
VISITING EXPERTS' PAPERS

CONTROLLING PRISONER RATES: EXPERIENCES FROM FINLAND

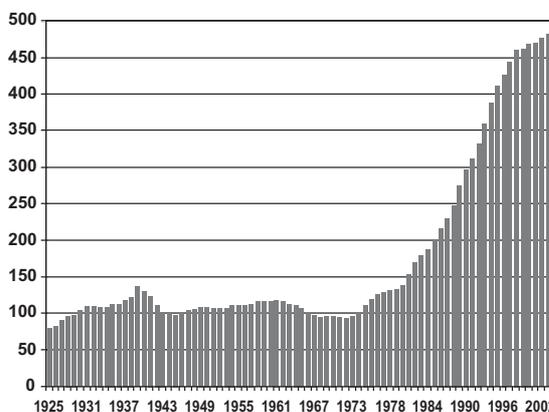
*Dr. Tapio Lappi-Seppälä**



I. TRENDS AND CHANGES

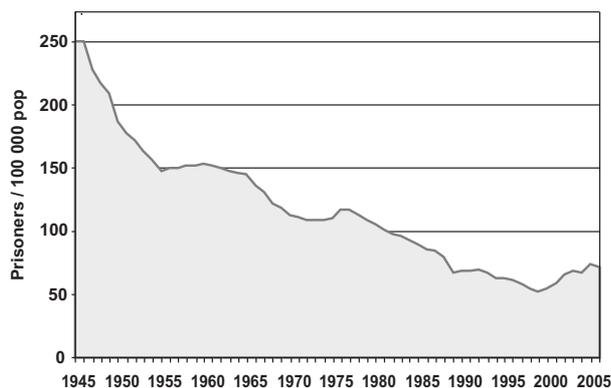
The last decades have witnessed unprecedented expansion of penal control in different parts of the world. Between 1975 and 2004 prisoner rates in the US have increased by 320% from around 170/100,000 inhabitants to over 700/100,000 inhabitants.

Federal and State prisoners in the USA 1925-2003 (/100 000)



This drastic change can be contrasted with another one, which took place in Finland after the Second World War:

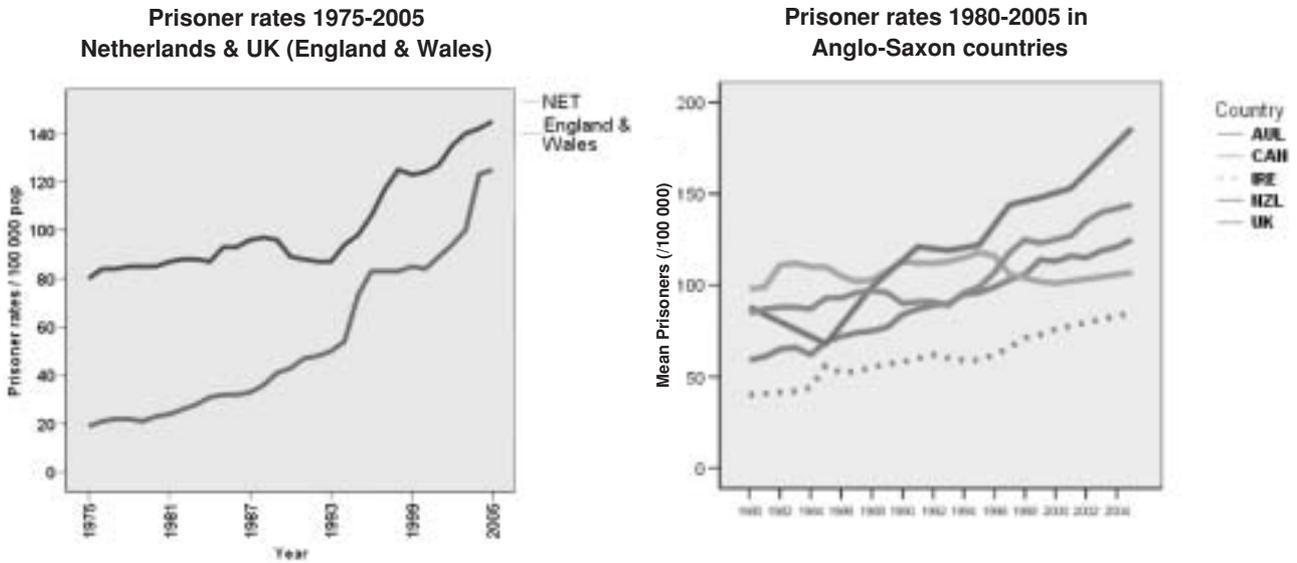
Prisoner rates in Finland 1945-2005



Combining these two diametrically opposing trends, we have a nice illustration on how things can take different shape in penal policy in different jurisdictions, at the same time.

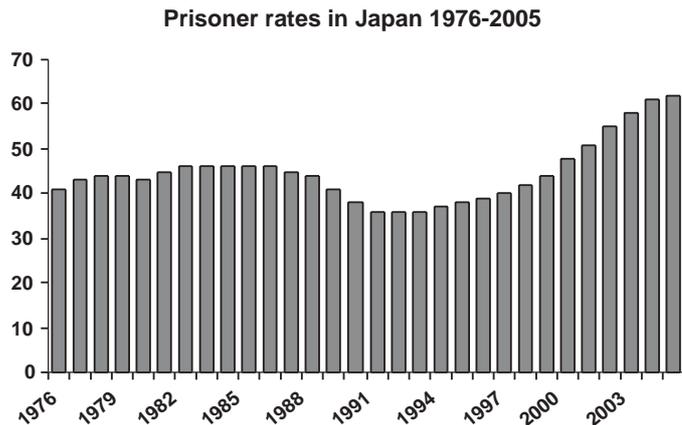
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Whatever happened in the US did not take place in Finland – to the contrary. Things can go differently, and often do. The development in the US seems to have had a strong model-effect in the English-speaking world. Similar – albeit smaller – changes have taken place also in Australia, New Zealand and the UK. These trends do not confine themselves to the Anglophone world. During the last two decades the Netherlands has increased more than six-fold its prisoner rate from the low of 20/100,000 to 130/100,000. Spain has more than tripled its rate from 40/100,000 to 140/100 000.



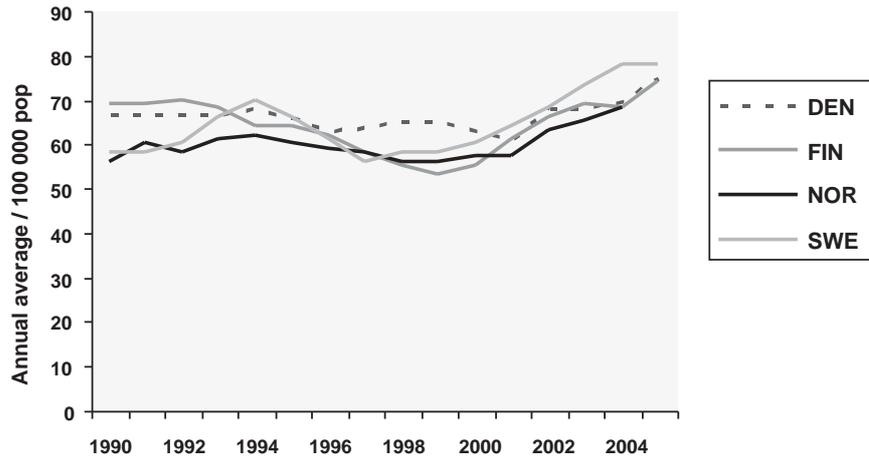
There is every reason to be worried by this development. As it seems, the expansion of prisoner rates is not confined to the Anglophone world, nor to Europe. Similar trends can be found everywhere, including Asian and African countries.

