2002.

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<sup>2</sup> For more detailed information on the project, see <[www.iuscrim.mpg.de/forsch/straf/projekte/arnold0100\\_e.html](http://www.iuscrim.mpg.de/forsch/straf/projekte/arnold0100_e.html)>.

S 82.6: Mali (*Kumelio Koffi A. Afandé*), Ghana (*Novisi G. Vukor-Quarshie* in collaboration with *Helmut Kreicker*). Freiburg i.Br. 2002.

S 82.7: Rußland, Weißrußland, Georgien, Estland, Litauen (forthcoming).

#### IV. Models of criminal law reactions to state crime

##### 1. “Clean break,” “criminal prosecution” and “reconciliation” models

Throughout the project **three basic models** have been developed: the clean break model, the criminal prosecution model and the reconciliation model (see **diagram 1**).

Countries whose goal was the comprehensive criminal punishment of past state crime were assigned to the *criminal prosecution model*. This was evidently the case only in Germany. The *clean break model* encompassed both countries that engaged in no criminal prosecution of past state crime whatsoever (“absolute clean break model”) as well as those whose criminal law reaction targeted only selected offences or offenders (“relative clean break model”). A further differentiation made in this category (beyond the decision either to renounce prosecution entirely or to engage in limited prosecution) reflected the extent to which victims of state crime were rehabilitated. Countries assigned to the *reconciliation model* (most prominent representative: South Africa) were characterised by the attempt to rely less on the use of the criminal law and more on the ability of truth commissions to bring about reconciliation between offenders and victims.

The initial classification of countries to these three models yielded the following results: In a large number of eastern European countries, models embracing criminal rehabilitation and compensation of victims dominate, whereby these models differ significantly in both scope and detail. If the statutory schemes established in these areas are the only criteria considered, then rehabilitation can be deemed comprehensive in *Belarus, Bulgaria, Czech Republic, Germany, Hungary, Lithuania, Poland* and *Russia*; only a few eastern European countries (such as *Georgia*) have yet to promulgate statutes regulating criminal rehabilitation and compensation.

In addition to their endeavours in the area of rehabilitation and compensation, a number of eastern European countries have also made the effort to prosecute offenders. In *Hungary, Lithuania* and *Poland*, for example, criminal prosecution has targeted primarily a small group of particularly serious acts committed during specific periods of the socialist era. Prosecution in Hungary concentrates on events connected with the violent suppression of the revolution and the struggle for freedom in October, 1956; prosecution in Lithuania and Poland focuses pri-

marily on specific periods of the Stalinist era. Since achieving independence in 1990, Lithuania has prosecuted primarily homicides and torture-related offences committed in conjunction with the mass deportations of Lithuanians that were carried out between 1941 and the end of the war and during the post-war years (1945–1952). In Poland, criminal prosecution has targeted Stalinist crimes committed prior to 31 December 1956; criminal responsibility for the shooting of Gdansk dockyard workers during the unrest in 1970 as well as for events associated with the imposition of martial law in 1981 has also been scrutinised.

In other countries that strive for rehabilitation and compensation, however, no efforts to prosecute political crime committed under the old regime have been observed. *Belarus* and *Russia* belong to this group.

Turning finally to *Germany*, this country would seem, at first glance, to belong to the model – common in eastern Europe – that combines restitution with criminal prosecution. Upon closer scrutiny, however, it becomes apparent that the “German approach,” in contrast to the eastern European countries studied, is not limited to the prosecution of a few acts committed during specific periods of repression and political persecution in the GDR; instead, it is characterised by expansive and comprehensive prosecutorial efforts. Admittedly, the justice system has put a damper on these efforts: although more than 65,000 investigations were officially initiated by the summer of 1998, charges have been filed in only approximately 1 % and final convictions have been reached in only approximately 0.5 % of these cases. These convictions were handed down primarily in cases involving fatal shootings at the German-German border, perversions of justice committed by judges and prosecutors, crimes committed by the Ministry for State Security as well as in espionage cases and selected economic offences committed by state and party functionaries of the GDR. Whereas some 700 cases have been brought, more than 100 individuals have been acquitted.

