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## Opiskelijakirjaston verkkojulkaisu 2009

### Penal policy and prisoner rates in Scandinavia

Tapio Lappi-Seppälä

Festschrift in Honour of Raimo Lahti

Edited by Kimmo Nuotio

Helsinki: Faculty of Law, University of Helsinki, 2007  
s. 265-306

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## **PENAL POLICY AND PRISONER RATES IN SCANDINAVIA<sup>1</sup>**

### **Cross-comparative perspectives on penal severity**

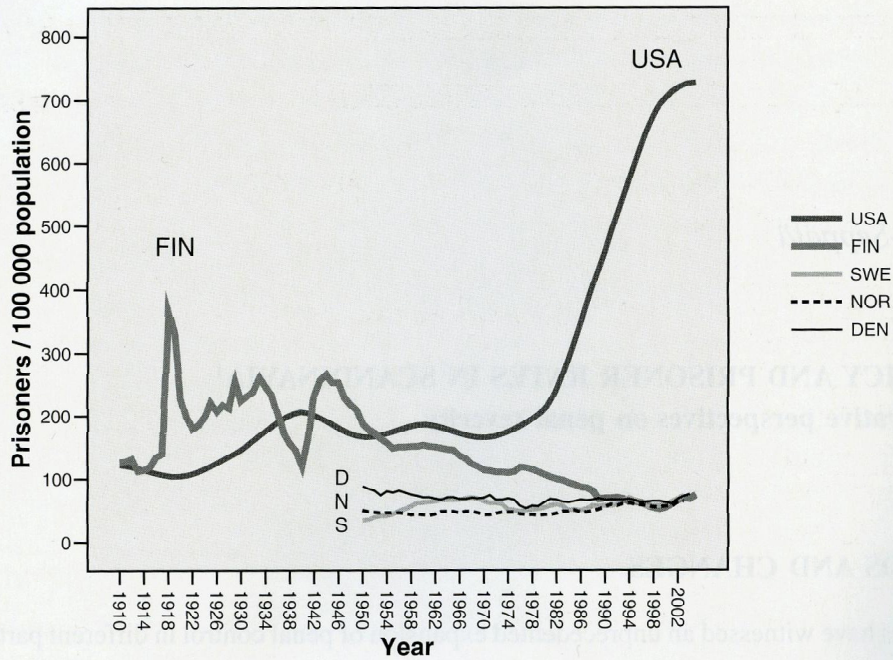
#### **I TRENDS AND CHANGES**

The last decades have witnessed an unprecedented expansion of penal control in different parts of the world. Between 1975-2004 prisoner rates in the US have increased by 320 % from around 170 to over 700/100 000 pop. The US seems to have 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 in the Anglophone world. During the last two decades Netherlands has more than six-folded their prisoner rate from the low of 20 to 130/100 000. Spain has more than tripled their rates from 40 to 140/100 000.

The Scandinavian countries have had a special role in this development. These countries differ from many other countries both in terms of stability and leniency of penal policy. For almost a half of a century the prisoner rates in Denmark, Norway and Sweden have stayed between the narrow limits of 40-60 prisoners. Finland, however, has followed its own path. At the beginning of the 1950s, the prisoner rate in Finland was four times higher than in the other Nordic countries. Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway were around 50. Even during the 1970s, Finland's prisoner rate continued to be among the highest in Western Europe. However, the steady decrease that started soon after the Second World War continued, and during the 1970s and 1980s, when most European countries experienced rising prison populations, the Finnish rates kept on going down. By the beginning of the 1990s, Finland had reached the Nordic level of around 60 prisoners. Diverging trends in USA and the Scandinavian countries are highlighted in figure I.1.

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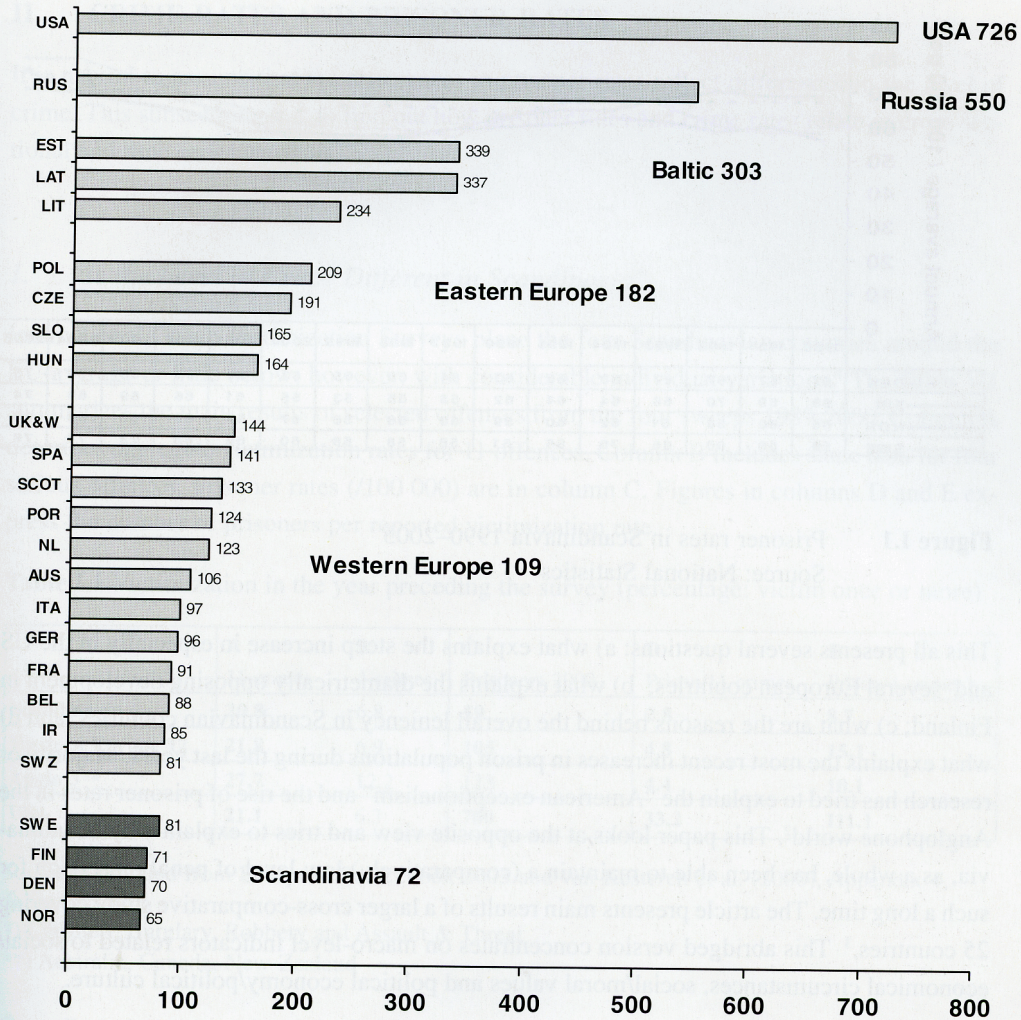
1 Original to be published in Per Ole Träskman (Ed.), *Rationality and Emotion in European Penal Policy. Nordic Perspectives*, DJOF, Copenhagen (forthcoming 2007).



**Figure I.1** Long-term prisoner rates in Scandinavia and US  
Source: Varia.

In a global context Scandinavia as a region has among the lowest level of prisoners. At the moment the figures are around 70-75/100 000 pop. The corresponding figures for other Western European countries are around 110, in Eastern Europe around 200, in Baltic Countries around 300, in Russia 550 and in the US over 700. Prisoner rates by regions in 2004/2005 are represented in figure 1.2.

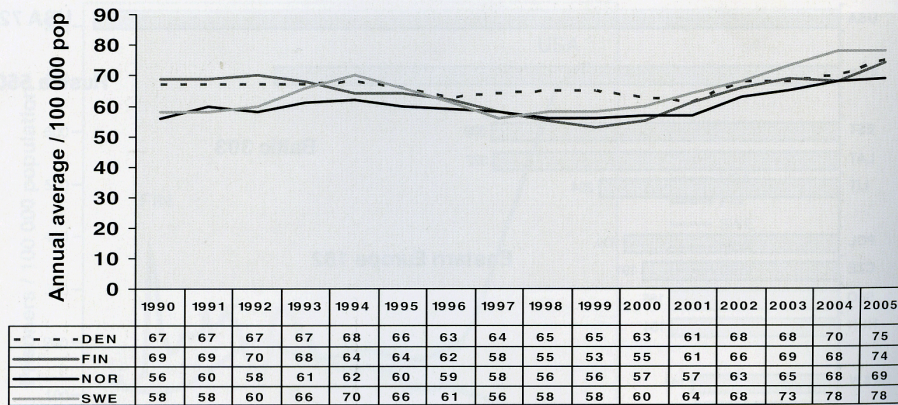




**Figure I.1** Prisoner rates in 2004/2005  
 Source: KCL <http://www.prisonstudies.org/>

When we entered this millennium the global increase in prisoner rates seems 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. Recent prisoner rates in Scandinavia are presented in figure I.3.





**Figure I.1** Prisoner rates in Scandinavia 1990–2005  
Source: National Statistics

This all presents several questions: a) what explains the steep increase in especially in the US and several European countries; b) what explains the diametrically opposing development in Finland; c) what are the reasons behind the overall leniency in Scandinavian countries; and d) what explains the most recent increases in prison populations during the last years. Majority of research has tried to explain the "American exceptionalism" and the rise of prisoner rates in the Anglophone world<sup>2</sup>. This paper looks at the opposite view and tries to explain why Scandinavia, as a whole, has been able to maintain a (comparatively) low level of penal repression for such a long time. The article presents main results of a larger cross-comparative study covering 25 countries.<sup>3</sup> This abridged version concentrates on macro-level indicators related to social/economical circumstances, social/moral values and political economy/political culture.

<sup>2</sup> See especially Garland 2001 and Tonry 2004.

<sup>3</sup> See Lappi-Seppälä 2007a (forthcoming). The sample includes 16 Western European countries, 3 Eastern European countries (CZ, HUN and POL), two Baltic countries (EST, LIT) and 4 Anglo-Saxon countries outside Europe (US, Canada, New Zealand and Australia). Dependent factor consists of prisoner rates measured per 100 000 population. Information of prisoner rates is taken from KCL <http://www.prisonstudies.org/>, Council of Europe Prison Information Bulletins Sourcebooks 1995, 2000 and 2006, SPACE I, National statistics and various research reports. Main factors explaining prisoner rates include fears, punitivity and trust (measured by survey data from ICVS, ECVS, ESS and WVS), income inequality and social welfare expenditures (data from LIS, Eurostat, UN, EUSI and OECD) and political culture and corporatism (on political indicators see Lijphart 1999 and Huber et al 2004).

## II CRIME-RATES AND PRISONER RATES

It is natural to assume that the differences in prisoner rates reflect differences in the level of crime. This subsection aims to find out how prisoner rates and crime rates relate in cross sectional and time series analyses.

### 1. *Is the Level of Crime Different in Scandinavia?*

International Crime Victimization Surveys place the four Scandinavian countries around the EU-average or little below; however, with considerable individual variations.<sup>4</sup> The Table V.I summarizes the main results of selected offences from the four sweeps 1989-2000. Column A describes aggregate victimization rates for 11 offences. Column B includes same data for four serious offences. Prisoner rates (/100 000) are in column C. Figures in columns D and E express the number of prisoners per reported victimization rate.

**Table I.1** Victimization in the year preceding the survey (percentage: victim once or more)

	A 11 crimes	B 4 crimes	C Prisoners 2000	D Prison/11 crimes	E Prison/4 crimes*
<b>Scandinavia 4</b>	<b>20.8</b>	<b>6.8</b>	<b>59</b>	<b>2.8</b>	<b>8.7</b>
<b>Western Europe 12</b>	<b>21.8</b>	<b>6.9</b>	<b>105</b>	<b>4.8</b>	<b>15.1</b>
<b>Anglo 3**</b>	<b>27.7</b>	<b>12.2</b>	<b>123</b>	<b>4.4</b>	<b>10.1</b>
<b>USA</b>	<b>21.1</b>	<b>6.3</b>	<b>700</b>	<b>33.2</b>	<b>111.1</b>

Source: Compiled from European Sourcebook 2003 and van Kesteren et al. (2000), Appendix 4, Table 1.