Japan, in turn, is an often cited as an example of a low-crime and low-imprisonment country. For a long period of time, Japanese prison figures were among the lowest of the industrialized countries, even below that of Scandinavia. But it now appears that Japan too is experiencing increasing prisoner rates, and a rise of around 70% from the early 1990s to today.

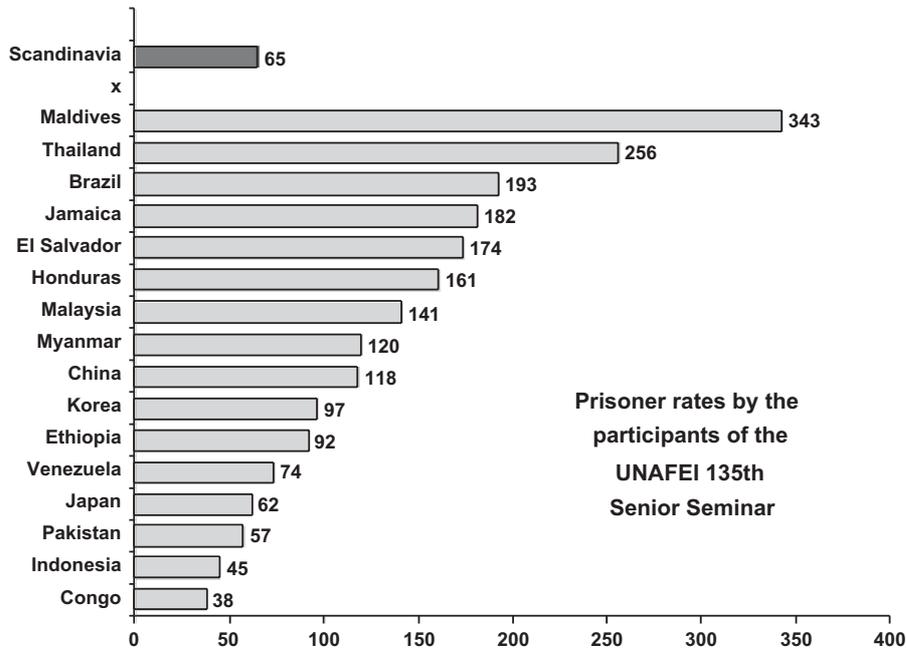


Unfortunately, by the turn of the millennium the global increase in prisoner rates seemed to have taken a hold also of the Scandinavian countries. Starting from the late 1990s, prisoner rates have taken an upward turn. Even if this increase is modest by international standards (on average from 60/100,000 to 70-75/100,000 prisoners), it is nevertheless significant from the Scandinavian point of view.

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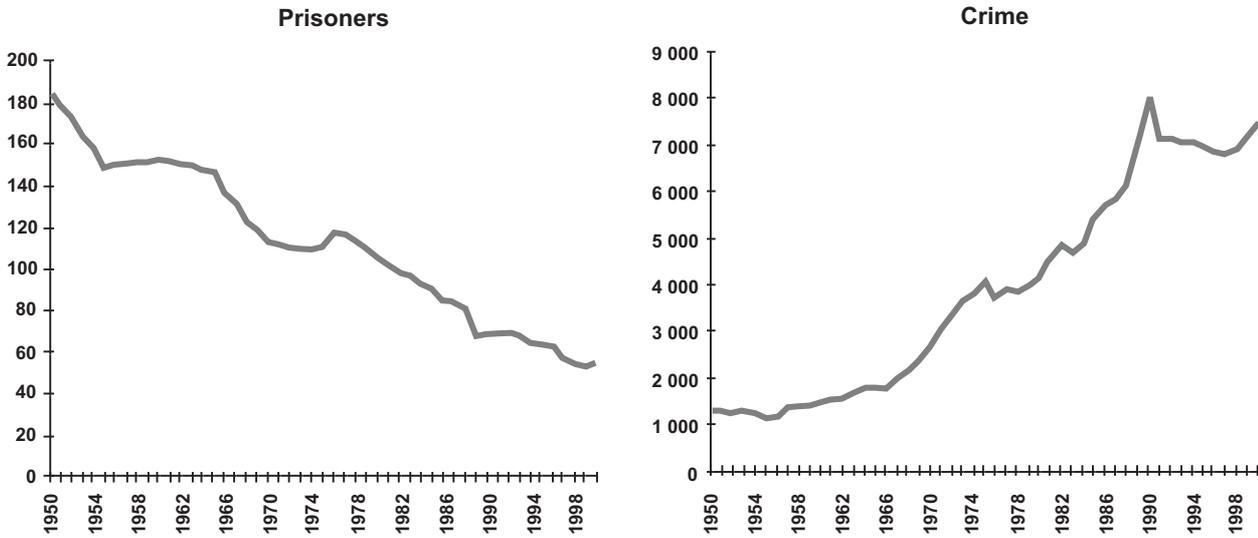
In short, the global picture is dominated by rising prisoner rates. However, there are exceptions in trends and there still are huge differences in the levels of imprisonment. That becomes also clear when we look at the published prisoner rate data of the participating countries of the 135th UNAFEI International Senior seminar.



The Maldives is in the lead with 350 prisoners per 100,000 people while the Congo has only 10% of that number. Japan is located at the lower end of the scale, on the same level as Scandinavia. Are they just unavoidable and natural reflections of current levels of crime? My tentative answer is a decisive “No.” Prisoner rates cannot be explained with reference to crime. They are products of political processes, but these processes can also be influenced.

I will try to examine these processes on the basis of Finnish data. In a global context, the Finnish trends are unique. At the beginning of the 1950s, Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway – and in Japan – were around 50. Even in the 1970s, Finland’s prisoner rate continued to be among the highest in Western Europe. However, during the time when most European countries experienced rising prison populations, the Finnish rates continued to decrease. By the beginning of the 1990s, Finland had reached the Nordic level of around 60 prisoners per 100,000 inhabitants. The first thing to note is that this major change cannot be explained by decreasing crime – as so often is assumed. When prisoner rates went down, crime went up.

**PRISON RATES AND CRIME RATES
Finland 1950-2000**



But neither was it so, that a decrease in the prisoner rates lead to an increase in crime – as is even more often assumed. I will first look at the reasons and factors that contributed to this decline in prisoner rates. I will thereafter consider whether, and to what extent, changes in prisoner rates were reflected in the crime rates.