Two major problems facing countries where criminal prosecution – in addition to rehabilitation and compensation – is a goal are the expiration of statutes of limitations and the prohibition of ex post facto laws. In the *Czech Republic*, *Hungary* and *Poland*, constitutional courts have grappled with the question of whether recently promulgated statutes of limitations in these countries (some of which enabled prosecution of certain state-sponsored crimes for the first time) must be considered constitutionally prohibited retroactive lifting of statute-barred prosecution. Whereas the Constitutional Court of the Czech Republic answered this question in the negative (both in its holding and in its reasoning) and the Constitutional Court of Poland came to the same conclusion (at least in its holding), the Hungarian Constitutional Court took the opposite position: Grounds for tolling the statute of limitations during a period of politically-motivated non-prosecution did not exist at the time the offence was committed in the old system; thus, according to

the court, the subsequent introduction of such grounds, as was the case in Hungary, is unconstitutional because (among other things) it violates the prohibition of ex post facto laws. In a separate decision, however, the court held that there were no constitutional impediments to the prosecution of the war crimes and crimes against humanity committed in Hungary in connection with the use of force to maintain the communist system, because according to public international law such offences are not subject to statutes of limitations. As far as Germany is concerned, there the Constitutional Court was faced with the question of whether and to what extent prosecution of high- and top-ranking officials as well as of border guards for fatal shootings of fleeing GDR citizens at the border to the Federal Republic is constitutional. Although in most cases GDR law permitted these acts, the Constitutional Court determined that criminal punishments imposed by courts of the Federal Republic for such shootings do not violate the prohibition of ex post facto laws because, in the opinion of the court, the fatal shots represent such an intolerable violation of legal norms that abandonment of the prohibition appears to be justified for reasons of substantive justice. The Polish Constitutional Court responded similarly in the context of problems presented by statutes of limitations: the prohibition of ex post facto laws is an irrevocable principle of the rule of law but exceptions are permissible if, following an extraordinary regime change, “historical justice” must be established. In the spring of 2001, the European Court of Human Rights in Strasbourg held that the German courts had not violated the prohibition of ex post facto laws as contained in art. 7 para. 1 of the European Convention on Human Rights (ECHR). According to the Strasbourg court, a state practise – such as the border policy of the GDR – that blatantly violates the right to life, which is the highest on an international scale of values, is not entitled to the protections contained in art. 7 para. 1 ECHR. The court held that the border shootings would have to have given rise to criminal liability under GDR law, had an assessment governed by the rule of law been carried out at the time they were committed.<sup>3</sup>

In addition to eastern European models that combine criminal prosecution of state-supported crime with rehabilitation and compensation, other countries, such as *South Africa*, have established so-called “truth commissions” that allow offenders to avoid punishment if they actively participate in compiling an accurate account of past events and show remorse for their actions. This model emphasises active reconciliation between victims and offenders. Truth commissions have been set up in Latin American countries such as *Argentina* and *Chile* as well, whereby these countries also engage in criminal prosecution. In practice, however, these efforts come to very little if, primarily for political reasons, former members

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3 Cf. *Jörg Arnold/Nora Karsten/Helmut Kreicker*, The German Border Guard Cases before the European Court of Human Rights, 11 *European Journal of Crime, Criminal Law and Criminal Justice* (2003 forthcoming); *Helmut Kreicker*, Art. 7 EMRK und die Gewalttaten an der deutsch-deutschen Grenze, Baden-Baden 2002.



of the ruling class can rely on amnesties and broad exemptions from punishment. In *Spain*, too, national reconciliation was key in the decision to deal with the legacy of the Franco regime solely by means of amnesty.

Another model consists of the prosecution of those bearing principal responsibility for state and political crimes committed in conjunction with the violent overthrow of the pre-dictatorial system. In *Greece*, for example, this approach combined with the general prosecution of torture was taken; Korea also took this approach, but the convictions of both former presidents were closely followed by pardons.

The models described above were revised on the basis of further discussions (see **diagram 2**): The most important change was the removal of the rehabilitation-related subdivision from the “clean break” and “criminal prosecution” models.

## 2. A new paradigm: "Policy for the past"

In the meantime, diagram 2 has been extensively expanded and revised. A first step was the realisation that the decisive criterion for classification in the context of the “criminal prosecution” and the “clean break” models is the *path* that the reaction to system crime has taken; in contrast, in the context of the “reconciliation model,” the focus is on a political *goal*, namely that of reconciliation. This does not mean, however, that other approaches do not seek reconciliation; indeed, reconciliation can be an objective both when persons suspected of committing system crime are prosecuted and when such persons are granted impunity. This insight required us to differentiate more clearly between the paths, goals and historical conditions of criminal law reactions to system crime. For example, a number of specific “path” options have been identified, namely, “legislation,” “restitution” and “utilising independent commissions to compile an accurate record of past events,” and these paths have been separated from the question of offender-related criminal law responses. In so doing, we were able to identify various tendencies exhibited by criminal law “policies for the past” (see **diagram 3**). The pivotal expansion of our perspective took place during preparations for a conference of historians entitled “Totalitarianism and Authoritarianism in Europe: Short- and Long-term Perspectives,” which took place in September, 2000, in Warsaw. The paradigm change consisted in introducing into the model-building process the concept of *Vergangenheitspolitik* (policy for the past) during the period of transformation or transition. Henceforth, as shown by the diagram, the offender-related

criminal law reaction to system crime must be seen as one component of a criminal law *Vergangenheitspolitik* during a transitional period.<sup>4</sup>