\*) Car-theft, Burglary, Robbery and Assault & Threat

\*\* ) Australia, Canada, New-Zealand

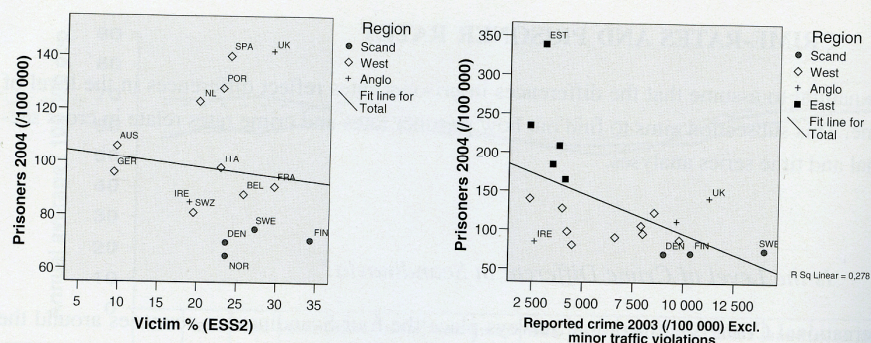
Overall victimization rate in Scandinavia is on the same level as in Western Europe, but the number of prisoners is only half of that. The higher number of prisoners in the three Anglo-Saxon countries might be partly explained by the higher victimization rates. However, the 10-fold prisoner rate of the US, as compared to the Scandinavian countries, cannot be explained with differences in crime, as the victimization rates are practically identical.

### 2. *Cross Sectional Comparisons on Crime and Prisoner rates*

Figure compares prisoner rates victimization (ESS 2<sup>nd</sup> round) and reported crime.

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4 Van Kesteren et al 2000.



**Figure II.1** Prisoner rates 2004, victimization (ESS2) and reported crime (SB 2006)  
Source: Varia.

Lower incarceration rate cannot be explained by lower victimization rates or by reported crime. In fact both figures indicate the opposite: The higher the crime rates, the fewer prisoners. However, some caveats are needed. First, victimization surveys are concentrated on minor property offences. In most Western European countries these crimes have a quite limited relevance for prisoner rates. A more reliable picture could be obtained if we had reliable comparative data of those crimes which have the greatest impact on the use of imprisonment.<sup>5</sup> Differences in reported crime are, obviously, explainable also by differences in the recording and control practices<sup>6</sup>. To minimize the effects of recording practices results are reported also for homicide, and for the sake of comparison, also for assaults.

<sup>5</sup> With that purpose Table I.I. above included separate columns (B and E) for more serious offences. As shown, higher prisoner rates in the English-speaking countries may be partly explainable by higher victimization in these offences.

<sup>6</sup> See in more detail Westfelt & Estrada 2005.



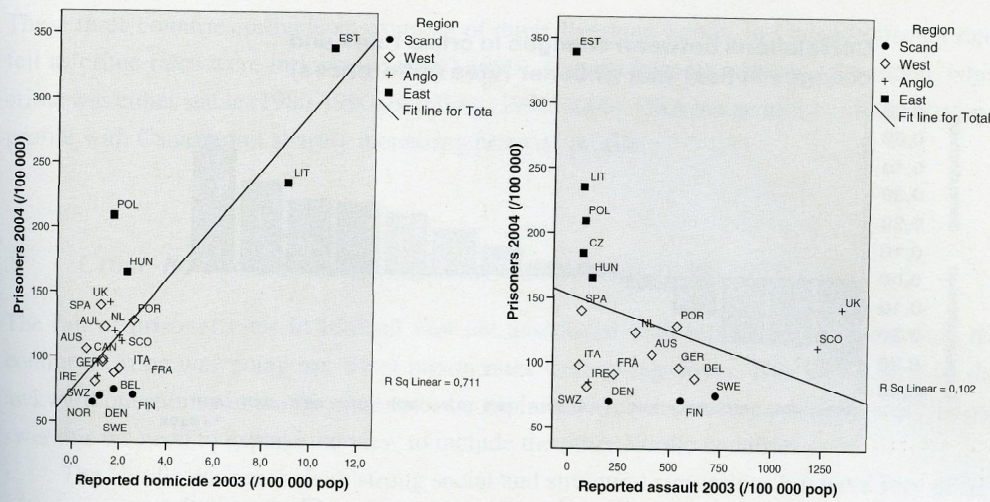
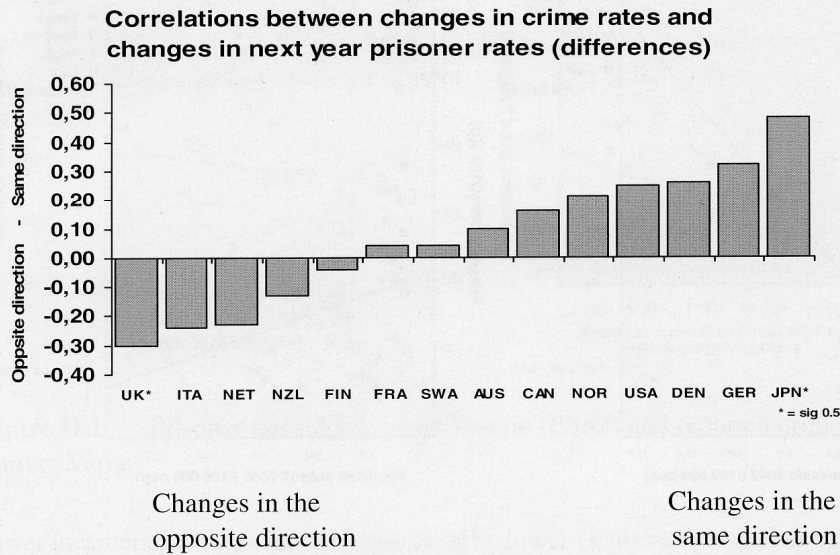


Figure II.2 Reported homicides and assaults in 2003 (/100 000)

For homicides the direction of the correlation changed. However, the results are heavily affected by two powerful observations regarding the Baltic countries. In addition, homicide is a rare event and it has fairly small effect in overall prisoner rates. Violent crime as a whole is in different position. As the figure on left indicates, the more there are reported assaults, the less there are prisoners.

### 3. Changes in Prisoner Rates and Reported Crime in Western-Europe 1980-2000

Second way of establishing possible associations between crime rates and prisoner rates is to examine whether changes in crime rates correlate with subsequent changes in prisoner rates. In the following a lag-effect of one year is assumed (crimes detected today have their main impact on prisoners next year). Since both variables show a constant increasing trend (and produce thus easily spurious correlations) correlations are based on differentiated series (differences between two years).

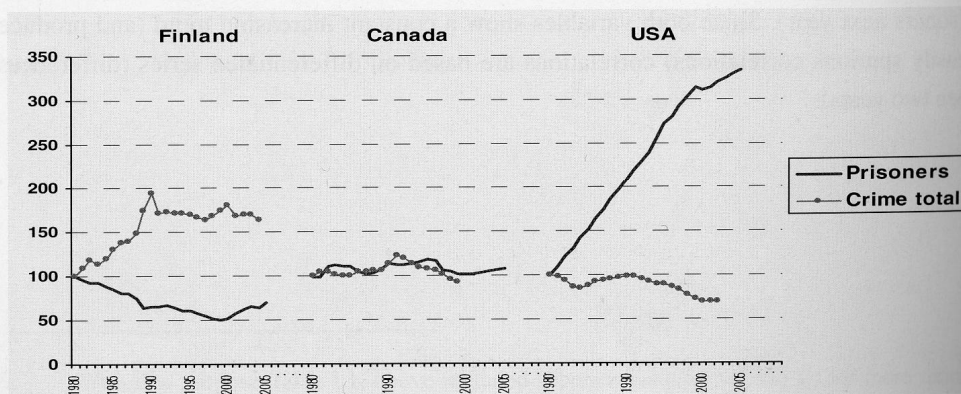


**Figure II.3** Associations between reported crime and prisoner rates 1980-2005 (Pearson's r)

Associations differ in different countries. In UK, Italy and Netherlands prisoner rates moved to the opposite direction with crime. In Japan, Germany and Denmark prisoners and crime were moving in the same direction.

4. Trends in Prisoners Rates and Reported Crime 1980-2005

Trend analyses provide a third way of testing the associations. Figure II.4 compares trends in prisoner rates and reported crime in Finland, Canada and USA in 1980-2005 (1980=100).



**Figure II.3** Prisoners and reported crime in Canada and USA (/100 000, 1980=100)

These three countries provide an example of three diverging trends. In Finland prisoner rates fell as crime rates were in increase (1980-1990). Canada kept its prisoner rates stable while crime was either stable (1980-1990) or falling (1990-2000). USA has an almost identical crime-profile with Canada, but sharply increasing prisoner profile.

5. *Crime-Rate and Prisoner Rates in Scandinavia 1950-2005*

The fall of prisoner rates in Finland was not associated with falling crime levels - on the contrary. Crime was going up, when prison rates were going down. This leaves us with the awkward question: can rising crime rates be explained with decreasing prisoner rates? To answer this we need to expand the view to include the other Nordic countries.

The Nordic countries share strong social and structural similarities but have very different penal histories. This provides an unusual opportunity to assess how in Finland drastic changes in penal practices have reflected in the crime rates compared with those countries (with similar social and cultural conditions) which have kept their penal systems more or less stable. Figure II.4 shows incarceration and reported crime rates in Finland, Sweden, Denmark and Norway from 1950 to 2005.

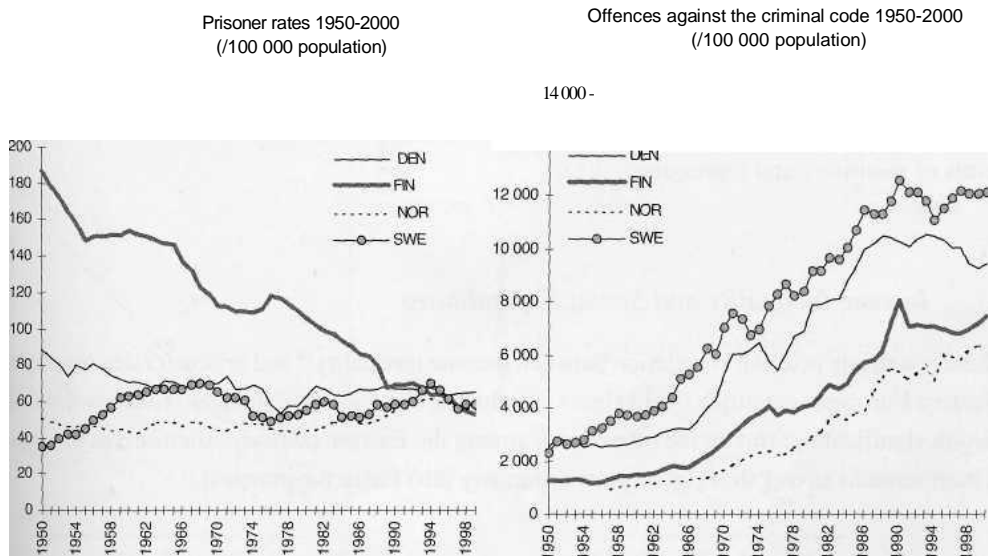


Figure II.4 Prison rates and crime rates 1950-2000  
 Compiled from: Falck et al 2003

There is a striking difference in the use of imprisonment, and a striking similarity in trends recorded crime. That Finland has substantially -reduced its incarceration rate has not disturbed the symmetry of Nordic the crime rates. These figures, once again, support the general crimino-



logical conclusion that crime and incarceration rates are fairly independent of one another; each rises and falls according to its own laws and dynamics.

Prisoner rates are unrelated to victimization rates as well as to reported crime. The development of prisoner rates in 1980-2005 showed no consistent patterns when compared with total recorded crime. In different times different countries showed different patterns. These results fit well with the conclusion from prior literature that imprisonment is largely unaffected by the level and trends in criminality.<sup>7</sup> Crime is not the explanation, neither for differences nor for trends. The rest of this paper searches explanations from other sources.