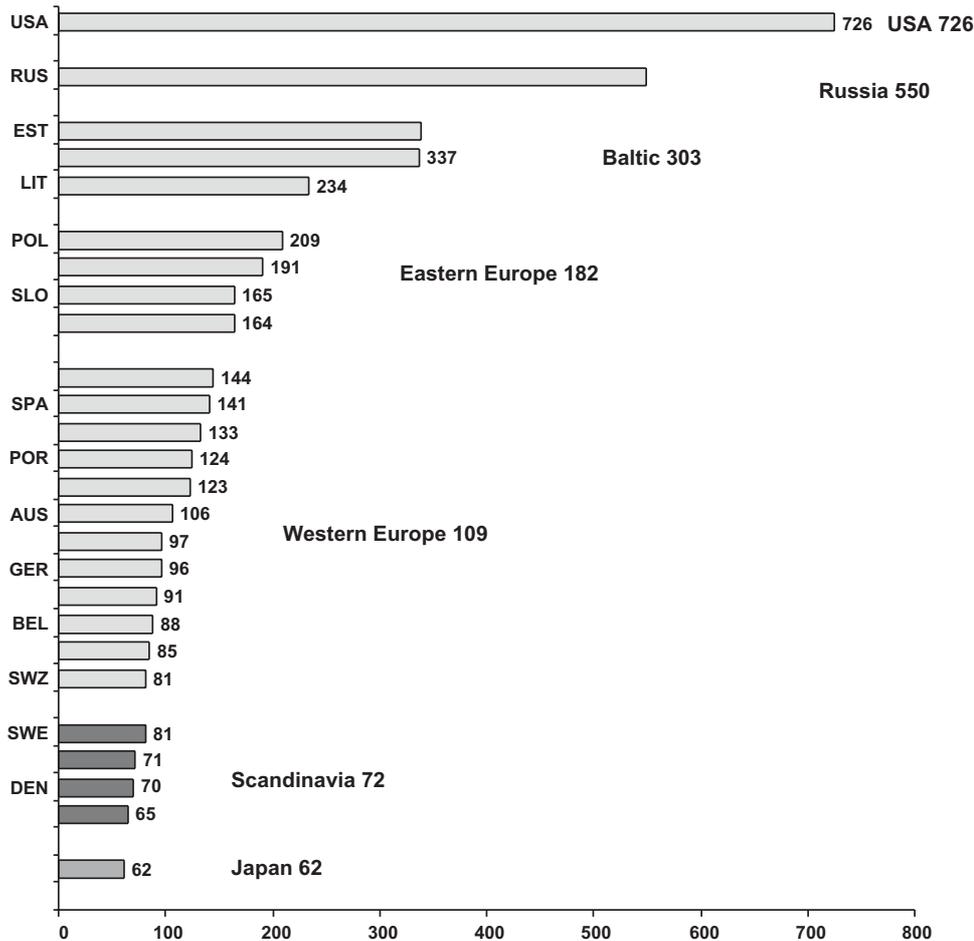
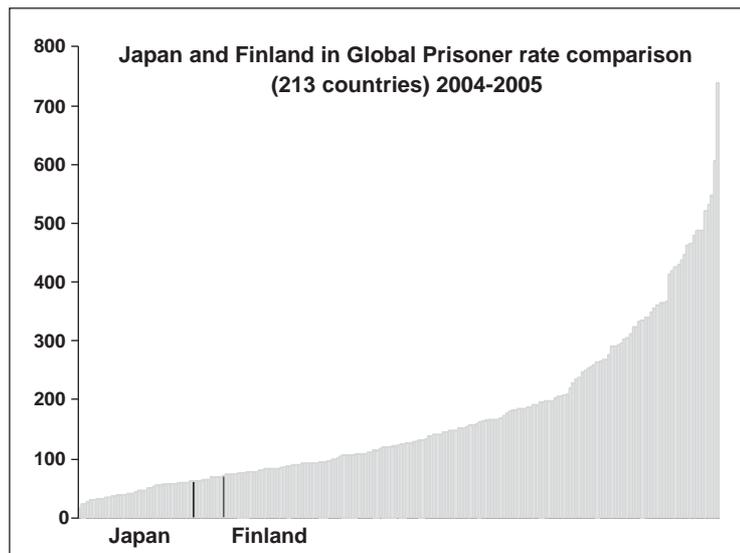
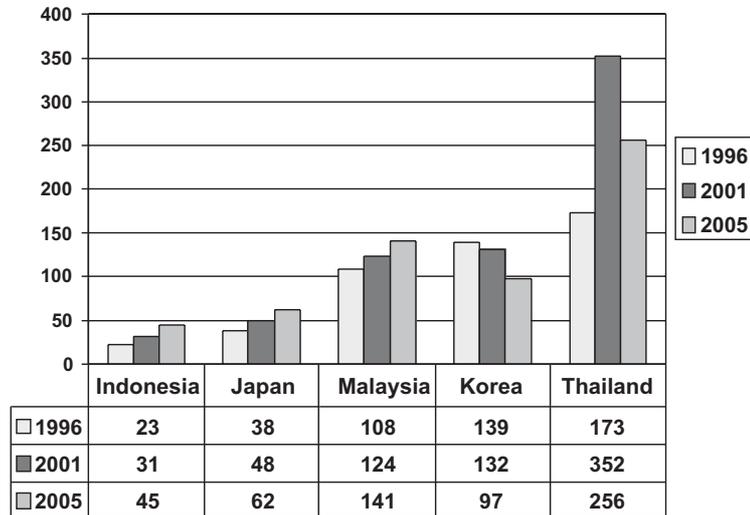


Figure I.1 Prisoner rates in 2004/2005
Source: KCL <http://www.prisonstudies.org/>

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In a global context Scandinavia is tied with Japan in having the lowest numbers of prisoners per capita. At present the figures are about 70-75/100,000. The corresponding figures for other Western European countries are around 110; in Eastern Europe around 200; in the Baltic countries around 300; in Russia around 550 and in the US over 700.

Prisoner rates in selected Asian countries 1995-2005



II. CHANGES IN PENAL IDEOLOGY

Long-term change in Finland – covering almost a half a century – was affected both by macro-level structural factors and ideological changes in penal theory, as well as legal reforms and changing practices in sentencing and prison enforcement. Also, the role of these different background reasons varies over time.

Like in so many other countries, criminal political thinking in Finland underwent profound changes in the late 1960s and 70s. In the 1960s, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise. (Such as in health care and in the treatment of alcoholics). What became later known as the “nothing works” doctrine had its earlier counterpart in the Scandinavian discussions of the late 1960s. The tone and the results of this ideological turn were quite different in Finland compared to the US. In Finland the emphasis was on the ineffectiveness of institutional treatment and the excessive use of the prison system. While in US the fall of the rehabilitative ideal lead subsequently to the renaissance of punishment – as we just saw – in Finland the

outcome was just the opposite. The 1960s and 70s started a reform movement against excessive use of custodial sentences. The resulting criminal political ideology was labelled as “humane neo-classicism”. It stressed both legal safeguards against coercive care and the objective of less repressive measures in general.