First of all, the diagram differentiates horizontally between the institutional paths of the criminal law *Vergangenheitspolitik*, the political goals striven for and the historical conditions under which the reaction to system crime takes place. Thus, for example, it becomes clear that the goals of “reconciliation,” “establishment of historical justice,” “prevention of future system crime” and “compiling of an accurate record of past events” are not necessarily associated with any particular type of reaction. For example, where one country may choose impunity in order to achieve reconciliation, another country may rely on prosecution in order to achieve this very same goal. Similarly, variables of a personnel-related, political, economic, socio-cultural and/or transnational nature, also play an important role in the transitional period. For example, of great significance in the choice of the path to take in reacting to system crime are factors such as whether the elite have been replaced, the degree of stability achieved by the new system, economic resources, the mentality of the population and the degree to which the country has been integrated into the international community.

As far as the various institutional paths of criminal law *Vergangenheitspolitik* are concerned, the diagram differentiates vertically between *four columns*: First, the *purely future-oriented* adoption of “new criminal legislation”; this path has been taken in Russia, Belarus, Georgia (the countries under study that were formerly part of the Soviet Union), Poland and the former GDR (where the criminal law of the FRG entered into force). The new criminal law applicable in these countries provides – at least normatively – for the protection of fundamental civil rights and freedoms. The *second column*, “restitution/rehabilitation/compensation,” applies – in one form or another and to very different degrees – to those countries under study that formerly belonged to the Soviet Union as well as to Poland, Hungary, Germany and Greece; according to the information currently available to us, this column does not apply to Spain and Portugal. The independent *third column*, “utilising special commissions and public authorities to compile an accurate record of the past,” is primarily applicable to Germany and Poland. These countries have created independent public authorities for the purpose of shedding light on the past on a societal level; not infrequently, examinations by such authorities of files assembled by previous regimes have yielded information concerning the commission of criminal acts. The functions of these authorities are closely connected to the criminal prosecution of these crimes.

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4 For details on this point, see *Jörg Arnold*, *Strafrecht in Reaktion auf Systemunrecht. Vergangenheitspolitik bei europäischen Transformationen*, Lecture at the Warsaw conference (forthcoming).

Central to the project is the *fourth column*. It addresses the issue of the “offender-related criminal law reaction” to system crime, that is, the question of whether offenders should be held criminally responsible at all and if so, how. This path can be subdivided into “criminal prosecution,” on the one hand, and “impunity,” on the other, a division that corresponds, to a certain extent, to the models developed originally. The impunity model can be further divided into “absolute impunity” and “qualified impunity.” Germany, Poland and Hungary as well as Portugal and Greece have chosen to pursue – more or less strictly – the path of criminal prosecution. It is not difficult to determine that as far as criminal prosecution is concerned, Germany has taken first place. Russia, Belarus, Georgia and Spain have opted for absolute impunity. South Africa has adopted the “qualified impunity” approach; it grants offenders impunity if they take an active part in compiling an accurate account of the past and searching for truth and if they show remorse.

Although the results presented here are preliminary (as well as abridged), they suffice for us to engage in an initial summing up: The criminal law reaction to system crime is accorded varying degrees of significance. For the most part, eastern European countries are of one mind concerning the role of rehabilitation and compensation. Consensus is less widespread, however, with regard to the direct criminal prosecution and punishment of political and state-supported crime. More thorough conclusions cannot be expected until a later stage of the project has been completed. Moreover, commenting at this stage on the causes of the differences and commonalities found among eastern European countries as well as those found among the western European, Latin American, Asian and African countries included in the study would amount to mere speculation. At the same time, it is important to note that such grounds are highly complex in nature – from the concrete-historical, political, socio-cultural and socio-psychological perspectives, that is – and cannot be explained solely on the basis of a legal analysis. This insight has led, finally, to yet another modification of the models.