### III WELFARE AND SOCIAL EQUALITY

There is an evident connection between welfare orientation and penal culture. A straightforward way of defining the relationship between welfare and incarceration is to draw a straight line between these two: "locking people up or giving them money might be considered alternative ways of handling marginal, poor populations - repressive in one case, generous in the other".<sup>8</sup> War on Poverty leads to a different type of penal policy than War on Crime. The association between the emergence of punitive policies and the scaling down of the welfare state in the US and in the UK has been noted by several commentators.<sup>9</sup> The connection between the level of repression and welfare receives support also from the Finnish story, as the period on penal liberalization in Finland started at the time when Finland "joined the Nordic welfare family". This all indicates that factors such as high level of social and economic security, equality in welfare resources and generous welfare provision should contribute to lower levels of punitivity and repression.

#### 1. *Income Inequality and Social Expenditures*

There is a strong positive correlation between income inequality<sup>10</sup> and prisoner rates among the Western European countries (right figure). Including the Eastern countries weakens the association significantly. But on the other hand, among the Eastern countries themselves this association remains strong (left figure plots separately also Eastern countries).<sup>11</sup>

7 See for example Greenberg 1999, von Hofer 2003, Sutton 2004 and Ruddell 2005.

8 Greenberg 2001 p. 70.

9 Most notably by Garland 2001, see also the discussions in Cavadino & Dignan 2006, p. 21 ft.

10 The "fairness" of income distribution is measured with Gini-index. The index expresses to vvhah extent the real income distribution differs from the "ideal" and fair distribution (O=total fairness, I=total unfairness).

11 The small number of Eastern countries included in the study prevents making general conclusions. The Baltic countries seem to follow a different pattern than the other former socialist countries.

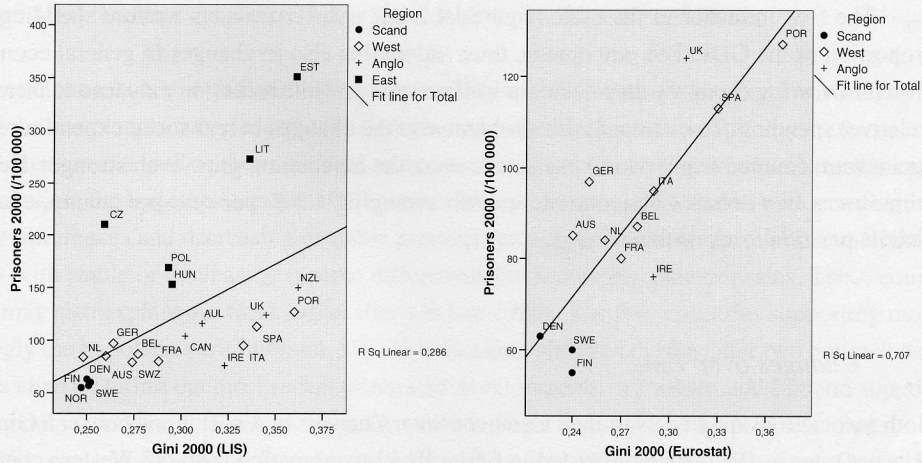


Figure III.1 Gini-index and prisoner rates 2000

There is equally clear (inverse) relation between the commitment to welfare and the scale of imprisonment. Below the extent of welfare provision is measured both in relative and absolute terms (as % of the GDP and as €/per capita).

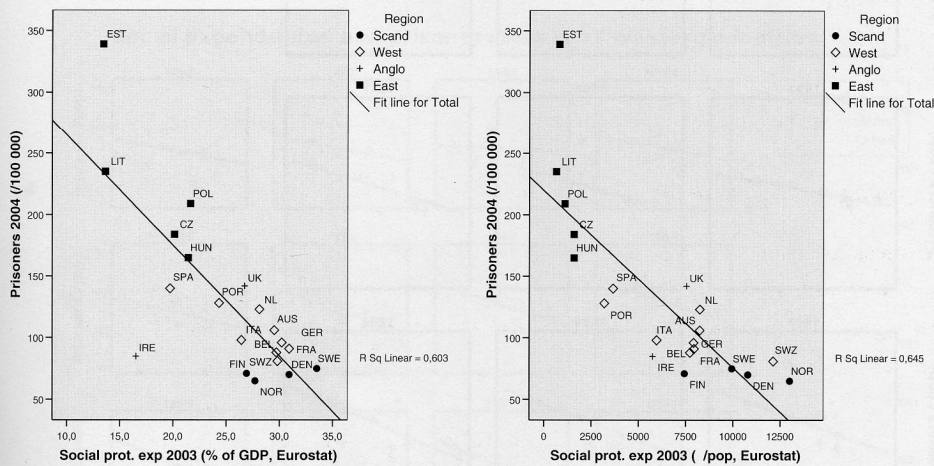


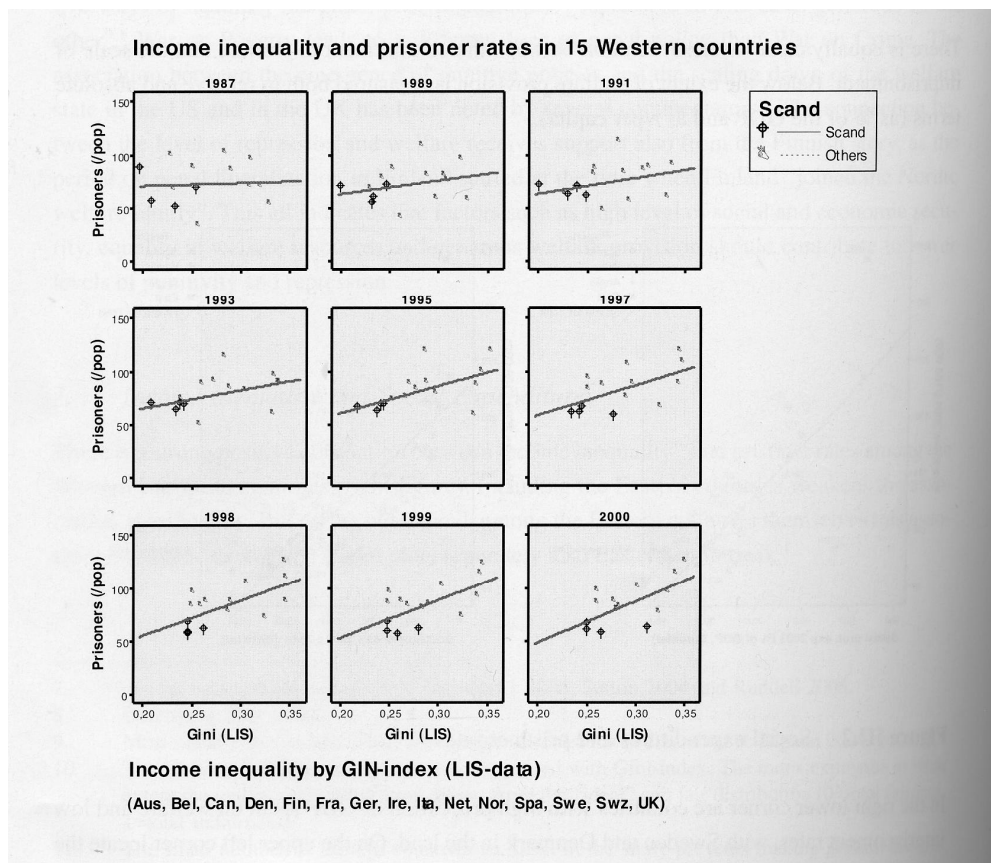
Figure III.2 Social expenditures and prisoner rates

In the right lower corner are countries with high proportion of GDP spent on welfare and low imprisonment rates, with Sweden and Denmark in the lead. On the upper left corner locate the Eastern countries and from Western Europe UK, Portugal and Spain.

The first indicator in the table (figure III. 2 left panel) measures welfare spending as a proportion of the GDP. The outcome is, thus, vulnerable also to changes in general economic growth. Growing economy may decrease welfare ratings while recession may lead to increased (relative) spending. To overcome this problem also the changes in real social expenditures per capita were counted (right panel). As can be seen, the association grew even stronger. Ireland, with almost two decades of economic growth averaging 4.3 % per cent per annum, changed also its position towards the average.

## 2. Changes over Time

Both associations may be examined also over time. Changes in associations between Gini and prisoner rates in 1987-2000 are tested in figure III.3 by comparing those 15 Western countries for which there is data for each year.



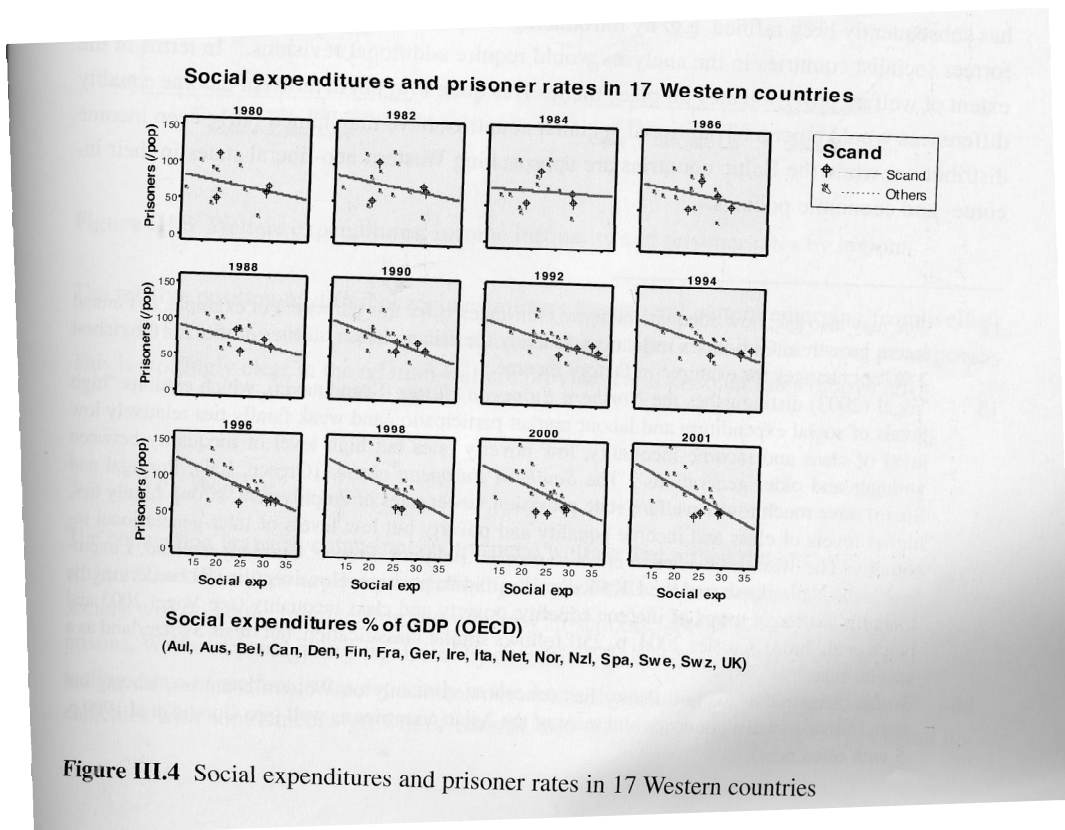


**Figure III.3** Income inequality and prisoner rates in 15 Western countries

In overall the association between income inequality and prisoner rates has become stronger. In 1987 the correlation was close to zero, but grew stronger each year ever since.

However, a look at the individual countries would reveal diverse trends. Countries running against the hypothesis in the 1980s were Finland, Austria and Sweden with growing income differences and decreasing or stable prisoner rates, and Switzerland, Ireland and Netherlands with stable or decreasing income differences but increasing prisoner rates. These countries may also explain the weak associations in late 1980s. The four countries supporting most strongly the hypothesis are Belgium, UK, New Zealand and the US (the latter two not included in the chart). During the most recent years also developments in Sweden and Finland support the model, as income differences have increased together with increasing prisoner rates.