This change reflects more than just a concern over the lack of legal safeguards. Behind this shift in strategies in criminal policy were more profound changes in the way the entire problem of crime was conceived. The whole theoretical criminal political framework and the conceptualization of the aims and means of criminal policy underwent a dramatic change. The aims of criminal policy were defined in par with the overall aims of general social policy. Traditional goals, such as simple prevention or the ‘fight against crime’ were replaced by differentiated twofold overall aims:

- (i) the minimization of the costs and harmful effects of crime and of crime control (the aim of minimization); and
- (ii) the fair distribution of these costs among the offender, society and the victim (the aim of fair distribution).¹

The *aim of minimization* emphasizes the *costs and the harmful effects* of criminal behaviour instead of the mere number of crimes. It also draws attention to means which perhaps do not affect the level of criminality, but which affect the harmful impact that crime has on different parties (and especially on victims). By stressing not only the costs of criminality, but also the costs and suffering caused by the *control of criminality* the formula draws attention to the material and immaterial losses that arise, e.g. through the operation of the system of sanctions. The *aim of fair distribution* brings into daylight the delicate issues of how to allot the costs of crime and crime control between the different parties (society/community, the potential or actual offender, the potential or actual victim) in a manner fulfilling the demands of fairness and social justice.

Also *cost-benefit analysis* was introduced into criminal political thinking. In making choices between different strategies and means, the probable policy effects and costs – to be understood in a wide sense, including also immaterial costs for the offender – were to be assessed.

One result of all this was that the *arsenal of the possible means of criminal policy expanded* in comparison with the traditional penal system. *New strategies of crime prevention* emerged in criminal political discussions, to be later known as social and situational crime prevention strategies. This new ideology was crystallized in slogans such as “good social development policy is the best criminal policy”.

Also, the *aim and the justification for punishment* were subjected to re-evaluation. The shift was once again towards general prevention. However, this concept was now understood in a different way. It was assumed that this effect could be reached not through fear (deterrence), but through the morality-creating and value-shaping effect of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals. As a result of this process, the norms of criminal law and the values they reflect are internalized; people refrain from illegal behaviour not because such behaviour would be followed by unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.²

¹ These were originally introduced into the international discussion at the Sixth International Congress on Criminology, 1970, by a Finnish criminologist, Patrik Törnudd. This definition of goals was adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, where it was embodied in the report of the section dealing with the economic and social consequences of crime. The same report also recommends encouragement of cost-benefit thinking (for a more detailed discussion, see Törnudd, 1996).

² This ‘redefinition’ of the aim of punishment in the Nordic countries could rely on a long theoretical tradition dating back to the early Scandinavian realism of the Uppsala school of the 1920s and 1930s. In a closer analysis, this concept contains several distinct hypotheses which are based on different assumptions of why, how and through what kind of mechanisms various features of the legal system influence social values and compliance with the law. See in general Andeanes, 1974 and Lappi-Seppälä, 1995. Closely related trends are to be found in the German criminal law theory since the 1970s (“positive General-Prävention”, see Schünemann *et al.* 1998) and Anglo-Saxon sociology of the 1990s (on the theory of “normative compliance” see Tyler, 2003 and Bottoms, 2001).

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This view of the functions of the penal system has a number of important policy implications. To put it briefly: the aim of indirect prevention is best served by a system of sanctions which maintains a moral character and which demonstrates the blameworthiness of the act. The mechanisms require a system that is enforced with 'fair effectiveness' and that follows procedures which are perceived as fair and just and which respects the rights and intrinsic moral value of those involved. In short:

- From the early 1970s onwards there was a general conviction that in crime prevention, criminal law is only one means among many and that other means were often far more important;
- Furthermore, it was also stressed that the general preventive mechanisms were more subtle and indirect than one usually thinks and that the effective functioning of the criminal law is not necessarily conditioned by severe punishments, but by legitimacy and perceived fairness;
- All in all, we should be realistic as regards the possibilities of achieving short-term effects in crime control by tinkering with our penal system;
- And most importantly, we should always weigh the harms and benefits of applied or proposed strategies of criminal policy.

Between 1970 and 1990 all the main parts of the Finnish criminal legislation were reformed from these starting points. The list starts from the late 1960s and it contains over 25 law reforms, all having one thing in common: the reduction of the use of imprisonment.

Law reforms decreasing (- -) and increasing (+ +) prisoner rates Finland 1966-2004

Effect	Law reforms
-	1966 Minimum time for parole 6 months -> 4 months
---	1967 Amnesty
---	1969 Decriminalization of public drunkenness
-	1969 Day-fine reform
---	1972 Reduced penalties for theft
--	1973 Restricting the use of preventive detention
-	1973 Discount rules for remand
-	1976 Reform of the prison law: minimum time for parole reduced 4 months -> 3 months
-	1977 Conditional sentence expanded
--	1977 Sentencing reform; the impact of recidivism reduced
-	1977 Day-fine reform: heavier fines to replace imprisonment
---	1977 DWI reform: fines and conditional sentences instead of prison
-	1989 Fine-default rate reduced
--	1989 Minimum for parole 3 months -> 14 days
-	1989 The use of prison for juveniles restricted
-	1989 The length of pre-trial detention reduced
--	1991 Reduced penalties for theft
-	1991 Expanding the scope of non-prosecution
--	1992 Introduction of CSO
+	1994 Aggravated DWI 1.5 -> 1.2 %
-	1994 Experiment on (non residential) juvenile penalty
---	1995 Community service permanent and nationwide
+	1995 Domestic violence under public prosecution
++	1999 Increased penalties for assault
+	2000 Increased penalties for rape
+	2001 More fines for drug-users
+	2003 Zero-limits for drugs in traffic
-	2000/4 Combination sentence (conditional + CSO)

III. LAW-REFORM AND SENTENCING POLICIES

A. General Trends in Sentencing

The Finnish judge has traditionally had quite a limited number of options when sentencing. The two basic alternatives to imprisonment have been conditional imprisonment (suspended sentence) and a fine, but these alternatives have been used quite effectively. The scope of fines and conditional imprisonment (suspended sentence) were extended in the late 1960s, and mid 1970s also, by a series of law reforms.

Sixty percent of all cases dealt with by the courts result in fines. Eighty percent of cases dealt with either by the courts or the prosecutors result in fines. A fine is a typical penalty for most middle-rank offences such as theft, minor burglaries and assaults etc. The leading role of fines is to large extent explained by the day-fine system which was adopted in Finland some 80 years ago.

The other basic alternative, conditional imprisonment, has been widely used to replace custodial sentences. From 1950 to 1990 the number of conditional sentences increased from some 3,000 to 18,000 sentences per year. At the same time the number of prison sentences remained stable. In 1950, 30% of all sentences of imprisonment were imposed conditionally. In 2005 the rate was 64%.

Table III.1. The Use of Conditional and Unconditional Imprisonment from 1950 to 2000

	Unconditional N	Conditional N (all)	Conditional % (of all prison sentences)
1950	7000	4000	35
2000	8000	14000	63

* Excluding sentences commuted to community service

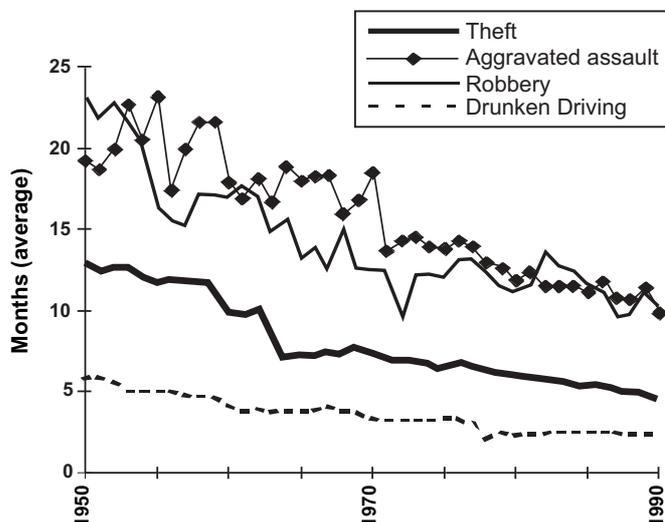
Source: Statistics Finland

B. Sentencing Changes in Separate Offences

Long custodial sentences imposed for traditional property crimes kept the prison population at its peak level during the early 1950s. In 1972 new definitions and new punishment latitudes for larceny were introduced. Again, in 1991 the latitude for the basic form of theft was reduced.