### 3. Two basic models: “Prosecution” and “Impunity”

Further modifications to the classification system were precipitated by a heightened interest in transformation and system theory. These changes are reflected in **diagram 4**. This diagram focuses on a “criminal law-oriented *Vergangenheitspolitik* (policy for the past) during transition”; the perspective taken is that of persons participating in the transitional process. The outer circle indicates the goals of and factors influencing the criminal law-oriented *Vergangenheitspolitik*. It must be noted, however, that the concrete relationships between these variables and various aspects of *Vergangenheitspolitik* are not yet clear: further study in this interdisciplinary area will benefit from the co-operation of historians, political scientists, sociologists, criminologists and legal scholars.

As far as political goals are concerned, the countries under study evidently pursue similar objectives but employ different means in their attempt to realise them: Whereas one country may proceed with criminal prosecutions in order to maximise system stability, another country may deem the granting of impunity essential for securing a peaceful transition. A similar phenomenon can be observed with regard to factors seen as influential to the transition process, such as the role of the elite. At first glance it might appear that in Russia, for instance, the unbroken continuity of the elite in the justice system and other positions of power was not unimportant in hindering both the formation of the political will to prosecute as well as the realisation of this goal (if, indeed, it ever came to be in the first place), whereas in Germany, the almost complete replacement of the elite in the territory of the former GDR, both in the judicial system as well as in politics, was a factor that greatly influenced the transitional process and was even a goal of criminal prosecution.

For its part, the *criminal law-oriented Vergangenheitspolitik* can be subdivided into the following structural elements: “institution-oriented reaction,” offender-oriented criminal law reaction,” “victim-oriented reaction” and “norm-oriented reaction.” The major focus of this project is on the offender-related criminal law reaction. This element of criminal law-oriented *Vergangenheitspolitik* can be subdivided into the “prosecution” and “impunity” models. These models, in turn, can be further differentiated into the “comprehensive prosecution” and “limited prosecution” models and the “limited impunity,” “qualified impunity,” and “comprehensive impunity” models. The criteria that were used to define these subdivisions are presented in **diagram 5**, which also shows the countries that have been classified to these models.

#### 4. Conclusions

The provisional results reported here allow us to draw a number of initial conclusions for a *transitional model human rights-oriented criminal law*:

- Human rights violations committed during a dictatorship are punishable. This finding applies not only to international criminal law and the need for criminal law at this level to develop into an effective protection of human rights; protection of human rights can be achieved during the transitional period by the national criminal law of the country in transition.
- The criminal law-oriented *Vergangenheitspolitik* during the transitional period protects human rights with the criminal law by either alternatively or simultaneously invoking the following reactions: institution-oriented, offender-oriented, victim-oriented and/or norm-oriented. Key concepts in this context are the utilisation of public authorities for compiling an accurate record of the past, rehabilitation, new criminal legislation as well as criminal prosecution.

- Criminal prosecutions carried out during the transitional process of serious human rights violations is, however, dependent on numerous political goals and other factors – such as political, historical, personnel-related and economical – so that each country is unique.
- Confrontation with the past is not primarily the responsibility of the criminal law since criminal law is evidently not a reasonable replacement for societal and political efforts in this regard – efforts that must be undertaken for the sake of a country's future. On the other hand, criminal law is not powerless in the face of system crime.

