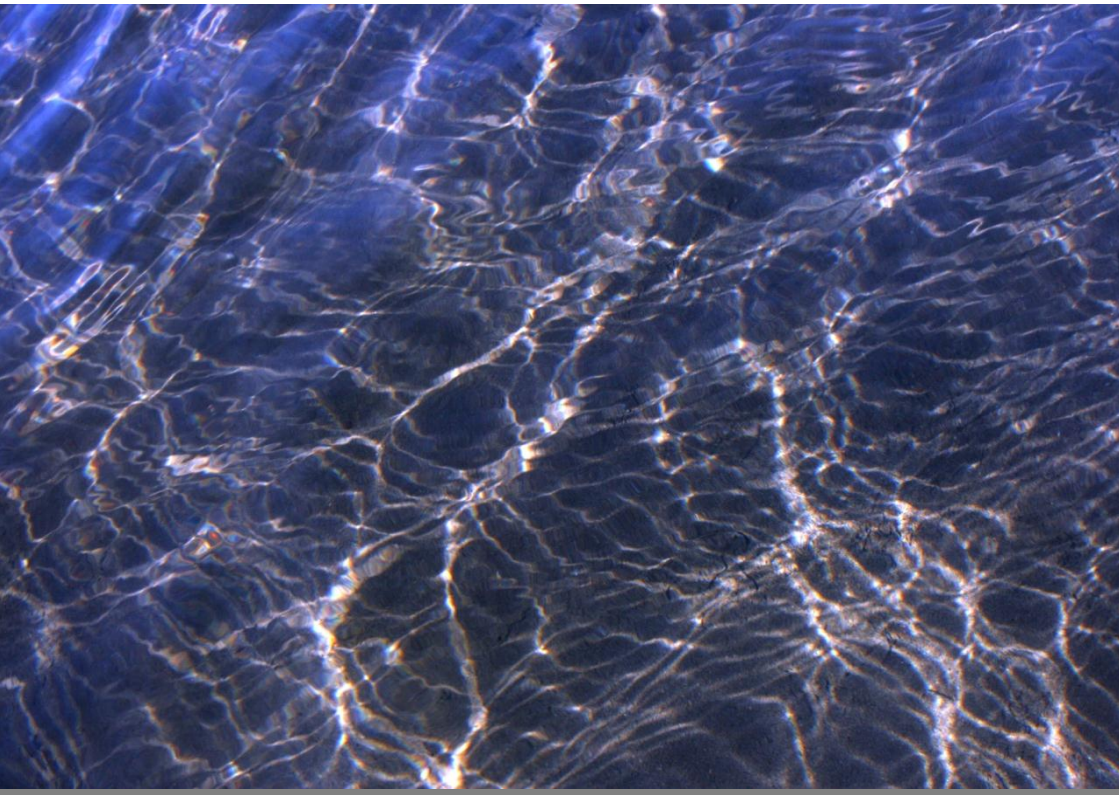
50 years

Scandinavian Research Council for Criminology

Nordisk Samarbejdsråd for Kriminologi

NORDIC CRIMINOLOGY IN FIFTY YEARS



Nordic Criminology in Fifty Years

November 2012

Nordic Criminology in Fifty Years

The Scandinavian Research Council for Criminology 2012

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The Time and the Water

Time is like the water,
and the water is cold and deep
like my own consciousness.

And time is like a picture,
which is painted of water,
half of it by me.

And time and the water
flow trackless to extinction
into my own consciousness.

A poem by Steinn Steinarr (1908-1958)
Translation by Marshall Brement

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Preface

There is a resemblance between time and water. Time, like water, passes by without us paying much notice to it. But sometimes there are events that make us stop for a moment and look into the mirror of time, both back but also ahead. The occasion now is the 50th anniversary of The Scandinavian Research Council for Criminology (Nordisk Samarbejdsråd for Kriminologi, NSfK).

NSfK was established on January 1st 1962. For 50 years NSfK has been committed to the role of its charter, to further criminological research within the Scandinavian countries and advice the Scandinavian governments on issues related to criminology. Many young Scandinavian researchers have started their carrier by attending the NSfK´s research seminars. NSfK´s contact networks and research have enriched and strengthened criminological research in the Scandinavian countries, beneficiary to the Scandinavian communities.

Because of cultural resemblance and their attitude to crime and punishment, the Scandinavian countries are a special unity. Compared to many other parts of the world Scandinavian crime rates are relatively low and sanctions are humane. In European fora the Scandinavian criminological research community has a lot to offer, both in respect of criminology and criminal policy. This book contains five research papers that were published in NSfK´s publications during the last 50 years. The scope and the quality we had to choose from was amazing. It is not fair to say that the chosen articles in any way represent all Scandinavian criminological research but by choosing articles from different decades produced in each country we hope to present a certain impression of Scandinavian criminology, its forces and potential.