Similar test can be conducted between social expenditures and prisoner rates. Downs & Hansen report that the countries which increased the share of their GDP spent on welfare saw relative declines in their prison population between 1987-1998. The association between imprisonment rates and spending became also greater over time, indicating that a "country that increases the amount of its GDP spent on welfare sees a greater decline in its imprisonment rate than in the past" (Downes & Hansen 2006). These findings get support from the present analysis and for a longer period (Figure III.4).



**Figure III.4** Social expenditures and prisoner rates in 17 Western countries

Countries which have decreased their (relative) social spending have also had the steepest increase in prisoner rates. The results are influenced especially by two powerful observations from Ireland and the Netherlands. The increase in social expenditure investments in the Netherlands has been the lowest, both in relative terms (% of the GDP) and in real terms per capita. Social inequality and meagre welfare state evidently are substantial risk factors for increased penal severity. However, this does not mean that changes in socio-economic factors have straightforward mechanical effects in prisoner rates.<sup>12</sup> There are also country-specific deviations and developments against general hypothesis.

### 3. *Regional Patterns and Penal Regimes ?*

In his classical *Three Worlds of Welfare Capitalism*, Esping-Andersen (1990) detected a pattern among Western (capitalist) welfare states. As regards to the extent and structure of welfare provision, values and principles aimed and expressed in welfare policies, countries in Esping-Andersen's study clustered fairly neatly in three welfare regimes: Social-Democratic (Scandinavian) regime, the Christian Democratic (Conservative/European regime) and the liberal (Anglo-Saxon) regime. These regimes bunch particular values together with particular programmes and policies. Different regimes pursue different policies, and for different reasons. Esping-Andersen's findings have not been contested, although his original classification has subsequently been refined, e.g. by introducing a separate Southern cluster.<sup>13</sup> Including the former socialist countries in the analyses would require additional revisions.<sup>14</sup> In terms of the extent of welfare provision they all place themselves quite low, but in terms of income equality differences would emerge. Traditional socialist countries have maintained fairly even income distribution, while the Baltic countries are approaching Western neo-liberal states in their income- and economic policies.

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12 One may also ask, how adequate measure Gini-index is for this purpose. For example, in Finland recent growth in Gini-index reflects exclusively the accumulation of sales profits for the richest 2 %, not changes for example in factory income.

13 Vogel (2003) distinguishes the *Northern European cluster* (Scandinavia), which exhibits "high levels of social expenditure and labour market participation and weak family ties relatively low level of class and income inequality, low poverty rates but high level of inequality between younger and older generations". The *Southern European cluster* (Greece, Italy, Portugal and Spain) have much lower welfare state provision, lower rates of employment, strong family ties. higher levels of class and income equality and poverty but low levels of inter-generational in equality. The *Western European cluster* (Austria, Belgium, France, Germany, Ireland, Luxembourg, the Netherlands and the UK) occupy the middle position. However, the UK borders on the southern cluster in terms of income equality, poverty and class inequality (see Vogel 2003 and Falck et al. 2003). Castles 2004, p. 25ff follows similar classification, but treats Switzerland as a special case.

14 So far comparative welfare theory has concentrated mainly on Western countries, leaving out both former socialist countries and most of the Asian countries as well (see Goodin et al 1999 p. 5 with references).

The relevance of welfare-classifications for this analysis is simple: Should welfare matter for penal policies (as it seems), differences between welfare regimes should also have comparable reflection in differences in penal policies. To test the hypothesis, countries have been clustered in five regions. The clustering follows the original classification of Esping-Andersen but adding two clusters from the former traditional former socialist countries and the Baltic countries. This leaves us with six regions (excluding the US): Scandinavia (Finland, Denmark, Sweden, Norway), Western Europe (Austria, Belgium, France, Germany, Netherlands, Switzerland), Mediterranean Europe (Spain, Italy, Portugal), Anglo-Saxon countries (UK, Ireland, and outside Europe Australia, Canada and New Zealand), Eastern Europe (Poland, Hungary and the Czech Republic) and the Baltic countries (Estonia and Lithuania). Figure III.5 illustrates the association between prisoner rates, welfare provision and income inequality in these six regions.

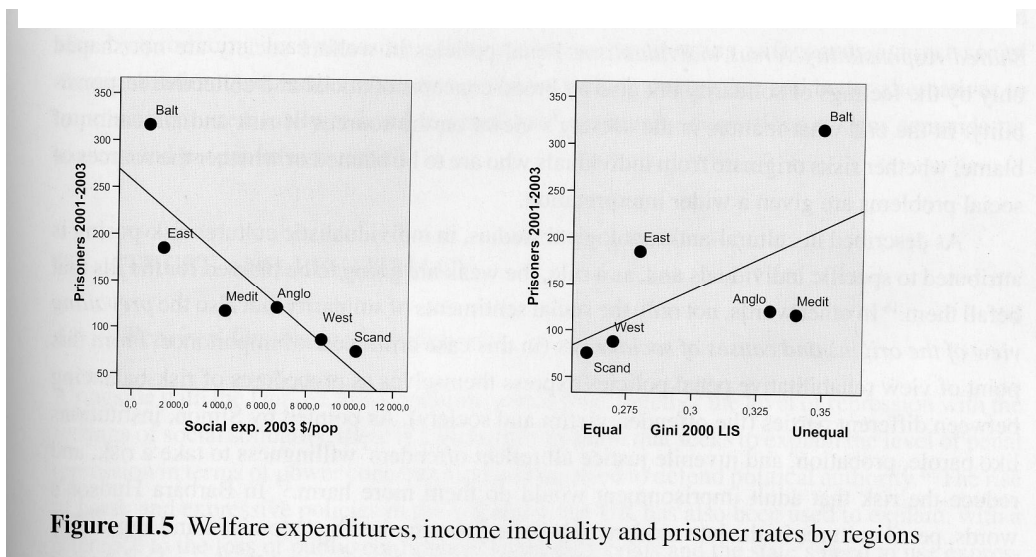


Figure III.5 Welfare expenditures, income inequality and prisoner rates by regions

The relative position of different regimes mirrors the general pattern emerging from welfare analyses. Different welfare regimes differ also in the penal policy and in the use of penal power. This is strikingly clear in the relation welfare provision and prisoner rates (above left).

#### 4. Why Welfare?

The connection between commitments to social welfare and prison rates is explicit in the old slogan "Good social policy is best criminal policy". This was just another way of saying that society will do better by investing more money in schools, social work and families than in prisons. Welfarist penal policy is, almost by definition, less repressive. No wonder, the general scaling down of welfare states especially in the Anglo-Saxon countries during the last decades coincides with simultaneous growth of control. But this is not to *explain* the association be-



tween social policy orientation and penal severity: We still need to ask, why welfare affects penal severity? Several propositions can be put forward.

*Solidarity.* Should one follow the Durkheimian tradition one would end up emphasizing the feelings of social solidarity. In David Greenberg's words, the comparative leniency and low degree of economic inequality may be seen "as manifestations of a high degree of empathic identification and concern for the well-being of others".<sup>15</sup>

Solidarity for the offenders may well explain penal leniency, but why should not feelings of solidarity have the opposite effect through the empathic identification on the position of the *victim*. The fact is that in welfare society feelings of solidarity tend to ease the burden of the offender, but that these are not used as arguments for tougher actions in the name of the victim may need further explanation.

*Shared responsibility versus individualism.* Penal policies in welfare society are not shaped only by the feelings of solidarity but also by broad concepts of social and collective responsibility. In the end what matters is the society's views on the sources of risk and allocation of blame; whether risks originate from individuals who are to be blamed or whether the sources of social problems are given a wider interpretation.

As described in cultural-anthropological studies, in individualistic cultures risk-posing is attributed to specific individuals and, as a rule, the weak are going to be blamed for the ills that befall them.<sup>16</sup> In other words, not only the social sentiments of solidarity, but also the *prevailing view of the origins and causes of social risks* (in this case crime) are of importance. From this point of view rehabilitative penal policies express themselves as procedures of risk-balancing between different parties (the offender, victim and society). As pointed by Simon, institutions like parole, probation, and juvenile justice all reflect offenders' willingness to take a risk, and reduce the risk that adult imprisonment would do them more harm.<sup>17</sup> In Barbara Hudson's words, penal cultures in the late modern risk-society are marked by "atomistic and aggressive individualism." The balancing of rights of different parties has gone, while the only right that matters for most are the safety rights of selves ("there is only one human right - the right not to be victimized"). Also the sense of shared risk and shared responsibility is gone, as we now cope with the risks by a constant scanning of all whom we come into contact to see whether or not they pose a threat to our security.<sup>18</sup>

*Material prosperity and security.* Behind less repressive social policy orientation one finds feelings of solidarity and a broad, less individualistic understanding of the origins of social risks. But a welfare society which organizes its social life from these starting points has trig-

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15 Greenberg 1999 p. 297.

16 On this see Hudson 2003 pp. 51-52 with references.

17 See Simon 2007 p.23. This balancing of risks was manifestly expressed in the general policy aim of "fair distribution" in the Finnish criminological theory in the 1970s (see Lappi-Seppälä 2001)

18 Hudson 2003 p. 74.

gered also other mechanisms which may contribute to less repressive direction. Taken into account material resources and economic security of an affluent welfare state, it may be easier to express tolerance and empathy, when one's own position is secured. Prosperity as such may also contribute to tolerance. David Garland (quoting Mary Douglas) writes, how the "no fault" approach to crime - which is what penal welfarism implicitly tends towards - depends upon an extensive network of insurance and gift-giving. Cultures, which rely on restitution instead of blame-allocation, are typically the ones where restitution can reasonably be expected and relied upon. "Non-fault" approach requires material background and mutual trust." In other words, only under certain conditions "one can afford to be tolerant". Empathy and feelings of togetherness are also easier to achieve among equals. Consequently, growing social divisions breed suspicions, fears and feelings of otherness.

*Policy alternatives.* Finally, strong welfare state may contribute to lower levels of repression also by producing less stressing crime problems by granting safeguards against social marginalization. And furthermore, in a generous welfare state, other and better alternatives to imprisonment are usually at hand (a functional community corrections system demands resources and proper infrastructure).

#### IV TRUST AND LEGITIMACY

##### 1. *Between Durkheim and Weber*

Alongside with the Durkheimian tradition, which links together the level of repression with the feelings of social solidarity, there is a Weberian tradition that seeks to explain the level of penal repression in terms of power concentration and the need to defend political authority.<sup>20</sup> The rise of harsh and expressive policies in the US and in the UK has also been used to explain, with a reference to the loss of public confidence, legitimacy crisis and the state's need to use expressive punishments as a demonstration of sovereignty. David Garland refers in various occasions to the state's failure to handle the crime problem and the resulting "denial and acting out": Unable to admit that situation has escaped from the government's control and in order to show to the public that at least "something" is done with the crime problem, the government has resorted to expressive gestures and punitive responses.<sup>21</sup> It has also been pointed out that in the US since the 1960s the scope of the federal government activity and responsibility has expanded into fields like health care, education, consumer protection, discrimination etc, leading into a spiral of political failures. This in turn has led into the collapse of confidence. The following expressive and convincing actions against crime have meant, in part, to save the

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19 Garland 2001 pp. 47-48.

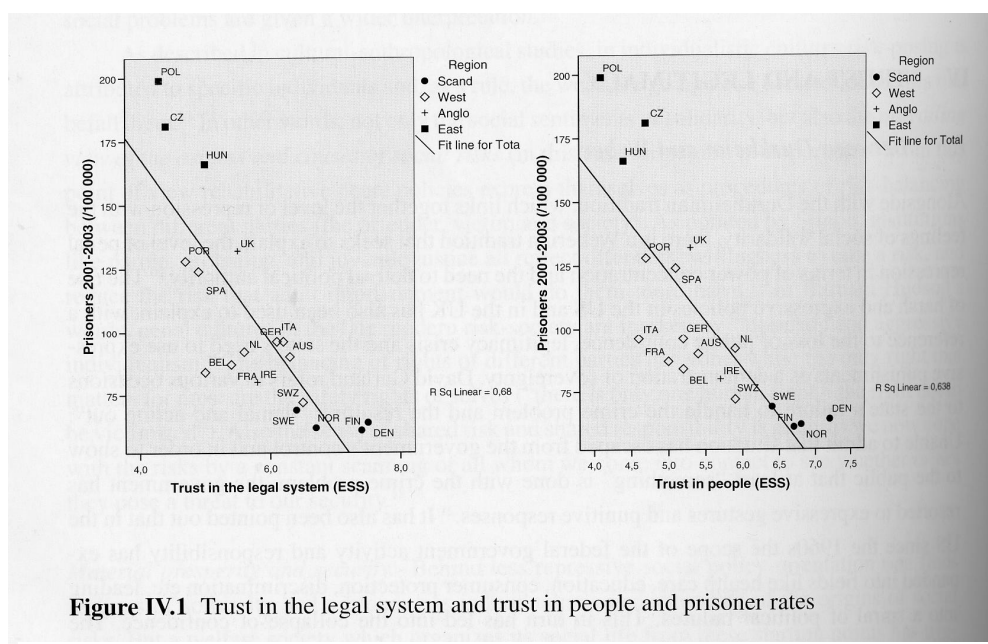
20 See Killias 1986.