As a result, there was a clear change in sentencing practice. In 1971, 38% of offenders sentenced for larceny received a custodial sentence. Twenty years later, in 1991, this proportion had decreased to 11% (for more detail see Lappi-Seppälä, 1998 and Törnudd, 1993). Similar changes can be seen in several other offences too.

The length of all prison sentences for four different offences 1950-1990



Drunken driving plays a special role in Nordic criminal policy. The combination of hard drinking habits and a very restrictive and intolerant attitude towards drinking-and-driving has kept drunken driving among the key issues in debates on criminal policy. A substantial part of the Finnish prison problem during the 1960s resulted from fairly long unconditional sentences of imprisonment imposed for drunken driving. During the 1970s this practice was changed in favour of non-custodial alternatives. The definition of drunken driving was modernized by an amendment of the law in 1977 and the legislator took a definite stand in favour of conditional sentence and fines.



In 1971, 70% of drunk drivers received an unconditional sentence. Ten years later, in 1981, this proportion had dropped to 12%.

C. The Sentencing Reforms of the 70s:

During the 1970s three other bills were passed in order to increase the use of conditional sentences and fines in general (and particularly in cases of drunken driving).

- (i) The reform of the *Conditional Sentence Act* created the opportunity to combine a fine with a conditional sentence.
- (ii) The reform of the *day-fine system* raised the amount of day-fines thus encouraging the court to use fines in more serious cases.
- (iii) The most important 1977 reform from a principle point of view was, however, the *enactment of general sentencing rules*. These provisions mitigated markedly old mechanical recidivism rules. Diminishing the role of recidivism had an immediate affect on the sentencing practices of the courts.

D. New Sentencing Alternatives: Community Service

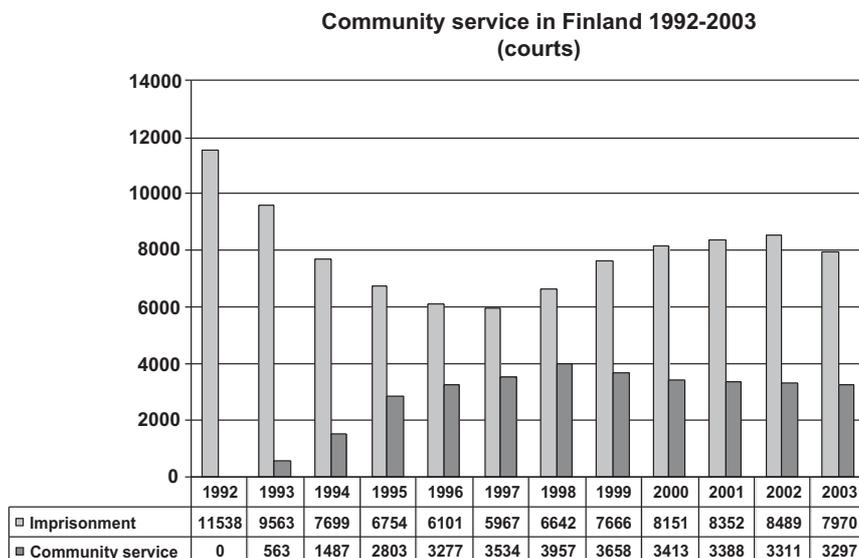
The next major change included the introduction of community service. This took place first on an experimental basis in 1991. In 1994 the system was extended to cover the entire country and community service became a standard part of the Finnish system of sanctions.

Community service is imposed instead of unconditional imprisonment for up to eight months. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a *two-step procedure* was adopted. First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. *If* the result is unconditional imprisonment, *then* the court may commute the sentence into community service under the following conditions:

- First, the convicted person must consent to the sanction;
- Second, the offender must also be capable of carrying out the community service order;
- Third, recidivism and prior convictions may prevent the use of this sanction.

The duration of community service varies from between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment. Community service does not contain any extra supervision aimed, for example, at controlling

the offender's other behaviour in general. The supervision is strictly confined to his or her working obligations. The legislator's idea, thus, was that community service should be used only in cases where the offender would otherwise have received an unconditional sentence of imprisonment. This aim was well achieved.



Along with the increase in the number of community service orders, there has been a decrease in the number of unconditional sentences of imprisonment. In 1998, the average daily number of offenders serving a community service order was about 1,200 and the corresponding prison rate was 2,800. It is therefore reasonable to argue that, within a short period of time, community service has proven to be an important alternative to imprisonment. As the figure shows, the use of community service seems to have peaked in 1998.

E. Specific Groups of Prisoners

In the course of time, different groups of prisoners have received different forms of attention. During the 1960s and 1970s the focus was on fine defaulters and recidivists in preventive detention. In the 1970s and 1980s the use of imprisonment for young offenders was restricted.

1. Fine Defaulters

In the 1950s and 1960s fine defaulters constituted a substantial part of the Finnish prison population (sometimes exceeding 25% of the total population). In the late 1960s the number default prisoners was reduced with two consecutive law reforms: by decriminalizing public drunkenness (which led to fewer default sentences since public drunkenness was one of the major offences leading to a default-fine) and by raising the amount of day-fines and decreasing the number of day-fines.

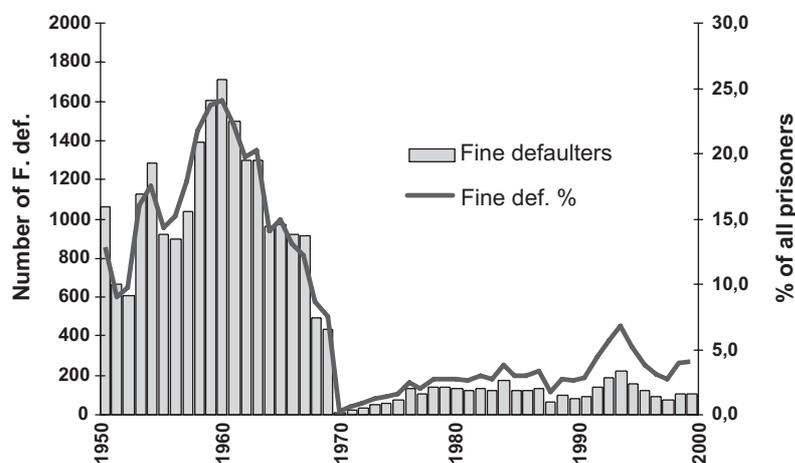


Figure III.2. The number of fine defaulters in prison 1950–2000

2. Preventive Detention

The Finnish criminal justice system includes a provision for holding chronic recidivists in preventive detention after the completion of the sentence, if both the sentencing court and a special court so decide. During the 1960s, a large majority of detainees had been guilty of repeat property crimes. On the basis of an amendment passed in 1971, the option of preventive detention was restricted only to dangerous violent offenders. The number of persons held in detention as recidivists dropped by 90% in one year, from 206 to 24. Since then, the annual average has been between ten and 20 prisoners.