At these crossroads NSfK does not only look back, but just as much to the future. On the occasion of the 50th anniversary NSfK preformed an evaluation of its operation in the last decade in order to define its operation in a critical way and to assess its strengths and weaknesses. Dr. philos. Hildigunnur Ólafsdóttir carried out the evaluation and in this book the summary of her report is published. She also assisted in choosing the papers and we would like to thank her for her contribution. We would also like to thank the authors for allowing us to publish their papers and the publishers, Universitetsforlaget and Pax Forlag i Oslo, and Taylor & Francis in London for the permission to publish the papers in this book.

Last but not least we want to thank the Ministries of Justice in all the Scandinavian countries for supporting Scandinavian criminological research and networking through NSfK during five decades. It is our deepest hope that this fruitful co-operation will continue and develop in the future.

Ragnheiður Bragadóttir — Chair

Anette Storgaard — Vice-chair

Scandinavian Research Council for Criminology

Criminology in the Spirit of Nordic Cooperation: Scandinavian Research Council for Criminology

Hildigunnur Ólafsdóttir

Organizing criminological cooperation

There is a strong tradition for Nordic cooperation that changing times and globalization have not vanquished. Naturally, some Nordic projects come and go, but others survive criticism and cutbacks. The Scandinavian Research Council for Criminology is one of these and celebrates its 50th anniversary in 2012. The Scandinavian Research Council for Criminology (hereafter abbreviated as the Council) was established on 1st January 1962 by the Ministries of Justice in Denmark, Finland, Iceland, Norway and Sweden. According to its statutes, the purpose of the Council is to further criminological research within the member countries, and advice the Scandinavian governments and the Nordic Council on issues related to criminology. Such a cross-national cooperation fits very well with Nordic ideals.

The Nordic countries have a combined population of approximately 25 million who share much common history with similar political and judicial systems, cultural values and living conditions often referred to as the Nordic model. The common linguistic heritage is one of the factors making up the Nordic identity, and Danish, Norwegian and Swedish are considered mutually intelligible. Against this background the Nordic countries can be expected to benefit from each other's knowledge and experience in the fields of criminology and criminal policy.

In the early years of the Council, only Scandinavian languages were spoken at meetings, and all printed matter was published in one of the three languages. In this context, Danish, Norwegian and Swedish researchers had the advantage of being able to speak and write in their mother tongue, whereas Finnish and Icelandic researchers could not. Younger generations of Finns and Icelanders preferred English to Swedish or Danish that they once learned in school, and were not always eager to practice. Therefore, English has been gaining ground as the language used in Nordic cooperation along with the Nordic languages.

The organization of the Council has not changed much since its beginning. The Council consists of 15 members, three from each country, nominated by the national Ministries of Justice. Two members from each country come from the universities or research institutions, while the third represents the Ministry of Justice. The Chair of the Council rotates every three years between the Nordic countries. The daily administration is carried out by a secretariat located in the country of the chairperson, and is run by an executive secretary and part time personnel. Professor Ragnheiður Bragadóttir is the Chair for the period 2010-2012, and the secretariat is situated in Iceland. In 2013 the secretariat will move to Denmark, when Annette Storgaard, assistant professor, will become the Chair for the next period. Council members in each country appoint contact secretaries, usually young criminologists, who serve as contact persons between the Council and the national research and user milieus. Hired on a part-time basis, contact secretaries are assigned to write national reports for the Council's newsletter, organize seminars and attend to other practical things.

The Council meets regularly once a year for discussing and planning the next year's activities, awarding grants and approving the budget. The Council's main activities are the

publishing of a monthly electronic newsletter, and the organization of a yearly research seminar with 50-60 participants. A contact seminar with about 20-30 participants from the fields of research, judicial systems and administration, is also arranged almost every year, and working meetings are organized if required. As most of the costs of the yearly seminars are covered by the Council, the number of participants is restricted. The four countries: Denmark, Finland, Norway and Sweden all are entitled to the same number of participants, whereas Iceland has a smaller quota. Greenland has occasionally been invited to send one or two representatives.

After an open application process once a year, the Council provides grants for individual projects or joint Nordic projects of criminological relevance. In some cases such projects are driven by the leadership of the Chair or other Council members. The Chair can award travel grants throughout the year, and translation of research papers may be supported financially. The peer reviewed *Journal of Scandinavian Studies in Criminology and Crime Prevention* is published under the auspices of the Council.