21 See Garland 2001 p. 103 ff.

government's credibility.<sup>22</sup> The loss of public confidence in the political system has been seen as one of the major causes behind the rise of punitive populism and the subsequent ascendancy of penal severity in the New Zealand.<sup>23</sup>

## 2. Social and Institutional Trust

Empirical testing needs operationalizations. In the following political legitimacy is measured with social survey data on citizen's confidence and trust in political institutions. The analysis extends from political legitimacy (Weber) to social trust (Durkheim), as the surveys cover both dimensions. ESS contains several questions measuring trust in people (horizontal, generalized or social trust) and trust in different social institutions (vertical or institutional trust).<sup>24</sup> World Values Surveys, conducted in a larger number of countries contain similar questions measuring citizens' confidence both to each other and to social and political institutions. Cross sectional observations are based on the first round of the European Social Survey (ESS 2002). Trend analyses are based on World values surveys (WVS) started in 1981.



**Figure IV.1** Trust in the legal system and trust in people and prisoner rates

22 See Tonry 2004 pp. 41-44 with references.

23 See Pratt & Clark 2005.

24 Trust in people ("generalized trust") was measured with the following question: Would you say that most people can be trusted, or that you cannot be too careful in dealing with people? (0 You can't be too careful, 10 Most people can be trusted). Trust in institutions was asked in the follow

There prevails a strong inverse association between the levels of repression, legitimacy and social trust. The legitimacy of social and political institutions remains the highest in Scandinavia and Switzerland. These countries also tend to have the lowest prisoner rates. Close to these rankings in trust come Austria and the Netherlands. In the opposite corner one typically finds the East-European countries, and often also the UK.

Figure III.4 summarizes regional patterns between prisoner rates and trust according to the welfare classification explained above.

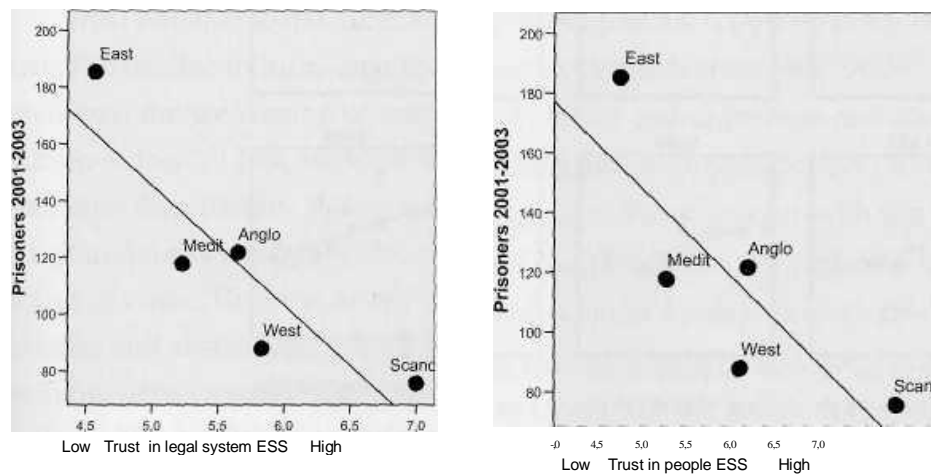


Figure IV.2 Trust and prisoner rates by regions

Regional patterns keep repeating themselves: The Scandinavians have higher social trust as well as trust in their political and legal institutions. The eastern cluster occupies the opposite position in both measurements. Continental Western countries are close to Scandinavia in political trust and at the same level with the Anglo-Saxon countries in social trust.

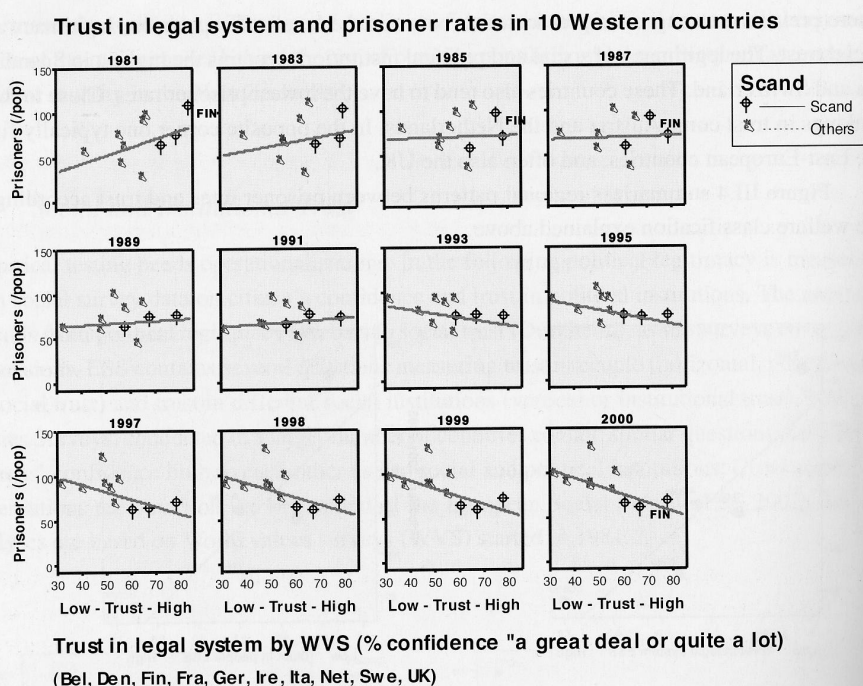
In a closer examination the levels of trust are inversely associated also with fear, punitivity and income-inequality. They all increase as the degree of trust decreases. High level of trust also seems to indicate a more generous welfare provision.<sup>25</sup>

### 3. Changes over time

Changes over time in prisoner rates and trust in legal system (measured by World Values Surveys) are examined in figure IV.3.

ing way: Please tell me on a score of 0-10 how much you personally trust each of the institutions, country's parliament, the legal system, the police, politicians? (0 No trust at all, 10 Complete trust).

25 Interrelations and associations between the key-variables are explored in more detail in Lappi-Seppala 2007a (forthcoming).



**Figure IV.3** Trust in legal system and prisoner rates in 10 Western countries

The association between trust in legal system and prisoner rates has become stronger between 1981-2000. Social trust and trust in people would give similar results.<sup>26</sup> Again one could find countries with diverting trends, such as Finland during the 1980s and early 1990s with decreasing trust in the legal system and decreasing prisoner rates. However, the general picture gives strong support for the hypothesis that the degree of social and political trust and penal severity are closely interrelated, and that declining trust associates with increasing prisoner rates.

*Why trust and legitimacy?* Evidently, trust and the level of repression are interconnected. For Fukuyama high prisoner rates constitute "a direct tax imposed by the breakdown of trust in society".<sup>27</sup> Again we are faced with the question, why trust and legitimacy bring leniency and why distrust produces severity? Trust in institutions (vertical, institutional trust) and trust in people (horizontal, personalized trust) are essential for the functioning of social institutions.

26 Lappi-Seppala 2007a (forthcoming).

27 Fukuyama 1995 p. 11.



norm-compliance, and for political responses to law-breaking, in different ways (and for various reasons).

Declining legitimacy and trust in institutions calls actions for political level. Historical analyses have pointed out how criminal laws have become harsher once the rulers have felt that their position and authority is threatened. In a system with a high level of confidence and trust there is also less need for political posturing and expressive gestures: "punitive outbursts and demonizing rhetoric have featured much more prominently in weak political regimes than in strong ones".<sup>28</sup> Thus Bow legitimacy may call for tough measures for political reasons (in order to defend the positions of power)<sup>29</sup>

Trust has also social dimensions. Trust in people, fears and punitive demands are interrelated. The decline in trust, reported in many western countries since the 1960s<sup>30</sup> has been associated with the weakening of community ties, the rise of individualism and the growth of the "culture of fear".<sup>31</sup> In a world of weakening solidarity ties other people start to look like strangers rather than friends. We do not know whom to trust. This together with the increased feelings of insecurity caused by the new risks beyond individual control provides a fertile ground for fear of crime. Crime is an apt object of fears and actions for anyone surrounded by growing anxieties and abstract threats. Crime and punishment are tangible and comprehensive targets: We know what causes crime and we know how to deal with the problem (especially when the media and the politicians do such a good job in teaching us). Declining trust and increased

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28 Garland 1996 p. 462.

29 Loss of confidence can trigger also other mechanisms which may have impact on penal policies.

Pratt & Clark (2005) describe how a dramatic fall in public confidence in the political system in New Zealand and increased feelings of insecurity (related also to the growing number of immigrants), reinforced by extensive media coverage of crime, has led to a birth of new interest groups which have adopted as their main target the hardening of the criminal justice system. Newly created Citizens Initiated Referendum provided also a channel for these groups to have a direct impact on government policy, which they also did.

30 See LaFree 1998.

31 Furedi 2002. See also the comments on the interrelation between trust and welfare (above).

fears go a long way together. Fears, in turn, correlate strongly with prisoner rates (Figure IV.4 below left), as well as with trust (below right).

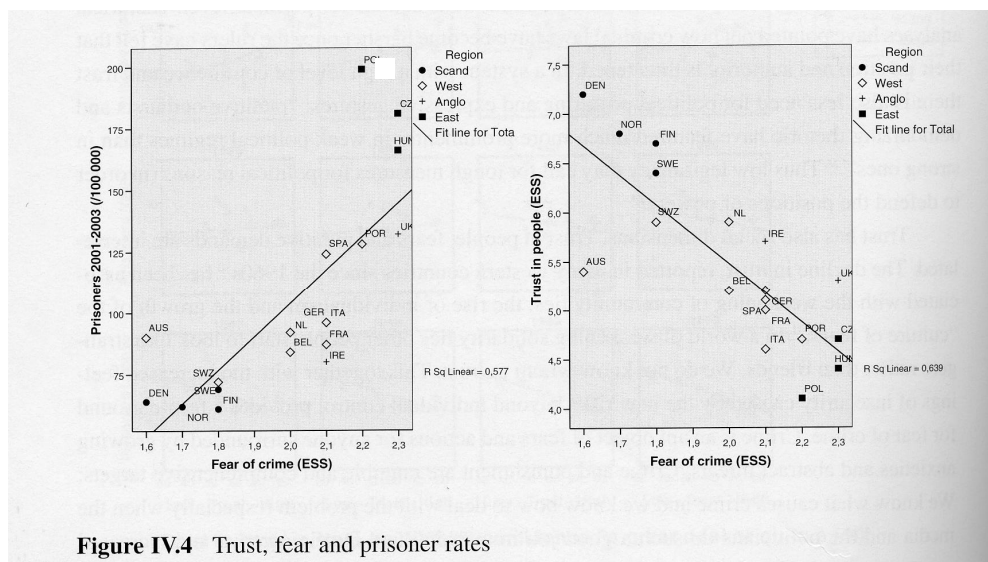


Figure IV.4 Trust, fear and prisoner rates

Trust is relevant also for social cohesion and (informal) social control. Generalized trust and trust on people is an indicator of social bonds and social solidarity. Decreasing trust indicates weakening solidarity and declining togetherness. And declining solidarity implies readiness for tougher actions.