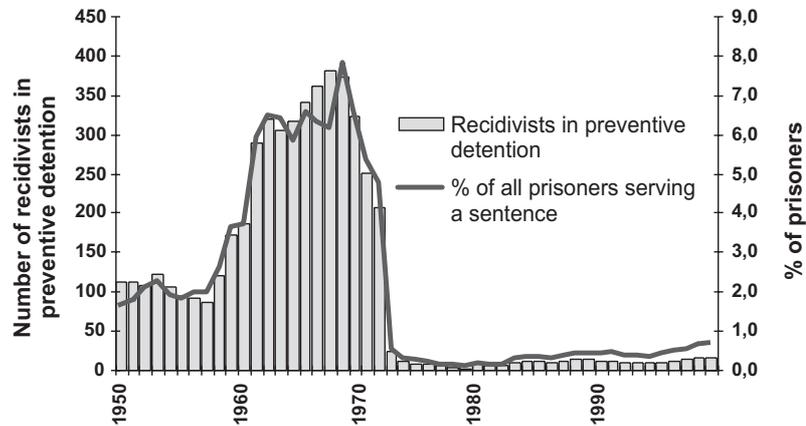


Figure III.3. Restricting the Number of Prisoners in Preventive Detention

3. Juveniles

There is no special juvenile criminal system in Finland, in the sense that this concept is understood in the Continental legal systems. There are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. However, offenders between 15 and 17 receive a mitigated sentence. In addition, the conditions for waiver of sanctions (for example non-prosecution) are much less restrictive for young offenders. Offenders under 21 who are sentenced to imprisonment are usually released on parole after one third of the sentence has been served, instead of the normal one half. Despite the lack of specific measures for juveniles, there has also been a deliberate policy against the use of imprisonment for the youngest age-groups. This has been done mainly by relying on the traditional alternatives. The willingness of the courts to impose custodial sentences on young offenders has decreased throughout the 1970s and the 80s. In addition, the *Conditional Sentence Act* was amended in 1989 by including a provision which allows the use of unconditional sentences for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on practice. At the moment there are about one hundred prisoners between the ages of 18 and 20 and fewer than ten in the 15 to 17 age group, while as recently as the 1960s the numbers were ten times higher.

Limiting the use of prison for juveniles



F. Parole

The system of parole (early release) has also proven to be a very powerful tool in controlling prisoner rates. Any changes in the basic structure of this system will have visible effects on prison figures. In Finland all prisoners except those few serving their sentence in preventive detention or serving a life sentence will be released on parole.

At the moment, the minimum time to be served before the prisoner is eligible for parole is 14 days. A series of reforms have resulted in this situation. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months and finally in 1989 from three months to 14 days.

IV. PRISON RATES AND CRIME RATES

A fundamental change in the use of imprisonment naturally leads to the question about the effects on crime rates. Time and time again, research confirms the fact that the use of imprisonment is relatively unrelated to the number of crimes committed or reported. There are, of course, several well known methodological difficulties in combining crime rates with prison rates (and other changes in the sentence severity). However, the possibility of comparing countries which share strong social and structural similarities but have a very different penal history gives an exceptional perspective to the matter. In fact, the Nordic experiences provides an interesting opportunity to test how drastic changes in the penal practices in one country have been reflected in the crime rates, compared to countries which have kept their penal system more or less stable. Figure IV.1 provides information on prisoner rates and reported crime in Finland, Sweden, Denmark and Norway from 1950 to 2000.

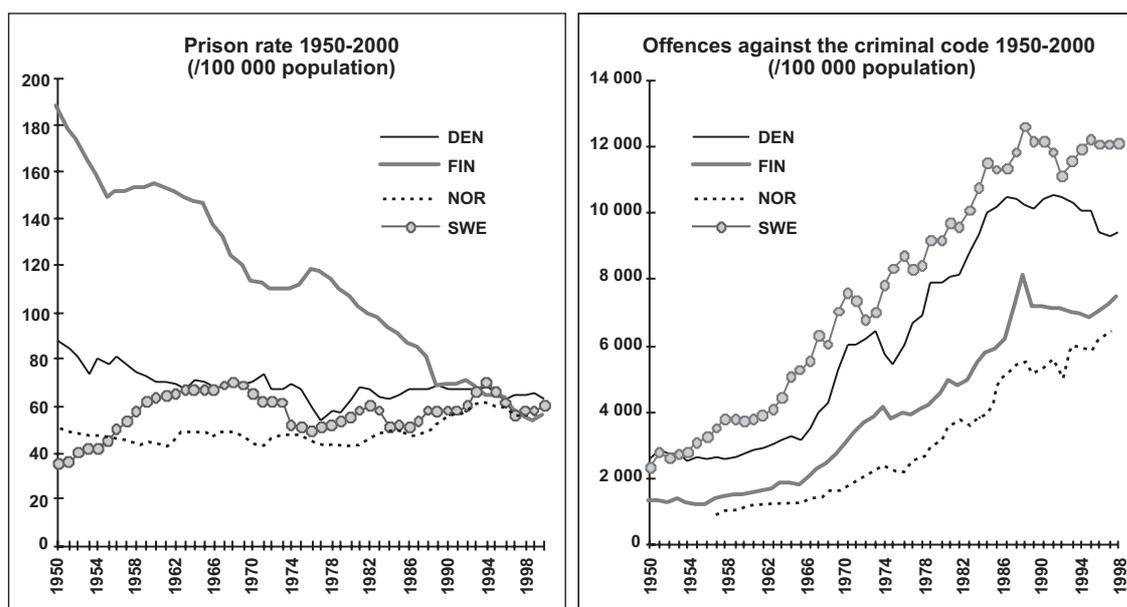


Figure IV.1. Prison Rates and Crime Rates 1950–2000

Compiled from: Falck, von Hofer & Storgaard 2003

A simple comparison between the Nordic countries reveals a striking difference in the use of imprisonment, as well as a striking similarity in the trends in recorded criminality. The fact that Finland has heavily reduced its prisoner rate has not disturbed the symmetry of Nordic crime rates. The figures start to differentiate only during the 1990s, as reported crime in Norway kept going up, while the Danish figures are going down. However, the imprisonment rates in both countries stay at the same level (Norway between 56 and 60 and Denmark between 63 and 68). The figures also confirm, once again, the general criminological conclusion that crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.