The countries' contributions to the Council are determined by the funding formula based on the countries' Gross National Product (GNP), a rule that is generally applied in Nordic cooperation. In 2009, the Council had about 370.000 EUR at its disposal. Of this amount, 32% covered administrative costs, 20% were used for seminars and meetings, 30% for research projects, 8% for research projects administered by the Council, 3% for travel grants, and 8% for publications.

Even if the Council's activities are characterized by continuity, the Chair will set his or her mark on the Council and have influence on the priorities given to certain tasks. In the Finnish period from 2001-2003, the main attention was paid to the core

activities: seminars and research grants awards. The Council's chair, Kauko Aromaa, director of HEUNI had been active both in European and international criminological research projects, and used his experience to connect the Council with European criminology. Generally, there was a rising interest in European criminological collaboration in these years. This interest was carried on in the next periods.

In the beginning of the Swedish period from 2004-2006, the legitimacy of support for the Council was challenged by the Swedish Ministry of Justice. For some time, the future of the Council was insecure, but the crisis was staved off and the financing of the Council continued as before. However, the uncertainty set its mark on the Council which along with its Chair, Professor Jerzy Sarnecky, devoted time securing the future of the Council.

Under the leadership of Professor Per Ole Johansen who was the Norwegian Chair from 2007-2009, measures were taken to strengthen the Nordic collaboration. The chair took an active role in establishing and leading working groups on themes in his special criminological field, economic crimes. Increased intensity of Nordic research groups characterized the Norwegian period.

Evaluated and well known

In the 50 years' history of the Scandinavian Research Council for Criminology there is a tradition for taking stock of the Council's activities. The 20 years anniversary was an occasion for a report on the foundation of the Council and a bibliography of its publications by Halvor Kongshavn. In relation to the 30 years anniversary, Cecilie Høigård wrote another report about the establishing of the Council where she evaluated and gave an overview of the Council's organization and its activities (Høigård 1992). Her report showed that the Council had used its funds

well, and that young researchers were prioritized both regarding grants and participation in research seminars.

This article is based upon a third evaluation report that this author wrote upon request from the Council (Ólafsdóttir 2011). Thus, ever since the Council was founded, its members have had a willingness to rethink and restructure the activities in order to further criminological research. This report was supposed to answer a number of questions about the Council's activities designed by the Council's previous chairman. These questions concerned the organizational aspects of the Council more than thematic issues of criminological relevance or evaluation of the quality of individual research projects. The period under scrutiny was from 2001 to 2009 when the secretariat had been located in Helsinki, Stockholm and Oslo. Data were documents, both in electronic and paper form, including annual and accounting reports, proceedings, newsletters, reports from research and contact seminars and the *Journal of Scandinavian Studies in Criminology and Crime Prevention*. Besides this, a survey was distributed by e-mail to all recipients of the Council's newsletter of whom 165 persons responded. The respondents represented all five Nordic countries, even if Finland was under-represented due to language problems (the survey was in Norwegian), they worked both in the academic and governmental arenas, and the majority of them had been employed in the field for many years. Table 1 shows answers from the respondents on how much knowledge they had of the Council's activities.

Of all the Council's activities, the newsletter and the research seminars are best known. *Journal of Scandinavian Studies in Criminology and Crime Prevention* was also widely known. Knowledge of the Council's main activities can therefore, be considered to be quite good. The contact seminars are less well known, probably because they have not been organized as

regularly, and participation of a small number of participants is by invitation only. Not as many are familiar with the Council's travel grants or the possibilities to apply for funds for translation of Finnish and Icelandic papers to one of the Scandinavian languages or English, or translation of Nordic papers to English.

Table 1. Percentage of respondents who have good/medium/little knowledge of the Scandinavian Research Council for Criminology, distributed by various activities

Activities	Good knowledge	Medium knowledge	Little knowledge	Number of responses
Newsletter	83%	15%	1%	162
Research seminar	41%	44%	15%	158
Contact seminar	21%	32%	46%	154
Research grants	34%	36%	30%	155
Travel grants	28%	31%	40%	156
Translation	11%	25%	64%	154
Journal of Scandinavian Studies in Criminology and Crime Prevention	45%	35%	20%	156

Most of the respondents had learned about the Council through colleagues or at their working place. For most of the respondents the first encounter of the Council was due to professional networks, but few had discovered the Council through its web site or the newsletter. An increased use of the internet in general, and a revised home-page in 2010 which has since been regularly updated, may change this. In the future, it is very likely that students and others will discover the Council on the internet.