On the other hand, communities equipped with trust are better protected against disruptive social behaviour. They are "collectively more effective" in their efforts to exercise social control.<sup>32</sup> This ability may also be gathered under the broad label "social capital" including i.e. the existence of those social networks and shared values that inhibit law breaking and support norm-compliance.<sup>33</sup> There exists a link between trust, solidarity and social cohesion, and effective informal social control.<sup>34</sup>

32 Sampson et al (1997) refer to collective efficacy, defined as "social cohesion among neighbours combined with their willingness to intervene on behalf of the common good".

33 Social capital may be described as "the pattern and intensity of networks among people and the shared values which arise from those networks. While definitions of social capital vary, the main aspects are citizenship, neighbourliness, trust and shared values, community involvement, volunteering, social networks and civic participation (ONS, <http://www.statistics.gov.uk/socialcapital/>). See also Kubrin & Weizer 2003 for an almost synonymous use of the terms social control and social capital.

34 Gatti et al 2003 report how social solidarity and trust enhanced social integration of children and reduced criminal behaviour.

Finally trust in institutions and legitimacy is conducive also to norm-compliance and behaviour. Both later theories of procedural justice<sup>35</sup> and traditional Scandinavian theories of the moral creating and enforcing effect criminal law which stress the idea that in a well-established society norm-compliance is based on internalized (normative) motives - not on fear. And the crucial condition for this to happen is that people perceive the system as fair and legitimate. A system which seeks to uphold norm-compliance through trust and legitimacy, rather than fear and deterrence, should be able to manage with less severe sanctions, as the results also indicate.

To sum up: The association between trust and the level of repression is the function of several coexisting relations. The lack of institutional trust creates political pressures towards more repressive means in order to maintain political authority. The lack of personal trust associated with fears result in ascending punitive demands and increase in these pressures. On the other hand, increased personal trust, community cohesion and social capital strengthen informal social control. This associated with institutional trust and norm-compliance based on legitimacy decrease the needs to resort to formal social control and to the penal system.

Trust may well be one of the key-variables in explaining the shape and contents of penal policies. Structures upholding and enhancing trust are, therefore, an object worth examining.<sup>36</sup> This brings political economy in the spotlight.

## V POLITICAL ECONOMY

This all has also a political side. Socio-economic factors, public sentiments or the feeling of trust do not turn just by themselves into penal practices. In the end prison rates (and social policy) are an outcome of policy choices and political actions, taken under a given political culture. The penal changes in the US, to give an example, have been explained with a reference to the bi-polar structure of the political system and with the struggle of the swing-voters.<sup>37</sup> The Scandinavian leniency, in turn, has been explained with a reference to the corporatist and consensual model of political decision-making.<sup>38</sup>

### 1. *Typologies of political economy*

*Consensual and majoritarian democracies.* In political theory the differences between democratic political systems has been characterized with the distinction between "consensus- and

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35 See Tyler 2003.

36 From a policy perspective, the negative association between severity trust should give something to think for those concerned of the legitimacy and the functioning of the criminal justice system. It seems like increased penalties is a poor measure in buying back the lost confidence and in enhancing legitimacy.

37 See Caplow & Simon 1999 and Tonry 2004 p. 38 ff.

38 Kyvsgaard 2001, Bondeson 2005 and Cavadino & Dignan 2006 p. 149 ff.

majoritarian democracies".<sup>39</sup> The terms themselves express the main differences.<sup>40</sup> In relation to the "basic democratic principle", majoritarian democracy stresses the majority principle: It is the will of the majority that dictates the choices between alternatives. Consensus democracy wishes to go a little further, and tries to maximize political participation over mere majorities. Majority principle means that the winner takes all, consensus means that as many views as possible are taken into account. Majority driven politics are usually based on two-party competition and confrontation, whereas consensus driven policy seeks compromises. Instead of concentrating power in the hands of the majority, the consensus model tries to share, disperse, and restrain power in a various ways, i.e. by allowing all or most of the important parties to share executive power in broad coalitions and by granting widespread interest group participation.<sup>41</sup> Several institutional arrangements separate these two systems. Consensus democracies typically have larger number of political parties, a proportional electoral system and either minority governments or large-based coalition governments. Political decision making processes are characterized by consensus seeking negotiations with well coordinated and centralized interest groups actively co-operating.

*Corporatism and neo-corporatism.* By bringing the interest group participation in the analyses extends the perspective to broader political processes and the relations between the state, corporations, workers, employers and trade unions. The concept of (neo)corporatism aims to capture essential features in these processes. In today's political science and sociology the term refers to tri-partite processes of bargaining between labour-unions, private sector, and government taken place typically in small and open economies.<sup>42</sup> Such bargaining is oriented toward dividing the productivity gains created in the economy fairly among the social partners and gaining wage restraint in recessionary or inflationary periods. Neo-corporatist arrangements usually require highly organized and centralized labour unions which bargain on behalf of all workers. Examples of modern neo-corporatism include the collective agreement arrangements of the Scandinavian countries, the Dutch Poldermodel system of consensus, and the Republic of Ireland's system of Social Partnership.<sup>43</sup>

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39 Lijphart 1999.

40 Though Lijphart (1998) reports of several difficulties in developing suitable and non-confusing concepts.

41 Lijphart 1999 p. 34 ff.

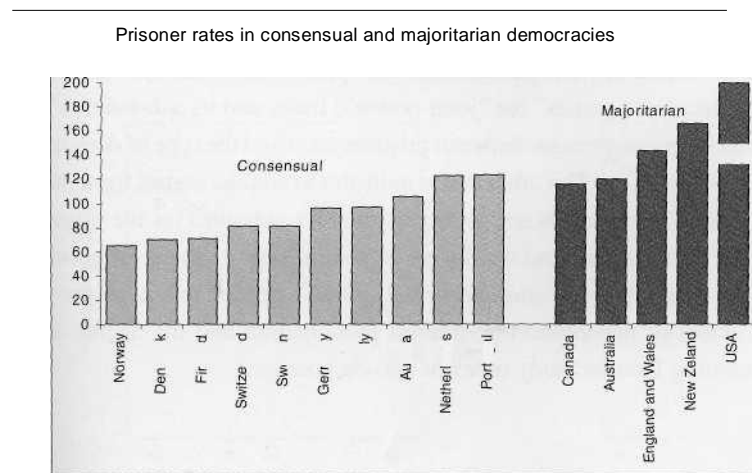
42 The historical roots of corporatism go back to old guild-system and the early 20th century Italian trade unions, many organized to counter the influences of socialist ideology. The concept was revised by the late 20th theory of political economy. Like its successor, neo-corporatism emphasizes the role of corporate bodies in influencing government decision-making, but has lost the negative associations (some originating from the period of Italian Fascism).

43 Evidently also corporatism (or neo-corporatism) may be defined differently. Sutton's definition stresses the labour-market dimension: Corporatism is a "set of structural arrangements through which workers, employers, and the state are jointly engaged in forging economic policies that are applied in a coordinated way across the entire economy (Sutton 2004 p. 176).

There is an obvious link between these two: Consensus democracies and corporatism go usually hand in hand.<sup>44</sup> Scandinavian countries are typical examples of consensual - or corporatist - (social)democracies. Switzerland, also, is classified as an paradigmatic example of a highly corporatist (Christian) democracy. To this group belong also Austria, Belgium, France, Germany, Italy and Netherlands. Majoritarian (and usually also less corporatist) democracies include Australia, Canada, Ireland, New Zealand, the UK and the US.<sup>45</sup>

2. *The relevance of political economy: Initial remarks*

In Lijphart's own analyses consensus democracies outperform the majoritarian democracies with regard to the quality of democracy and democratic representation and the "kindness and gentleness of their public policy orientation".<sup>46</sup> Consensual democracies are also characterized by better political and economic equality and enhanced electoral participation. Moreover, Lijphart found that (in 1992 and in 1995) consensual democracies put fewer people in prison and hold much more restrictive views on the use of death penalty.<sup>47</sup> Figure V. 1 compares prisoner rates in consensual and majoritarian democracies 2004. Table V. 1 summarizes the trends between 1980-2004.



**Figure V.I** Prisoner rates in consensual majoritarian democracies

44 However, this is not the case always. Ireland is an example of two-party system with strong corporatist elements. More generally, it needs to be emphasized that the classifications in the text are to be understood as ideal-types. Real world democracies place themselves on a scale, both in terms of the degree of corporatism and consensualism.

45 As Pratt & Clark 2005 report, New-Zealand moved in 1999 towards the corporatist direction by adopting a proportional electoral system (however, with considerable difficulties).

46 Lijphart 1999 p. 301.

47 Ibid. p. 286 pp. 297-298.



**Table V.1** Prisoner rates (/100 000) in consensus and majoritarian democracies 1980-2004

	1980	1990	2000	2004	Increase 1980-2004
Consensus 11	66	67	76	88	32 %
Majoritarian 5	68	92	114	129	89 %
USA	221	461	684	724	228 %

Consensus 11: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Sweden, Switzerland.

Majoritarian 5: Australia, Canada, Ireland, New Zealand and the UK.

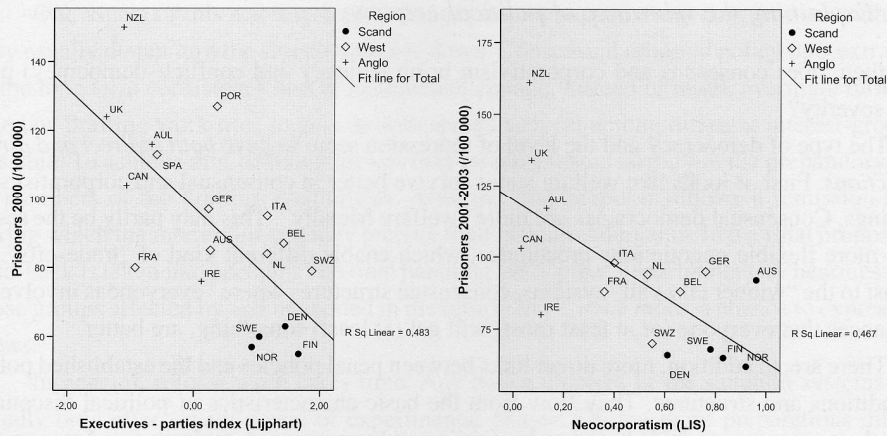
Consensual democracies are associated with a more lenient penal policy. However, in 1980 the prisoner rates in the eleven consensus democracies and five majoritarian democracies were about even. During the following 25 years the majoritarian democracies increased their prisoner rates by 89 % and the consensus democracies by 32 %. If the US had been included in the latter group (as it should have been), these differences would have become even greater.

### 3. *Measuring Political Economy*

More detailed empirical testing requires operationalizations. Lijphart measured the "consensus—majoritarian quality" of democracies with a set of indexes concerning things like the extent of interest group participation and centralization, the number of political parties, the balance of power between governments and parliaments, the type of electoral system etc. Lijphart's summary-index "Executives-parties" (or "joint-power") index and its sub-indexes<sup>48</sup> offer a possibility for quantitative measurements between prisoner rates and the type of democracy, as well as the degree of corporatism. The other major indicator available, comes from the Luxembourg income study. This 11-component neo-corporatism index measures i.a. the wage-bargaining processes, the role of the unions and the degree of centralization in interest group participation.<sup>49</sup> Figure V.I illustrates the association between Lijphart's general index (measuring first and foremost the extent of power sharing, interest participation and the degree of corporatism) and the Luxembourg Income Study index of neo-corporatism.