V. FACTORS BEHIND THE CHANGE

The decrease in the Finnish prison population has been the result of a conscious, long term and systematic criminal policy. But what made it possible to carry out these law-reforms? Describing the techniques used was easy. Explaining why they were adopted and accepted is harder. Exploring more closely the dynamics of these changes is important for a number of reasons, in addition to mere scientific curiosity.³

A. Political Culture

Part of the answer could be found in the structure of our political culture. Finnish criminologist Patrik Törnudd has stressed the importance of the *political will and consensus* to bring down the prisoner rate. As he summarizes, “those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s comparatively high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.” (Törnudd 1993, p. 12). This conviction was shared by the civil servants, the judiciary and the prison authorities and, equally importantly, by the politicians.⁴

Another and closely related way of characterizing Finnish criminal policy would be to describe it as *exceptionally expert-oriented*. Reforms have been prepared and conducted by a relatively small group of experts whose thinking on criminal policy, at least on the basic points, has followed similar lines. The impact of these professionals was, furthermore, reinforced by *close personal and professional contacts* with senior politicians and with academic research.⁵ Consequently, crime control has never been a central political issue in election campaigns in Finland, unlike in many other countries. At least, ‘heavyweight’ politicians have not relied on populist policies, such as ‘three strikes’ or ‘truth in sentencing’.

B. Media

This takes us to another element in the Finnish criminal policy composition – the *media market and the role of the media*. In Finland the media have retained quite a sober and reasonable attitude towards issues of criminal policy. Finns have largely been saved from low-level populism. There is a striking difference between the British and Finnish crime reports in the media. The tone in the Finnish reports is less emotional, and reports – also when dealing with singular events – are usually accompanied with commented research-based data on the development of the crime situation.

In fact, the whole structure of the Finnish media market looks a bit peculiar. Firstly, according to the information given by the World Association of Newspapers (World Press Trends 2004), the busiest newspaper-readers in Europe are to be found in Finland and Sweden (90% of the population read a newspaper every day, while in France, Italy and the UK the figures are 44%, 41% and 33% respectively). Secondly, the clear market leader can be classified as a quality paper; tabloids have a far less prominent role in Finland than in many other countries (including the UK). Thirdly, only a small fraction (12%) of newspaper distribution is based on selling single copies. Almost 90% of the newspapers are sold on the basis of subscription, which means that the papers do not have to rely on dramatic events in order to draw the reader’s attention each day. In short, in Finland the newspapers reach a large segment of the population and the market leaders are quality papers which do not have to sell themselves every day, since distribution is based on subscriptions. This all may have an effect both on the ways crime is reported, and the ways people think in these matters.

C. Nordic Co-operation

The early 1960s was a period of intensifying Nordic co-operation in legal matters. Crime and criminal justice were among the key issues in this agenda. In 1960, The Scandinavian Research Council was established with the support of the respective Ministries of Justice. This Council became a central forum for

³ In order to put things in perspective, it should be stressed that instead of a massive move towards decarceration one could also describe the change merely as a ‘normalization’ of prison rates: a move from a level that was totally absurd to a level that can be considered to be a fair Nordic level – albeit ten times lower than the present U.S. level.

⁴ At least to the extent that they did not oppose the reform proposals prepared by the Ministry of Justice.

⁵ Several of our Ministers of Justice during the 1970s and 1980s have had direct contact with research work; indeed, one of them, Inkeri Anttila, was a professor of criminal law and the director of the National Research Institute of Legal Policy at the time of her appointment as Minister.

the exchange of information between the Nordic countries. Interest in criminological research expanded and the status and resources of criminology were strengthened in the Nordic countries. The reform work of the 1960s and 1970s in Finland was heavily influenced by this exchange of ideas, as well as by the legislative models offered by our Scandinavian neighbours (especially Sweden). In many instances liberal reforms could be defended with reference to positive experiences gained from other Nordic countries and the need for Inter-Nordic harmonization. This 'Nordic identity' was strengthened in Finland by the fact that Finland in the 1960s was quickly reaching the levels of other Scandinavian partners in economic and welfare resources.

A specific feature of this co-operation was that it was not founded on conventions but on non-binding agreements between the nations.⁶ It was not led by politicians and governments, but by Ministries of Justice and their experts. It proved to be very effective and less bureaucratic. The results of this co-operation were manifested in legislative acts that have been adopted separately in each Nordic country, but with identical contents. This concerns, for example, extradition from one Nordic country to another as well as the enforcement of sentences within these countries.

D. Judicial Culture and Sentencing Structures

Micro-level institutional arrangements and specific professional practices have also contributed to this change. Co-operation with the judicial authorities – the judges and the prosecutors – and their 'attitudinal readiness' for liberal criminal policies have been of great importance in Finland. In many cases, legislators have been strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before legislators had changed the law.

Also, the fact that judges and prosecutors are career officials with training in criminology and criminal policy in the law schools contributes to this explanation. In addition, different courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in co-operation with the universities – have had an impact on sentencing and prosecutorial practices.

The Finnish sentencing structure, which treats sentencing as an area of normal judicial decision making, guided by valid sources of sentencing law, may also function as a shield against political pressures. Finland and Sweden have highly structured systems with detailed written provisions on the general principles and specific sentencing criteria to be taken into account in deciding both the type and amount of punishment. Arguments that affect sentencing must be presented in a form that fits the accepted rules and standards. The specific structure of the decision making-process, as outlined in the general sentencing provisions (the "notion of normal-punishments") stresses the importance of uniformity in sentencing (avoiding unwarranted disparities). This places the existing sentencing patterns in a central position as starting points in sentencing. And this, in turn, gives sentencing strong inertia; rapid changes are unlikely to occur, unless these changes have not been channeled through the valid sources of sentencing law (see in general Lappi-Seppälä, 2001).

E. Social Factors

But there are even more fundamental factors related to social structures and values. It needs to be noted that penal reform in Finland was a part of a larger social policy movement. Finland revised its penal policy together with its social policy. And the fact that reformulation of the basic principles and practices in criminal and social policy took place shortly after Finland had joined the Scandinavian welfare family is more than just a coincidence. Since those days explaining Finland is more or less the same as explaining the specific features of the Scandinavian penal policy as a whole, including the comparative leniency, and the pragmatic and less politicized and non-moralistic approach in penal policy.

VI. CONCLUSIONS – NORDIC MODEL OF PENAL POLICY TODAY – AND TOMORROW?

Nordic penal policy has been an example of a pragmatic and non-moralistic approach, with a clear social policy orientation. It reflects the values of the Nordic welfare-state ideal and emphasizes that measures against social marginalization and inequality work also as measures against crime. It stresses the view that

⁶ The foundation for the co-operation is based on Helsinki Treaty (1962). The treaty obliged the contracting parties to "strive to create uniform provisions concerning crime and sanctions of crime." A general overview is to be found in Lahti, 2000.

crime control and criminal policy are still a part of social justice, not just an issue of controlling dangerous individuals. These liberal policies are to a large extent also a by-product of an affluent welfare state and of consensual and corporatist political cultures. These structural conditions have enabled and sustained tolerant policies, made it possible to develop workable alternatives to imprisonment and promoted trust and legitimacy. All of this has relieved the political system's stress for symbolic actions and it also has enabled norm compliance based on legitimacy and acceptance instead of fear and deterrence. Further factors explaining the Scandinavian leniency included strong expert influences, (fairly) sensible media and demographic homogeneity.

However, the changes that have occurred during the last five to ten years raise unavoidable questions. Has this now come to its end; what is the nature of these changes; are they more a result of changes in external conditions or signs of revised policy preferences; how are things going to proceed in the future, etc? There is space for only short tentative replies.