Research and travel grants

Every year the Council provides grants for research projects of criminological relevance. The statutes for the Council set certain limits for what kind of research the Council can support, but the Council's grants have always been meant to have a research profile different from national research funds. According to the guidelines, grants can be given to projects that have a clear Nordic relevance such as replications of studies in other Nordic countries, Nordic review articles, cooperation between researchers from at least two Nordic countries, and comparison between at least two Nordic countries. A project involving only one Nordic country can also be considered to have Nordic relevance if the topic is unexplored in majority of the Nordic countries, or if research on the topic is lacking in one country while it is extensive in the other countries.

In the period from 2001 to 2003, any topic in the criminological field could be supported, but in 2003 the Council decided upon a new policy by announcing that special themes would be prioritized for the next two or three years. The following themes that have been prioritized are as follows in a chronological order: prison research, crime prevention, violence, organized crime, economic crime, corruption, and the time after release. The same themes were also chosen as the main themes of the research seminars. The idea behind this arrangement was to better link the individual research, supported by the Council, to its research seminars. New studies on targeted themes would therefore, be presented and discussed at the research seminars. Experiences from targeted funding are mixed, because the Nordic criminological research milieus turned out to be too small to have the necessary resources to apply for cooperative studies of earmarked themes on short notice. All in all, the policy of earmarked research no doubt resulted in an increased prison

research in the Nordic countries. However, the procedure to announce grants for targeted themes was discontinued in 2009.

Collaborative research projects

Collaborative Nordic projects have either been started after an application from individual researchers or by the Council or the Council's chair. A Nordic comparative study of pattern and volume of offences by immigrants in all Nordic countries except Iceland was awarded grants in 2006, mainly for working meetings.

A Nordic violence project had received a big grant from the Nordic Council of Ministers, and the Scandinavian Research Council for Criminology was invited to participate in the project. It received a mandate to examine measures aimed at minority women at risk for violence. This part of the project was to be carried out in collaboration with the Crime Prevention Council in Norway. A report on measures for minority women at risk was written and published in TemaNord 2009: 541.

In 2008, the Council received an application for a grant for a project on public attitudes to punishments in four Nordic countries. This project was very well received by the Council, and after a suggestion from the Council that the research should be carried out in all five Nordic countries, Finland was also included in the project plan. This project was an ideal project; comparative, collaborative, and to be conducted in all five Nordic countries. The project was divided in different parts: A telephone survey, a postal survey with more detailed questions, focus group interviews, and a study of a panel of judges. The respondents were asked about how to penalize the offenders in six selected cases. The project was presented at the 15th Nordic Criminal Sciences Conference in Copenhagen in 2010, and in 2011 both at the Stockholm Criminology Symposium and also at the annual conference of the European Society of Criminology in Vilnius. In

relation to the Copenhagen conference, the project got a good coverage in Nordic mass media.

A Nordic project on economic crime was initiated by the Council's chair Per Ole Johansen. This project captured interests in the criminological milieus and had participants from all Nordic countries except Denmark. Various themes and different aspects of economic crime were examined. The results were presented at the Stockholm Criminology Symposium in 2009 and a collection of six articles was published by the Council: *Økonomisk kriminalitet. Nordiske perspektiver*. [Economic crime. Nordic perspectives].

Another project on corruption was also initiated by the Council's chair. This time the Council only supported working meetings and publishing costs. The project had participants from all the Nordic countries. A thematic issue of Scandinavian Journal of Criminal Law and Criminology with five articles from this project was published in 2010. One of the articles is an overview of Nordic regulations on corruption and other articles are case studies, together forming a varied picture of how corruption can be studied.

Participation in international research projects

In 2005, the Council decided to support two international research projects which should be carried out under the Council's direction. The research was to be conducted in all five countries. These projects were The International Crime Victims Survey ICVS and The Second International Self-Reported Delinquency Study ISRD2. It turned out that ICVS had various methodological problems and gathering data was problematic. These drawbacks were considered to diminish the study's quality causing the Council to take the decision in 2006 to back out of the project. Participation in ISRD2 was more successful and resulted in the report *Delinquent Behavior in Nordic Capital Cities* (Kivivuori

2007). This project followed the long Nordic tradition of self-report studies of delinquency.

Grants for individual research projects

In the period from 2001 to 2009, the Council awarded grants to 107 research projects amounting to 868.056 EUR. Of these projects, 45 studies can be classified as general criminological research; organized crime (3), economic crime (4), violent crime (10), sexual crime (4), drugs (5), drunken driving (1), minority/immigration (4), moral climate to crime and punishment (6), offenders (1), victimology (4), crime statistics (3).

Altogether 56 more projects can be listed within the field of correctional intervention and penology; criminal policy (8), police and prosecution (11), correctional insitutions and law courts (23), crime prevention and social control (12), criminal law (2). In addition to this, grouped as "other" were 6 projects; history and history of law (2), psychiatry (3), psychology (1).