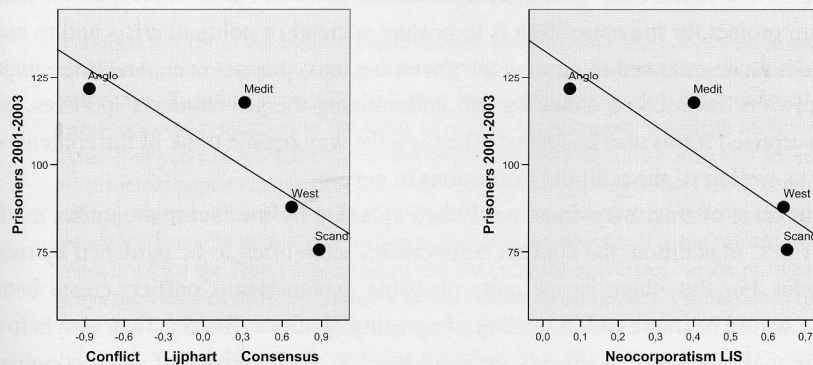
48 They include (1) the concentration of executives power in single-party majority cabinets versus executive power-sharing in broad multiparty coalitions, (2) executive-legislative relationships in which the executive is dominant versus balance of power, (3) two-party versus multiparty systems, (4) majoritarian and disproportional electoral systems versus proportional representation, and (5) pluralist interest group systems with free-for-all competition among groups versus coordinated and "corporatist" interest group systems aimed at compromise and concentration (Lijphart 1999 p. 3 ff).

49 See in more detail Huber et al 2004.



**Figure V.1** Political culture (Lijhart index), neocorporatism (LIS) and prisoner rates

Consensual democracies and neocorporatism are associated with a more lenient penal policy. The  $R^2$  indicates that among the Western European countries about 50 % of prisoner rates variation could be explained by the type of democracy and the degree of corporatism. Figure V.2 summarizes the associations by regions (only Western countries).



**Figure V.2** Political culture and prisoner rates by regions

The associations between the extent of consensualism, neo-corporatism and penal severity and prisoner rates hold also on regional level.<sup>50</sup>

50 Political culture correlates also to a number of other variables. In a consensual democracy people are less afraid of crime, they have more trust in the legal system and to other people, they experience higher social and political equality and are more satisfied with their lives and the way democracy is working (see Lappi-Seppälä 2007a, forthcoming).

#### 4. *Explaining the relevance of political economy*

Why, then, does consensus and corporativism bring leniency and conflict(-democracy) produces severity?

The type of democracy and the level of repression seem to have *both indirect and direct connections*. First, it looks like welfare states survive better in consensual and corporatist surroundings. Consensual democracies are more "welfare friendly". This may partly be the result of the more flexible negotiations procedures, which enable different kind of "trade-offs". In contrast to the "winner takes all" systems, consensual structures where "everyone is involved", the chances that everyone (or at least most) will get (at least) something, are better.

There are, in addition, more direct links between penal policies and the established political traditions and structures. They flow from the basic characteristics of political discourse. While the consensus model is based on bargaining and compromise, majoritarian democracies are based on competition and confrontation. The latter sharpens the distinctions, heightens the controversies and encourages conflicts. This all has its effect on the stability and content of the policies, and in the legitimacy of the system.

In a consensus democracy there always remains the need to maintain good relations with your opponent. You will probably need them also after the election. As expressed in Scandinavian politics: "There are no knock-out winnings in politics, only winnings by scores". In consensus democracy there is less to win and more to lose in criticizing the previous governments achievements. There is also less criticism and less discontent due to the fact that policies and reforms have been prepared together by incorporating as many parties as possible in the process.

There is also less "crisis talk." In majoritarian democracies and under a competitive party system the main project for the opposition is to posture societal or political crisis and to convince that there is an urgent need to remove the governing party from power. And if the major part of political work is based on attacking and undermining the governments' policies, one should not be surprised if this also had some effects on the way people think of the contents of these policies, as well as of the political institutions in general.

The lower level of trust may, thus, partly be explained by the fact that conflict model invites more critics. In addition, the conflict democracies seem often to be burdened by more aggressive media. For this, there is one quite plausible explanation: Conflicts create better news. Very few would be interested in reading of agreeing opinions. But this may also help to explain why the majoritarian democracies are more susceptible to episode of penal populism, and why the consensus democracies tend to have lower incarceration rates.

Consensus seems to bring also both *stability and deliberation*. The Social Democrats have been in power in Denmark, Sweden and Norway from the 1930s until the late 1990s with only minor interruptions. This hegemony combined with consensual political culture under a minority government (when you have to negotiate with the opposition) or under a coalition government (when you have to negotiate with your cabinet partners) has produced unprecedented stability. New governments rarely have had the need to raise their profile by making spectacular turnovers.

One aspect of this stability is that changes do not happen every day. And when they do, they usually do not turn the situation upside down. Consensual criminal policy puts extra value in the long term consistency and in incremental change, instead of rapid, overnight turnovers. The law drafting work tries to gain as widespread support among different interest-groups as possible. To achieve this, different groups may be represented already in the preparatory phase as members of the drafting committees. After the first proposal follows a remission-round, during which the interest groups may prepare their official statements. In the final proposal this feed-back is taken into account. The final handling takes place in parliamentary hearings where those groups affected by and interested in the reform have, once more, a chance to express their views.<sup>51</sup>

In general, reform work takes time. Any major changes in the sanction systems occur usually only after several years of experimental phases. During these preparations different groups have a chance to express their views in several occasions, which evidently increases the degree of their commitment in the final outcome.

What has been said about the Finnish law drafting process applies more or less to other Scandinavian countries, too. There are, certainly, some differences. From the Finnish point of view it seems that the Swedish legislator is more willing to act quicker and to pass "single problem solutions". Many commentators also report of changes in the Swedish political culture already during the 1980s.<sup>52</sup> There may be also other differences between the Scandinavian countries. The closer you look the more differences you find. But in a picture that covers not only the Scandinavian countries but also the UK, these differences look small. And if one

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- 51 The total reform of the Finnish criminal code serves as an example of consensual reform project in slow-motion. The project started in 1972 by the appointment of a committee to draft the basic principles. Together with the committee four sub-committees were appointed to examine the need for penal regulation in the fields of traffic, environment, work-life and economic relations. After four years of work the committee (which was heavily influenced by sociologists) laid down its principal paper. Again, after four years of preparation a specific Task-Force for Criminal Law reform was established. The Task Force had its own directory of boards, in order to grant independence from the ministry of justice and to secure consistency in the reform work. The appointment brief for the Task Force stressed that the code should reflect "in the most extensive possible ways the views of different groups and individuals in the society". Remissions of the work of the principal committee were asked from over a 300 organizations and groups. Once the actual drafting work started the aim of producing a fresh code in one piece was quickly abandoned, and the Task Force started to produce partial reforms. Practically all key figures stayed active from the start to the closing of the project (1980-1999, and some remained in the work from the initial start in 1972 till the last official sub-reform in 1999).
- 52 Victor (1995, pp. 71-72) reports of the decline of consensus and increased dissents and conflicts among the parliamentary Standing Committee on Justice from the early 1980s onwards. According to Tham (2001) the arguments for law and order grew stronger already under during the social democratic government but reached its culmination under the centre-right Government during 1991-1994. In general, the shift in the Swedish penal policy during the 1990s marked a decisive step from "defensive" crime policy characterised by legal safeguards, human rights values, penal parsimony and protection of individuals against power abuse, towards "offensive" crime policy aiming at problems solving, direct instrumental ends and abuse of punishment (Jareborg 1995).

wishes to incorporate the USA in the same picture, the Nordic countries look more or less identical.

However, some caveats must be added, especially when we move to the present-day law drafting work. Many routines have been turned upside down by the EU. The implementation of the framework decisions and the harmonization of national codes in accordance with the demands of different EU-instruments allows very little scope for reasoned deliberation - or national discretion for that matter. Long-lasting committees and careful preparations have been switched to two-day trips to Brussels. Arguments in principle and evidence based assessments on different options have been replaced by political arguments and symbolic messages. This all bears an evident risk of politicization of criminal policy, also in Scandinavia.

## VI SOCIAL, POLITICAL, ECONOMIC, AND CULTURAL CONTEXTS OF PENAL POLICY - AN OVERVIEW

Comparative analyses indicate that differences in prisoner rates can not be explained by differences in crime. Instead, penal severity seems to be closely associated with the extent of welfare provision, differences in income-equality, trust and political- and legal cultures. The analysis supports the view that the Scandinavian penal model has its roots in consensual and corporatist political culture, high levels of social trust and political legitimacy, as well as a strong welfare state. These different factors have both indirect and direct influences on the contents of penal policy.

The link between penal leniency and welfare state is almost conceptual. Welfare state is a state of solidarity and social equality. A society of equals, showing concern of the well being of others, is less willing to impose heavy penalties upon its co-members, compared to a society with great social distances where punishments apply only to "others" and to the underclass. Increasing social distances increase readiness for tougher actions, equality has the opposite effect. In more concrete forms welfare state sustains less repressive policies by providing workable alternatives to imprisonment. Extensive and generous social service networks often function also, per se, as effective crime prevention measures, even if that is not a partial motivation for these practices (such as encompassing day-care, parent-training, public schooling system based on equal opportunities for all etc).

Indirect effects take place through enhanced social and economic security, lesser fears, lower punitive projections and, especially, via high social trust and political legitimacy, both supported and sustained by welfare state. The type of welfare regime may also be of importance. Need-based selective social policy concerns "other people", those who are marginalized and who are culpable for their own position. This feeds suspicion and distrust. Universalistic social policy that assigns benefits for everyone, grants social equality and makes no distinctions between people, has different moral logic. Social policy concerns us all. Debates on social policy are efforts to solve our common problems. This all gives strong support for social trust. Addition to all this, the social and economic security granted by welfare state as well as the feelings of social trust it promotes, sustains tolerance, lower level of fears and less punitive projections.



Liberal policies and low prisoner rates are also by-products of consensual, corporatist and negotiating political cultures. These cultures are, for the first, more "welfare friendly", as compared to many majoritarian democracies. The direct links between penal policies and political cultures flow from the basic characteristics of political discourse. Consensus brings *stability and deliberation*. Political changes are gradual, not total as in majoritarian systems where the whole crew is changes at a time. In consensus democracy new governments rarely have had the need to raise their profile by making spectacular turnovers. Consensual criminal policy puts extra value in the long term consistency and in incremental change, instead of rapid, overnight turnovers. While the consensus model is based on bargaining and compromise, majoritarian democracies are based on competition and confrontation. The latter sharpens the distinctions, heightens the controversies and encourages conflicts. This affects the stability and content of the policies, as well as the legitimacy of the political system as a whole. There is more crisis talk, more critics, more short-term solutions and more direct appeals to public demands. In short: Consensual politics lessen controversies, produce less crisis talk, inhibit dramatic turnovers and sustain long-term consistent policies. In other words, consensual democracies are less susceptible for political populism.

The interplay between different factors influencing the contents of penal policy is illustrated in figure below.