Diagram 1: Original structure

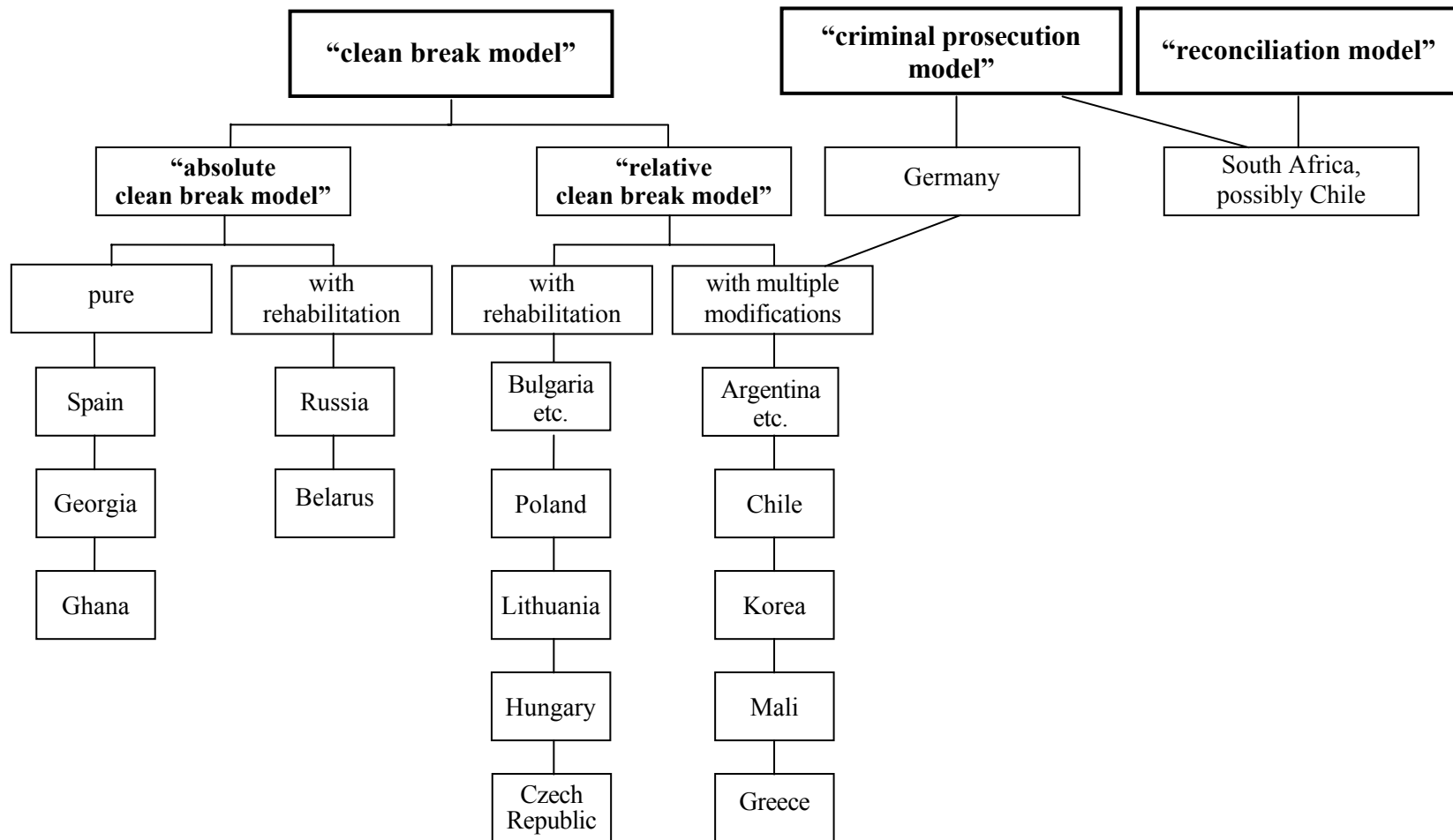


Diagram 2: Post-colloquium simplified models

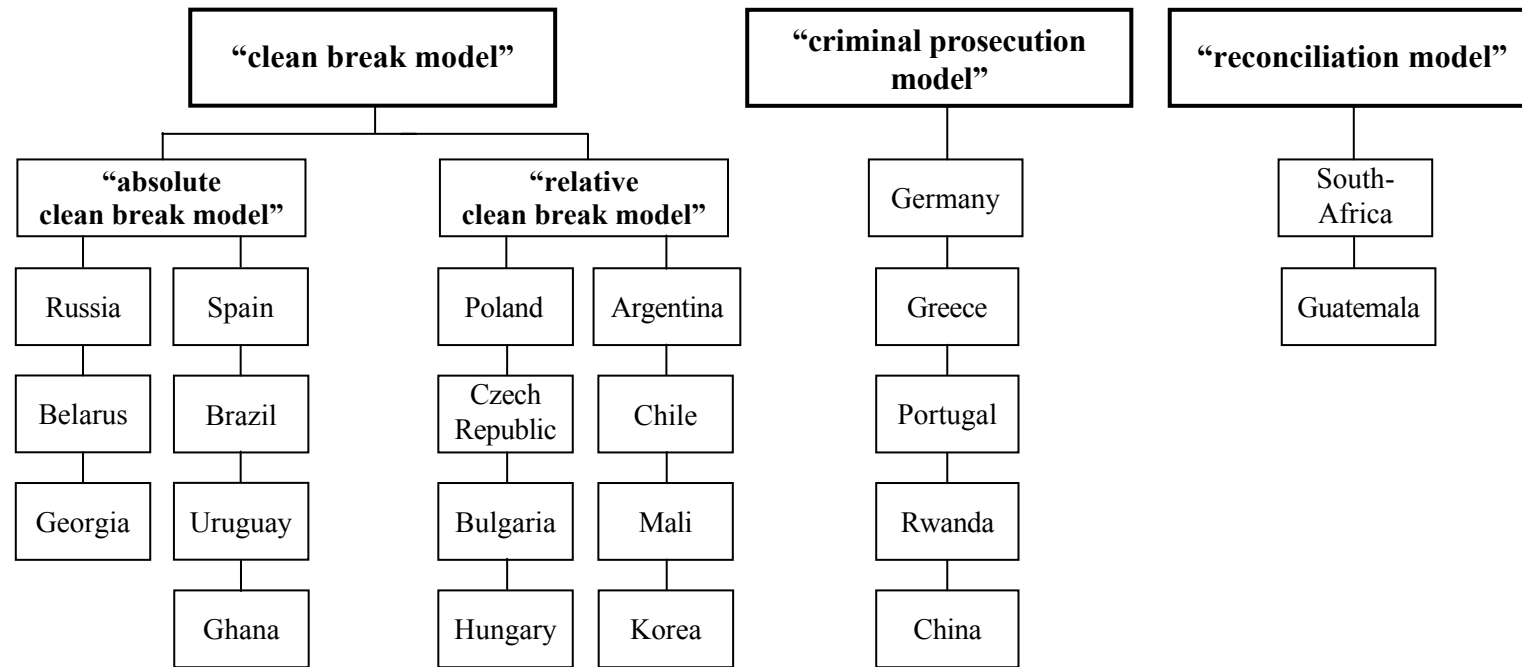


Diagram 3: Criminal law-related “Vergangenheitspolitik” during transformation