Variation within these broad categorisations is big and the Council has supported many and different research projects. Research of various crime categories has been a central topic for a long time, and violence is the type of crime category that has most often been supported. A large part of the research on violence was on violence against women. It is somewhat unexpected that so few studies of organized and economic offences have been supported because the Council has prioritised these themes. The explanation may be that studies of organized and economic crimes have gained political attention so these topics may have had relatively good opportunities for funding so grants from the Council have not been applied for. Very little drug research has been supported. The explanation may be that applications for drug research were sent to the Nordic Council on Alcohol and Drug Research (NAD).

Few grants were awarded to studies of offenders and victimological research. In the early days of Nordic criminology, research on offenders was pronounced but it does not come out strongly on the Council's list over grants. Victimological studies had a relatively strong position at times when criminological gender studies were a novelty in the 1970s, but this interest seems to have been mostly limited to studies of women and children. Crime prevention is another theme which has not been conspiscous in the research that the Council has supported. This list of the Council's research grants does not necessarily reflect Nordic criminology in its entirety.

Travel grants

Within the annual budget the chair of the Council is authorized to manage applications for travel grants. From 2001 to 2009, altogether 206 travel grants have been awarded.

Financial support can be granted for participation in conferences, seminars, working meetings and study trips. It is required that the applicant will present own research or that the study trip is of relevance for his or her research. Applicants from other than the Nordic countries can receive travel grants if the trip is considered to be of relevance for their research of Nordic conditions.

Young criminologists frequently received travel grants to participate in the annual conferences of The European Group for Study of Deviance and Social Control. More recently, travel grants have readily been awarded to criminologists who have desired to present their research at the big yearly conferences organized by the European Society of Criminology and American Society of Criminology. Participation in international conferences creates possibilities for establishing new networks which would otherwise not have been possible. Reports from international conferences are often published in the Council's newsletter, and are a way for those

who receive travel grants to pay back. Such reports are valuable contributions to mediation of criminological research.

Research seminars

At core in the Council's activities is the research seminar held every May for three days, in rotation between the Nordic countries. The seminars are a meeting place for younger and more established researchers from all the Nordic countries. At the research seminars there is an ample opportunity to present research which is in various phases. All research seminars have an overall theme but free papers are also accepted.

Exceptions from this traditional arrangement have been made twice. In 2001, a research seminar was organized in collaboration with the criminological milieus of Estonia, Latvia and Lithuania. And in 2003, the research seminar was organized in Helsinki as a part of the Annual Conference of the European Society of Criminology with the theme: Crime and Crime Control in an Integrating Europe.

A few times, key lecturers have been invited from outside the Nordic countries. In 2006, Steven Messner, University at Albany, State University of New York, was invited to give a lecture. His paper was entitled: *Saving Lives by Fixing Broken Windows? Policing and the Homicide Decline in New York City*. In 2008, Sebastian Roché, University of Grenoble was a key lecturer with the paper: *Crimes or Revolution?*

In table 2 there is a list over the themes of the research seminars and their location:

This overview reflects the Council's targeted themes with three through-going topics: violence, research of correctional institutions, and organized, economic crime and corruption. In the survey, the respondents were asked to suggest themes they

would prefer as topics for the coming research seminars. The suggestions included many and varied themes, but interestingly there still were a big interest in themes that have been on the research seminars recently, particularly prison research.

Table 2. Research seminars, year, theme and location

2001	Social Change and Crime in Scandinavian and Baltic Region	Jurmala, Latvia
2002	Perspectives on Violence	Skevigs Gård, Stockholm, Sweden
2003	Crime and Crime Control in an Integrating Europe	Helsinki, Finland
2004	Prison Research	Rørvig, Denmark
2005	1) Crime Prevention 2) Prison Research	Klækken, Oslo, Norway
2006	Violence – With or Without Meaning	Reykholt, Iceland
2007	1) Economic Crime, Organized Crime and Corruption 2) Violence	Djurönäset, Stockholm, Sweden
2008	1) Disturbances in the Public Sphere – Resistance or Crime 2) Economic Crime, Organized Crime and Corruption	Forssa, Finland
2009	1) After Release 2) Recent Research in Youth Delinquency 3) Crime Control and Nordic Crime Policy – Nordic Comparative Research 4) Delinquency, New Criminal Policy Trends.	Gilleleje, Denmark

Asked about which aspects of the research seminars the respondents valued highest, they reported that the research seminars were the place to get information about criminological research in the other countries. Some of the respondents wrote that the research seminars had resulted in mail correspondence, networking, exchange of information about national circum-

stances, and up to date information about criminological issues in the other Nordic countries.