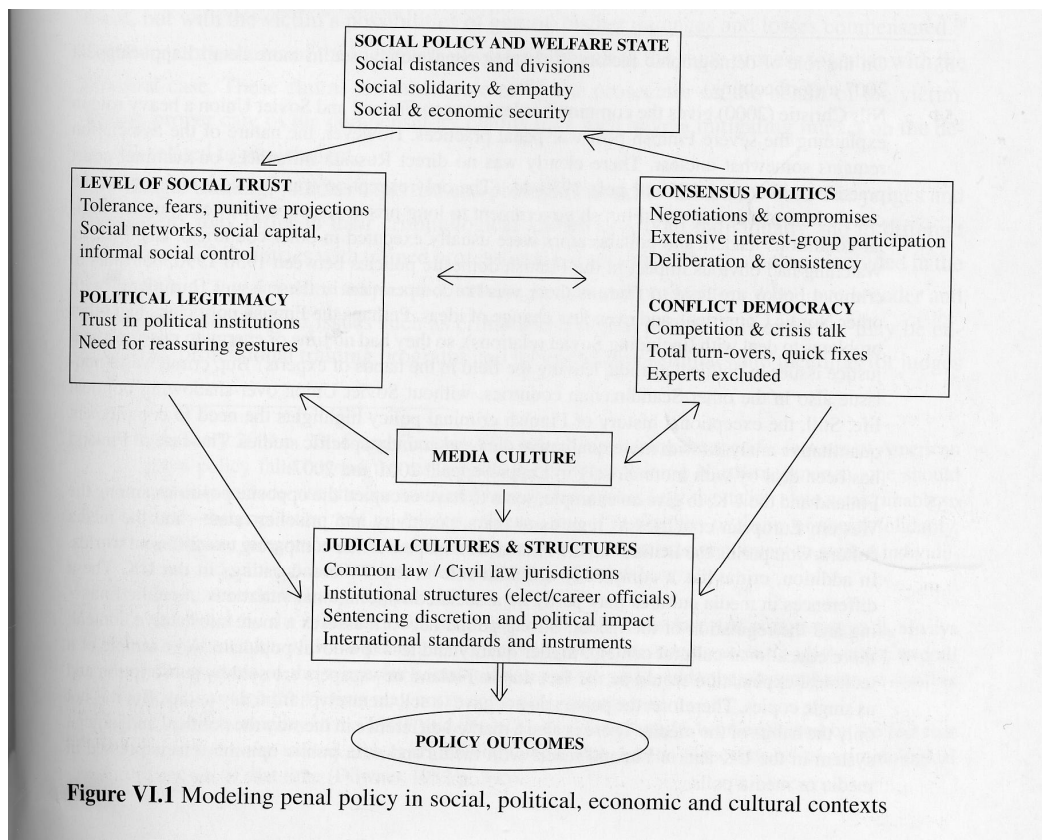


Figure VI.1 Modeling penal policy in social, political, economic and cultural contexts

In addition to these three basic factors - welfare, trust and political economy - there are several other elements requiring our attention. These would include structural factors such as demographics. Population homogeneity may ease the pursuit of liberal penal policies, but is no guarantee for success (and neither has multiculturalism to lead to harsher regimes).<sup>53</sup> Sometimes also geography may matter, as was the case when Finland was motivated by de-carceration policies with reference to Nordic co-operation.<sup>54</sup>

One factor certainly deserving more attention is the *role of the media and media culture*. Public opinion and public sentiments are shaped in a reciprocal interaction with political decision-makers, special interest. In short: Consensual politics lessen controversies, produce less crisis talk, inhibit dramatic turnovers and sustain long-term consistent policies. Consequently, consensual democracies are less susceptible for political populism and the news media (see Roberts et al 2003, p.86-87). Public opinion is affected by both the media representations and political decisions. Sensationalist media feeds public fears and distrust. It reinforces the pressures from the punitive public. At the same time media expresses its own preferences to the political system. There are differences in the way policy-makers pay attention to public demands, as well as in the ways these sentiments are conveyed to policy makers. If the political system chooses to take a responsive and adaptive role, media shapes and influences the policy outcomes both directly and indirectly (though invoking public demands).<sup>55</sup>

53 On the role of demographic factors in shaping penal policy, see in more detail Lappi-Seppälä 2007 a (forthcoming).

54 Nils Christie (2000) gives the common border between Finland and Soviet Union a heavy role in explaining the severe Finnish post-war penal practices. However, the nature of the association remains somewhat unclear. There clearly was no direct Russian influences on criminal court practices, either post 1918 or post 1939-44. (The only exception was Russia interfering in the convictions of the war-time Finnish government to long prison sentences; however, under similar conditions leaders and collaborators were usually executed in other countries). Big Brother Watching had obvious impact in the Finnish domestic policies between 1950-1990, but links to criminal policy are hard to find, as there was no co-operation in these issues (but plenty with other Nordic Countries), and even less change of ideas. Perhaps the Finnish politicians had other problems to deal with (including Soviet relations), so they had no time or energy to raise criminal justice issues in political agenda, leaving the field in the hands of experts? But, crime was a non-issue also in the other Scandinavian countries, without Soviet Union over-shadowing political life. Still, the exceptional history of Finnish criminal policy highlights the need to complement quantitative analyses with more qualitative data and country specific studies. The case of Finland has been dealt with more closely in Lappi-Seppälä 2001 and 2007.

55 Finland and the UK, to give an example, seem to have occupied the opposite positions among the Western European countries as regards to fears, punitivity and prisoner rates - and the media culture. Comparing the British and the Finnish newspapers is like comparing two different worlds. In addition, crime has a completely different role in the TV-broadcastings in the UK. These differences in media cultures may partly be associated with national variations in public financing and the regulation of the media. Strong public network assures a more substantive content, more educational-cultural content, higher quality and less low-level populism. An example of a technical explanation would be the fact that in Finland newspapers are sold by subscription and as single copies. Therefore, the papers do not have to sell themselves from day to day. But it is not only the habits of the media. There is also a marked difference in the way the political and judicial system in the UK and in Finland reacts with media and with public opinion - as expressed in media or media-polls.

Also *judicial structures and legal cultures* play an important part, especially in explaining the differences between continental and common-law countries. The inheritance of the enlightenment and the division of state powers has shielded the Continental and Scandinavian courts from political interventions. The US legal system, to give an example from the other extreme, with politically elected criminal justice officials (prosecutors, judges, sheriffs and governors) is much more vulnerable to short term populist influences on everyday sentencing practices and local policy choices. The need to measure one's popularity among the people ensures that the judiciary is much more closely attuned to public opinion and organized interest groups.<sup>56</sup> These differences are further reinforced by different techniques in structuring the sentencing discretion. The Scandinavian and Continental sentencing structures where the legislator decides only in broad terms on the *lati-tu-des*, and the rest is at the discretion of independent judges seems to be less vulnerable to short-sighted and ill-founded political interventions, as compared to politically elected bodies with the powers to give detailed instructions on sentencing.<sup>57</sup>

In addition, numerous details in the criminal justice proceedings may have an impact in sentencing policies. Widely-spread victims' impact statements, unknown in this form to Continental legal systems, may have but one effect in sentencing. In the Scandinavian criminal process the victim's rights are associated, not with the right to exercise personal vendetta in the court, but with the victim's possibilities of getting his/her damages and losses compensated.<sup>58</sup> Compensatory claims of the victim are always dealt with in the same process together with the criminal case. These claims are taken care of by the prosecutor on the behalf of the victim. Taking proper care of the compensatory claims may well have a mitigating impact on the demands related to punishment.

Legal training, judicial expertise and professional skills matter, as well. The judges and prosecutors may differ in their criminological knowledge, both individually and in different jurisdictions.<sup>59</sup> Countries with trained professional judges and with criminology included in the curriculum of law faculties may expect to have judges and prosecutors who have broader and deeper understanding of issues such as crime and criminal policy. This expertise may be enhanced by professional training programs and by organizing seminars and meetings for judges

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56 See Tonry 2004 p. 206 ff and Garland 2005 p. 363. Explaining the specific features of American penal policy falls beyond the task of this paper. In explaining Northern America, one should probably include also the constitutional heritage which has kept the nation state weak, unable to pacify the population and to develop effective social institutions or forms of social solidarity, incomplete integration of different ethnic groups and long term commitment to market individualism and minimal welfare (see Garland 2007 p. 151 and Tonry 2007).

57 See in more detail Lappi-Seppala 2001.

58 And if not by the offender, from state funds. No doubt, the fact that compensation is always ordered together with the punishment gives also the public a more realistic view of the overall consequences of the crime (as contrasted to systems which hide the compensation in another process, which the victims may not even be able to carry out).

59 The Dutch leniency in the 1960s and the 1970s has, for example, been explained by the fact that the judges were trained also in criminology and widely aware of the anti-prison criminological literature of that time (Downes 1982 p. 345).

etc. Evidently the receptiveness of the judiciary for this kind of activity and the exchange of information varies between different jurisdictions. Effective networking between research community and judiciary is essential, if one wishes to increase the impact of criminological knowledge in sentencing and penal practices.

Finally, one should also leave room for "country specific exceptionalism". While a good deal of penal practices can be explained by a reference to these general social, political, economic and cultural factors, their impact is difficult to condense in terms of simple statistical model. These factors occur in different combinations in different places and at different points in time. The associations detected are neither atomistic nor mechanical. The effects are context-related, and countries may experience unique changes. Also individuals and elites matter. Penal policies may occasionally be heavily influenced by individual experts, opinion leaders or politicians. This kind of personal and professional influence by individuals may be easier to achieve in a small country, like Finland.<sup>60</sup>

## VII SCANDINAVIAN PENAL POLICY TODAY - AND TOMORROW?

Nordic penal policy has been an example of 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 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. This all 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 5-10 years put forward unavoidable questions: Has this all 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.

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60 Finnish prison administration, for example, was led by two liberally-minded reformists for half a century (1945-1995), providing exceptionally favourable circumstances for policy-consistency. Finnish criminal policy was influenced for a lengthy period by a group of like-minded experts who held the key positions in law-drafting offices, judiciary, prison administration and universities. This group produced four ministers of justice, one president of the Supreme Court, the Lord Chancellor and several leading civil servants. This all created conditions for ideological consistency and consensus which may have been hard to establish elsewhere. (This may be difficult, but not impossible. The post-war welfare period in England and Wales, as described by Ryan (2003) carries a number of similarities with the Finnish situation).

Any overall assessment of complicated phenomena such as penal policy, covering several countries faces the risk of being either, incorrect, misleading or trivial. Also the use of imprisonment as an indicator begins to lose its validity as we wish to focus our picture. Also qualitative indicators have to be included, which, in turn, leaves more room for interpretation. Still, ample evidence supports the main conclusion: If we look at the whole Scandinavia, crime policy has become more offensive, more politicised, more adaptive to the views and voices of the media. There are more diverging views, more actors involved, and less agreement in principles. One outcome of all this is that the role of penal expertise has diminished, being partly replaced by grass-root knowledge, views of influential interest-groups, and by the 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 law 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 towards political attempts to harmonise criminal law.<sup>61</sup>

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 75-80 prisoners /100 000). There is also some indication that these figures might stabilise on this new level, however, who knows?

Qualitative indicators would add more nuances in the picture, but the general trend would remain the same. A closer look would also find clear differences between the countries. The extent and the degree of the changes would also appear different depending on which sources are used and which countries are included. The answer to the question, whether the basic principles of "rational and humane criminal policy" have been abandoned would clearly be negative, if one reads the last reports of the Finnish criminal law reform commission. However, reading the statements of the (conservative) ministers of justice in Sweden (especially early 1990s), in Finland (late 1990s) or in Denmark (early 2000s) would give quite a different picture.

Which, then, are the issues that have undergone the most severe changes? If the measure is the "degree of politicisation" the answer is clear: drugs, sex and violence (in that order). During the last 25 over 30 law reforms have been passed to increase the 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

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61 See for example Jareborg 1998, Greve 1995, Traskman 1999 and Nuotio 2003. These concerns are, by no means, restricted to Nordic Countries: "I remain very nervous that in 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).



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 is responsible 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 the present policies actually are? Again, much depends from 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 the UK. A six months increment for rape penalties from 2 years to 2.5 years may be much in Finland, but not necessarily in other countries. The keywords "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 individual's social and political rights are conspicuously absent in the Nordic penal policy. The issues of crime control are discussed in governmental level more often than before, but, much of these discussions take place in the form of crime prevention programs which focus on social and situational prevention - not on criminal law. The first National program for Preventing Violence in Finland in 2006 defines in measures against social marginalisation as key factors and hardly mentions criminal law at all.

There are also differences in the degrees of politicisation between the countries. Penal issues have played 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 in two blocks, thus resembling more and more the Anglo-Saxon bi-polarized structure. In Sweden, the Ministry of Justice has promised to build 1750 new prison-places by the year 2011. In their web-pages the Swedish prison administration proudly claims that they are building new prison places "more actively than any other country in the 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 in the political and public debate as a problem which requires serious attention, at least in Finland.

However, the changes in the composition of actors in criminal political field have made the situation unstable. The long-term consistency granted by strong involvement of civil-serv-

ants 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 Programs - define "knowledge" as the key factor, on which the development of the "competitive welfare state" must be built on. 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 programs have something else 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 on penal policy.

Is the bottle half-full or half-empty? Despite of the most recent changes, there still may be room for some optimism. In overall, the 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 U.S and the U.K 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 professional touch to 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 generally values rational, pragmatic and responsible argumentation is there a 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, practitioners and the public. We should apply the normal rules of political accountability also 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 an advantage of the fact that, in politics in general, there prevails a distaste of populism and cynical political score-hitting - if exposed. Exposing populism and showing the attitudinal oversimplifications, false premises and the dubious value-commitments of populist proposals, gives 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, this all 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? Preventing crime would not be the answer, as there are notably better, cheaper, more effective and more humane ways of protecting the public from the threats of crime.

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