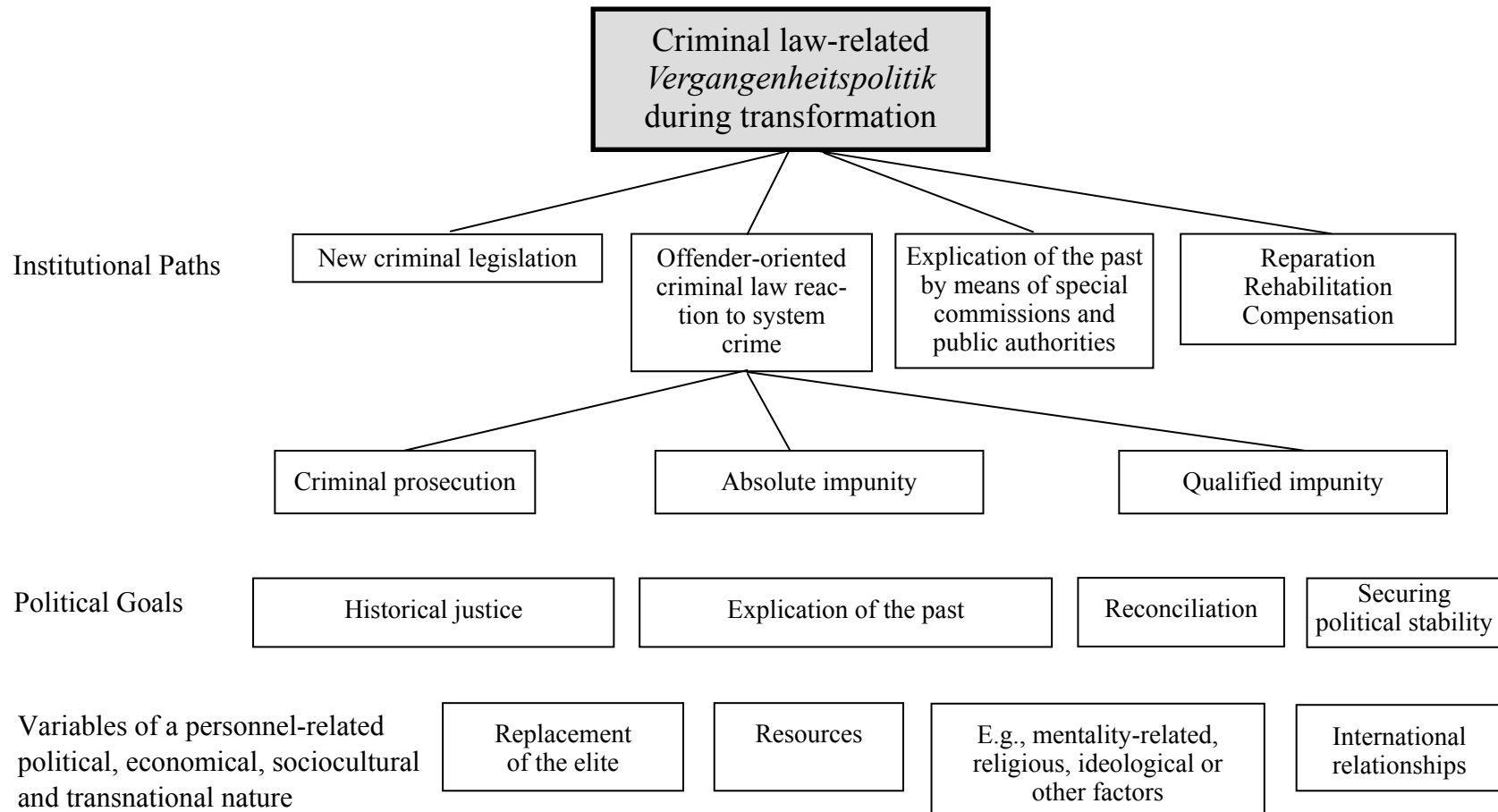




Diagram 4: Criminal law-oriented “Vergangenheitspolitik” during transition

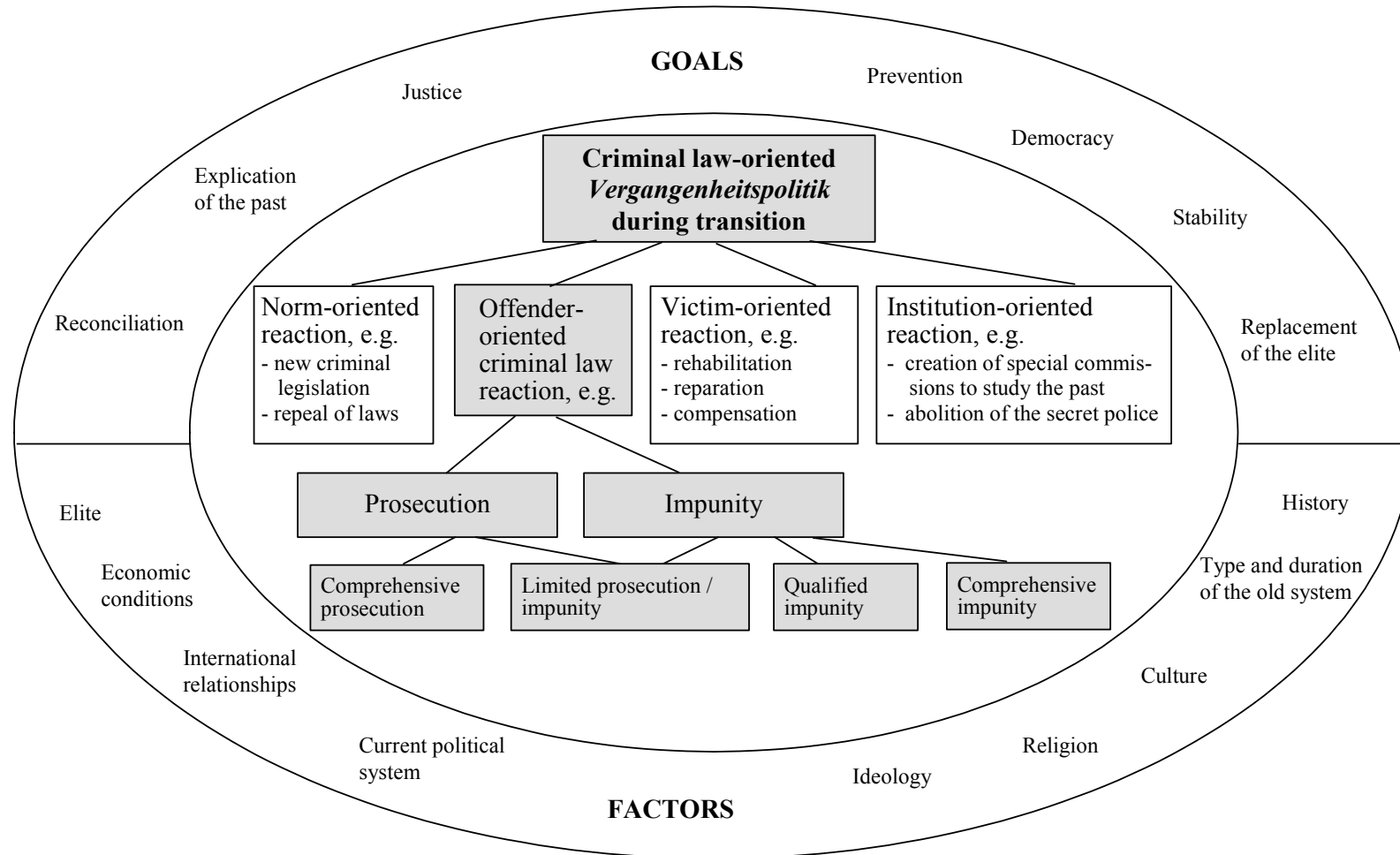
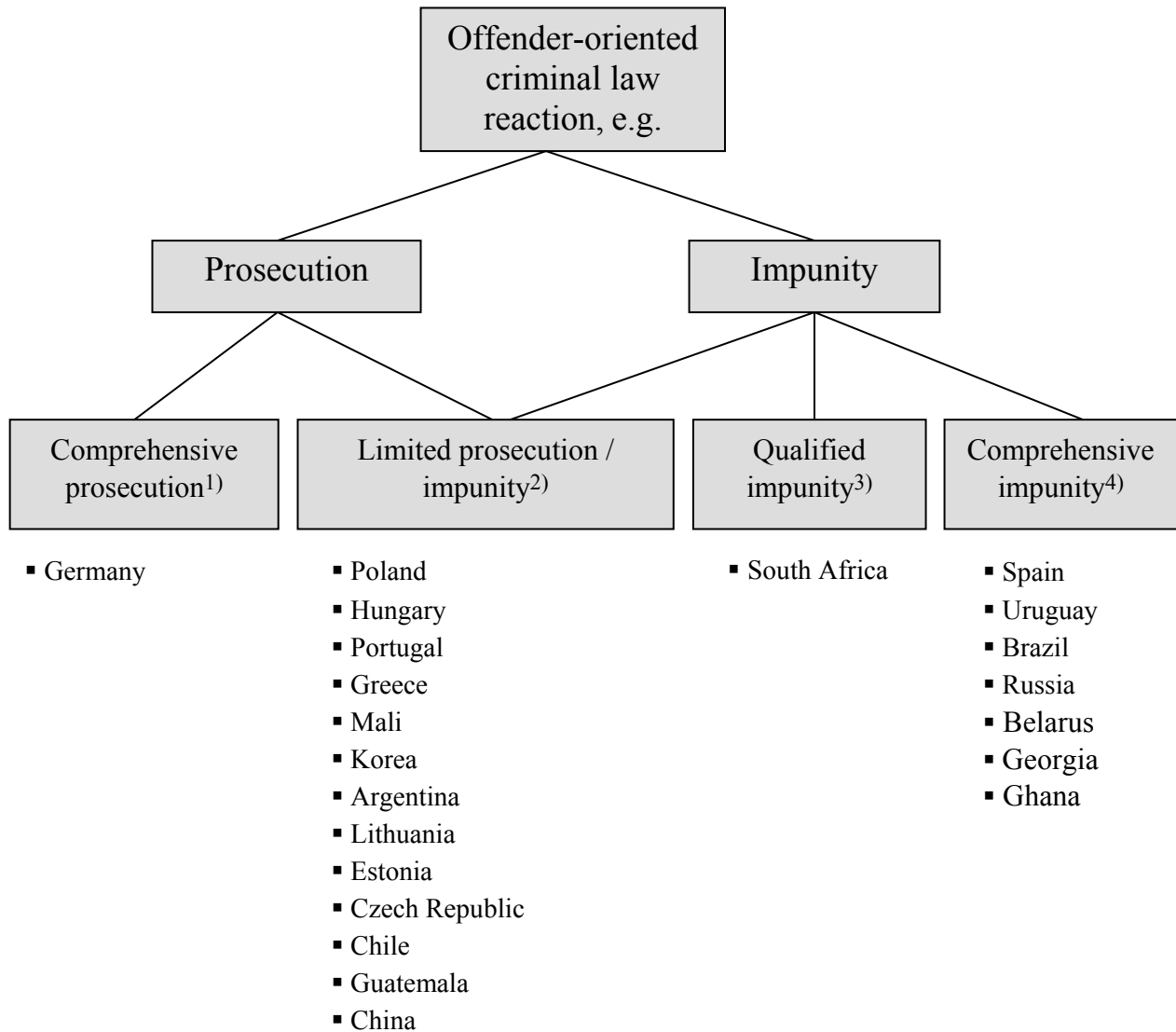


Diagram 5: Criminal law-oriented “Vergangenheitspolitik” –  
Country classification



1) Based on the number of criminal proceedings initiated

2) Limitation to, e.g.  
 - particular offenders  
 - particular offences  
 - particular time period  
 Limitation depending on, e.g.  
 - expiration of statute of limitation  
 - amnesty  
 - pardon  
 - other exemptions from punishment

3) Impunity in exchange for confession

4) No criminal prosecution

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