For a majority of the respondents, the research seminars were an important venue for presenting their own studies. For younger criminologists, the research seminars may be the place where they, for the first time, present their own research for researchers from other countries.

Criminological networks that were built at the research seminars were the part of the seminars that many respondents valued highly. Furthermore, there was evidence that such networks had resulted in concrete results such as cooperative research projects, publications, evaluations from Nordic colleagues, invitations to other meetings and conferences, more working possibilities and exchange of experience and research results. Such networking is naturally of the utmost importance for the Council and for the possibilities to promote Nordic collaborative and comparative criminological research. Interestingly, one of the respondents wrote "I have met almost all the criminologists in the Nordic countries thanks to the Council". As an inspiration for new research, the seminars did not score particularly high even if there were exceptions.

All papers presented at the research seminars used to be published in a seminar report that was distributed to the participants and others interested after the seminar. Recently the reports have been made available on the Council's web site, but only a few copies are printed for distribution. After the reports were made accessible on the Council's web site they are available to a much larger readership than before. Many respondents pointed out that they frequently used the reports and that they were an important knowledge base for those who want to know who is doing what in the Nordic criminological field. It is a

drawback that the reports are not included in general databases and are therefore, sometimes missed by scholars.

Traveling seminars

Traveling seminars is a type of activity the Council has organized from time to time. In 2002, a group of 17 Nordic criminologists went to England to visit the criminological milieus at the universities in Oxford, Keele, Hull, Cambridge and Portsmouth. The group also visited prisons, both run by the state as well as private prisons, and the Home Office. The Nordic guests participated in five seminars at the host universities where the hosts presented central criminological research, and the guests presented papers on Nordic studies. Contacts that came about under the trip to England were of importance for the individual criminologists who participated in the trip and have no doubt brought new ideas into Nordic criminology. However, these visits did not result in any further cooperation between the Council and the English criminologists or in any collaborative projects.

Ideas of traveling seminars to Eastern Europe and also to Palermo in Italy have been suggested but they have not been realized. The traveling seminars are expensive and demand a lot of preparatory work. Besides, the number of participants is restricted and as the Nordic criminological milieu has grown relatively fewer persons benefit from the traveling seminars.

Advising

The idea behind the contact seminars is that researchers, practitioners from the judicial system and administrators exchange knowledge and experience. Therefore, they have a different profile than the research seminars. From 2001 to 2009, five small contact seminars have been organized, where the number of participants has varied from 14 to 26. The following

themes have been up for discussion: 1) Withdrawal of the reporting and of the charges as a part of the criminal justice systems in the Nordic countries. 2) Cooperation between the Scandinavian Research Council for Criminology and the Crime Prevention Councils. 3) What do they know that we don't know? On winners in organized and economic crime. At this meeting, a special emphasis was laid on networking and organized crime and new relations between internationalization and economic crime. 4) Restorative justice. The focus was on variation of restorative justice, both the extension and organization of the mediation boards in the Nordic countries. 5) After release. Different aspects of release viewed as a process were discussed. Seminar reports have been published from all the contact seminars with the exception of the meeting on the cooperation of the Council and the Crime Prevention Councils.

The survey respondents were asked the same questions about the contact seminars as about the research seminars regarding which aspects of the seminars they found to be most useful. More than half of the respondents reported that the contact seminars gave them opportunities to present their own studies. What they valued most was that they met and got contact with people working on similar themes in the other countries. Network building was therefore, as important an aspect of the contact seminars as it was for the research seminars. Apart from that, the contacts seminars functioned as a venue for getting knowledge of practical conditions.

Publishing activities

It has been the Council's policy to make subject matters, both lectures and papers, presented at the Council's seminars and working meetings easily available. After the annual research seminar, a report is published including almost all presentations,

and the same is done regarding contact seminars and other events arranged by the Council. In recent years only a few copies have been printed and made available from the secretariat, but all new and earlier reports at least 10 years back are now accessible on the Council's home page.

Ever since 1975, the Council has published a newsletter which in the beginning was circulated in 370 copies. In 2010 an electronic newsletter was distributed to about 1300 private persons, institutions, libraries and government agencies. The newsletter includes information about the Council's activities and other actual matters such as seminars and conferences. A large part of the newsletter is subject to national reports from the five Nordic countries and Greenland. Guidelines for the national reports are that they shall contain a list over new publications of criminological and criminal policy relevance, and information about legislative changes. This type of information is not to be found in any other publications. The contact secretaries are responsible for the reports and leave their personal mark on them. As high a proportion as 87% of the survey respondents appreciated, highly or rather highly, reading these columns.