Any overall assessment of complicated phenomena such as penal policy, covering several countries, faces the risk of being incorrect, misleading or trivial. Also, the use of imprisonment as an indicator begins to lose its validity as we wish to focus our picture. Furthermore, qualitative indicators must be included which, in turn, leaves more room for interpretation. Still, ample evidence supports the main conclusion; if we look at the whole of Scandinavia, crime policy has become more offensive, more politicized, more adaptive to the views and voices of the media. There are more diverting views, more agents involved, and less agreement on matters of principle. One outcome of all this is that the role of penal expertise has diminished, being partly replaced by grass-roots knowledge, views of influential interest groups, and by politicians themselves. The expansion of the EU and the politically driven efforts to harmonize penal legislation among the EU member states is perhaps the most significant single factor contributing to these changes. It has both damaged the quality of the legal drafting processes and increased the amount of penal repression. This is the basic reason why a large segment of Nordic scholars have remained quite critical of political attempts to harmonize criminal law.⁷

How deep and how extensive is this change? Prisoner rates would justify (at least) the talk of a *relatively serious shift* (an increase by some 40%). In absolute terms and from a comparative point of view, the situation looks much less alarming (from 60-65 to 70-80 prisoners/100,000). There is also some indication that these figures might stabilize on this new level. In Finland, the prisoner rates have again declined by around 10% during the last two years.

Which, then, are the issues that have undergone the most severe changes? If the measure is the 'degree of politicization' the answer is clear: drugs, sex and violence (in that order). During the last 25 years over 30 law reforms have been passed to increase penal control in these issues. In drug issues, the Nordic countries have emulated practices from each other, following the example given by the most severe system (at that time). Norway started the race in the early 1970s, but soon Sweden took over. Under the pressure of these 'axel-powers' the others were to follow. The last one to bend was Denmark in the early 2000s. This spiral of moralistic and populist rhetoric seems to be extremely hard to break, despite the widely shared critics from both, legal, medical and social experts.

Drug laws are the most explicit example of politically motivated penal policy and, at the same time, the most evident anomaly in today's Scandinavian crime policy. Something akin has taken place also in the field of sexual offences and violent crime. These reforms have received visible places among the governments' lists of political 'achievements', especially in Sweden and Denmark. Criminal law and increased severity have become a question of equality between the sexes, which has made it politically very difficult to oppose these reforms. Other supporting arguments for tightening control have been fetched from the need to combat organized crime, especially motorcycle gangs. These deviations from traditional, detached and evidence-based pragmatic penal policy have had significant practical consequences. Expansive drug control

⁷ See for example Jareborg 1998, Greve 1995, Träskman 1999, and Nuotio 2003. These concerns are, by no means, restricted to Nordic Countries: "I remain very nervous that in the current political climate if we were to agree, at an EU-level, on common principles of punishment, these would lead to increased sentences of imprisonment without any real debate as to the efficacy and justice of such sentences." (Padfield 2004 p.89)

is responsible for over half of the increase in the Scandinavian prisoner rates. Drugs and violence explain together some 75-80% of the increase. The role of the politically highly visible sex offences has remained much more modest.

Criminal policy has lifted its political profile in Scandinavia. But *how* populist and *how* punitive are the present policies, actually? Again, much depends on the point of reference. What appears to be an example of punitive response for a Scandinavian commentator may not look the same for readers from the US or UK. A six month increment in rape penalties from two years to two and a half years may be a great deal in Finland, but not necessarily in other countries. The key phrase “humane and rational criminal policy” may have disappeared from political rhetoric and official statements; still, examples of expressive justice, public humiliation and the denial of an individual’s social and political rights are conspicuously absent in the Nordic penal policy. The issues of crime control are discussed at governmental level more often than before, but, much of these discussions take place in the form of crime prevention programmes which focus on social and situational prevention – not on criminal law. The first National Programme for Preventing Violence in Finland, in 2006, defined measures against social marginalization as key factors and hardly mentions criminal law at all.

There are also differences in the degrees of politicization between the countries. Penal issues have played a major role in national elections in both Sweden and Denmark, but were totally absent from the 2006 presidential election in Finland. Even the political systems seem to react differently: the Swedish political field seems to be dividing more and more clearly into two blocks, thus resembling more and more the Anglo-Saxon bi-polarized structure. In Sweden, the Ministry of Justice has promised to build 1,500 new prison places. In their web-pages the Swedish prison administration proudly claims that they are building new prison places “more actively than any other country in Europe”. In Finland, the Ministry of Treasury has refused to fund new prisons; consequently the Ministry of Justice has declared that the “control of prisoner rates” is one their key targets for the period of 2007-2011. Some signs indicate that prison overcrowding is, again, entering political and public debate as a problem which requires serious attention, at least in Finland.

However, the changes in the composition of agents in the criminal political field have made the situation unstable. The long-term consistency granted by strong involvement of civil servants and penal experts has weakened, and this year’s plans to reduce the prison population may look different next year. Still, it might be too pessimistic to announce the end of expert knowledge in penal policy. One of the major cultural changes in politics (elsewhere than in criminal policy) has been the growing importance attached to research-based knowledge in social and political planning. All major political plans – starting from the Government Programmes – define knowledge as the key factor, on which the development of the “competitive welfare state” must be built. Building the infrastructures which “support the production of the social and technological innovations” is the mantra of today’s Scandinavian governments. No doubt, the drafters of these programmes have something other than rational and humane criminal policy in their minds. Still, this general urge to promote evidence-based policies may provide a footing for demands that this same logic should be applied also to penal policy.

Is the bottle half-full or half-empty? Despite the most recent changes, there still may be room for some optimism. Overall, prisoner rates are still low – even after these changes. Neither is the path taken by many other penal systems an inevitable one. Very few of those social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the US and UK apply to any of the Scandinavian countries, as such. The social and economic security granted by the Nordic Welfare State may still function as a social backup system for tolerant crime policy. The judges and the prosecutors are, and will remain, career officials with a professional touch in these matters. Political culture still encourages negotiations and appreciates expert opinions – at least that is something one may hope for.

Luckily enough, this is not only a matter of hope. In a political culture which, in general, values rational, pragmatic and responsible argumentation there is lot that can be done. We must improve the pre-conditions of rational policy-making over populist posturing by producing more and better information for the politicians, the practitioners and the public. We should apply the normal rules of political accountability in penal discourse. Nowhere else in political life can plans and proposals be presented without estimations of costs, benefits and possible alternatives. Why should this be allowed in criminal policy where decisions infringe legally protected basic rights and are hugely expensive? And, we should take advantage of the fact that, in politics in general, there prevails distaste for populism and political cynical score-hitting - if exposed.

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Exposing populism and showing the attitudinal oversimplifications, false premises, and the dubious value-commitments of populist proposals are important intellectual weapons in the hands of political opponents of any penal populist.

For those Scandinavian politicians, who otherwise are strongly devoted to welfare values but who, at the same time, are tempted by the strong rhetoric and powerful gestures of Anglo-Saxon penal politics, all this should present a difficult question: when we, in all other respects, defend policies based on social equality, full citizenship, solidarity, respect for reason and humanity, why should we choose to carry out criminal policy which shows so little appreciation to these very same values and principles?