While the newsletter contains practical information of relevance for the criminological field, there are two peer reviewed journals intended for Nordic criminological research. *Nordisk Tidsskrift for Kriminalvidenskab* [Scandinavian Journal of Criminal Law and Criminology] is published by the Nordic Criminal Science Associations, but receives some financial support from the Council. Founded in 1872 the journal is well established in the Nordic countries, and the articles may be in Danish, Norwegian or Swedish, and exceptionally in English. All articles have an English summary.

Somewhat younger is *Journal of Scandinavian Studies in Criminology and Crime Prevention* published in English under the

auspices of the Council. In year 2000 this journal replaced the Council's former publication series: *Scandinavian Studies in Criminology* which was first published in 1965. In the beginning the publishing of the journal was a joint venture undertaken by the Council and the Crime Prevention Councils in Denmark, Finland, Norway and Sweden. This cooperation did not work out well and very few articles on crime prevention were published in the journal. The crime prevention Councils in Denmark and Sweden had to withdraw their support for economic reasons. They were replaced by new supporting agents and since 2010 the journal has been a joint venture of the Scandinavian Research Council for Criminology, and the Finnish and Norwegian Crime Prevention Councils, the Finnish National Research Institute of Legal Policy and the Department of Criminology at the University of Stockholm.

The aim of this journal is to encourage Nordic authors to report in English. The journal is meant to be a forum for scientifically interesting and relevant work, not easily available in other international sources, that deserves to be published for benefit of audience not familiar with the Nordic languages.

The two journals have a different target group even if there is some overlapping. *Nordisk Tidsskrift for Kriminalvidenskab* (NTfK) [Scandinavian Journal of Criminal Law and Criminology] has a Nordic circle of readers consisting of researchers, administrators and judicial practitioners. *Journal of Scandinavian Studies in Criminology and Crime Prevention* is mainly read by Nordic and international researchers. Asked about the importance of the journals, as many as 80% of the survey respondents considered *Scandinavian Journal of Criminal Law and Criminology* to be very or medium important, and 74% of the respondents had the same view on *Journal of Scandinavian Studies in Criminology and Crime Prevention*.

Of 132 articles published in the *Journal of Scandinavian Studies in Criminology and Crime Prevention* from 2000 to 2009, 16 articles were written by non-Nordic researchers, 57 articles which are almost half of all the other articles were from Sweden, whereas the other half, 59 articles were written by researchers from the other Nordic countries. The most obvious explanation for the high proportion of Swedish articles may be that the Swedish criminological milieu is big by Nordic standards. Another factor may be that the Swedish researchers were the first to feel the pressure in Nordic academia to publish in English, a phenomenon that has been increasingly affecting Nordic research communities. In an evaluation of the Swedish Research Council's criminology programme, Swedish researchers in criminology were encouraged to become more active partners in the research dialogues in the international research community (Magnussen, Peterson and Sundin 2011).

In order to meet the need for a bibliography of Nordic Criminology the Council had published *Bibliography of Nordic Criminology* which was made electronically available in 1999. Experience showed there were lacunas in the bibliography of some of the Nordic countries and it was discontinued in 2008. More advanced technology in searching literature on the internet had also made this enterprise outdated.

European and International cooperation and promotion

The Council has had little collaboration with other organizations, but from time to time there has been some cooperation with other organizations in organizing conferences and seminars. One example of such cooperation is the research seminar arranged in collaboration with a local organizing committee in Latvia in 2001. The theme of this seminar was Social Change and Crime in

Scandinavian and Baltic Region. Another collaborative project was undertaken when the Council's research seminar was organized in connection with the third annual conference of the European Society of Criminology in Helsinki in 2003. This was a cooperation with the European Institute for Crime Prevention and Control affiliated with the United Nations (HEUNI) and the Department of Criminal Law, Judicial Procedure and General Jurisprudential Studies at the University of Helsinki which that year were organizing the annual conference for the European Society of Criminology that was to be held in Helsinki. The theme of the conference was Crime and Crime Control in Integrating Europe.

In order to promote Nordic criminological research in the international criminological field the Council has arranged for research projects that have received grants from the Council to be presented at international conferences. The selection of such presentations is made on the basis of their relevance for an international audience. A special session featuring Nordic criminology organized by the Council has, therefore, been regularly organized at the annual conferences of the European Society of Criminology, and at the Stockholm Criminology Symposium, a Swedish mission that has been organized in connection with the Stockholm Prize in Criminology. In 2005, the Swedish government established an international prize, the Stockholm Prize in Criminology, awarded for outstanding achievements in the field of criminological research or in the application of research results by practitioners. In the period from 2006 to 2009 eight criminologists have been awarded the prize, but none of them has been a Nordic citizen. This does not mean Nordic criminologists have not gained an international recognition. In *Fifty Key Thinkers in Criminology* (2009), both Nils Christie and Thomas Mathiesen are included (Hayward, Maruna and Mooney 2009).

Visions for future activities

The Council's activities are extensive and manifold because the Council has functions as a counseling centre, collaborative body, financing agency and mediator of information. The Council is deeply rooted in the Nordic criminological milieus and has contributed to the establishment of professional networks. The Council has functioned very well as a collaborative body for Nordic criminological research but the Council's consultative tasks have be said to have been secondary. The explanation for this is supposedly that in national matters the various ministries consult their own experts in their research departments or other national experts. Common Nordic matters where it had been proper to consult the Council as a consultative body have obviously not been relevant. Nevertheless, the Council has been of importance for the authorities. Even if the Council has not received formal inquiries about assistance or advice, experts within the administration undoubtedly have made use of the professional networks the Council has helped them establish.

Within European criminological collaboration the joint Nordic criminological professional milieu can contribute with a great deal both regarding criminological research and criminal policy (Pratt 2008a, Pratt 2008b). The Council can have a role as an assembling unity in a European context. A joint front in external activities is of interest both to the research milieus and to the administration. Experiences from the alcohol policy encourage such undertakings because there is evidence for that the Nordic countries, particularly Sweden and Finland as members of EU, have played a central role in setting alcohol and health on EU's agenda (Ugland 2011). Nordic views have therefore, proved to be of interest in European institutions.

For the purpose of estimating the Council's activities in its entirety it can be useful to use a holistic approach to the

activities. A SWOT-analysis can be used to evaluate strengths, weaknesses, possibilities and threats (Ingólfsson, Friðriksson & Kristinsson 2007).

Table 3. SWOT-analysis of the Scandinavian Research Council for Criminology

Strengths: long history, continuity, widely known, good reputation, rotating secretariat	Possibilities: reach out for doctoral students and younger researchers, initiate Nordic collaborative research projects
Weaknesses: few collaborative partners, little contact with administration	Threats: downgrading Nordic cooperation, competition with international research conferences and projects

Strengths and weaknesses

The Strength of the Council is to be found in its long and continuous operation. The continuity originated because of the Council's close relationship with the university research and other central research institutes in the respective Nordic countries. It has been a strength that the secretary rotates between the countries. Such an arrangement invites a national engagement in the period each country is responsible for the secretary. No country can be said to "own" the Council. Participation at the annual research seminars is based on national quotas, whereas decisions on research grants are taken on the basis of the application's quality. The respondents in the survey were very positive towards the Council. "The council is a very useful forum for young researchers, and thus useful for recruiting", is a citation from one of the survey respondents. Participation in the research seminars, which is the Council's main activity, is much-coveted by Nordic criminologists. In its entirety the Council's research seminars, research projects and the newsletter all

have a good reputation. It is also strength that the Council can award grants based on its own premises and priorities.

In its role as a collaborative unit the Council contributed largely to create contact and collaboration between Nordic criminologists. The Council's role in establishing professional networks was highly valued by the survey respondents.

As a financing unit the Council has not had possibilities to award big grants. However, the Council's financial support has been vital to some research projects which otherwise would not have been initiated. A case in point is the project, Attitudes to punishment, which very probably would not have been carried out without the support from the Council.

The Council's newsletter has been very well received because it is published frequently and mediates practical information. The Council's web page which is now continuously updated will probably become equally central for spreading information.

It is presumed that those members of the Council who represent the Ministries of Justice inform their colleagues in the administration about the Council's activities. The Council's expertise may therefore be a supplement to national knowledge. One of the characteristics of the co-called "The Scandinavian Exceptionalism" with its low rates of imprisonments and humane prison conditions was that policy making was expert-dominated (Pratt 2008a). With the recent challenges and restructuring of the Nordic welfare, Pratt (2008b) feared that the expertise would be displaced from the prominence it used to have, causing policy-making to become the subject of greater public debate, scrutiny and media coverage.

Reasons for why expertise is not always so easily applied are to be found in the nature of science and the variety of the users. Research follows its own rules; science is slow and not always

available when most needed. Research results can be presented at times when they are not required. Besides, knowledge is unstable, not all is known and knowledge can be questioned (Ólafsdóttir 2001).

Even if there are no examples available of requests to the Council in criminological matters, it is not impossible that it can happen. It must be an indication of weakness that the Council has rather limited direct contact with the administration. This can be of relevance if the existence of the Council is threatened. A close relationship between researchers and administrators turned out to be of significance when the restructuring of the Nordic Council for Alcohol and Drug Research was under consideration (Fjær 2008).

The Council has had little cooperation with other organizations and institutes in recent years. Experiences from participation in big international research project are not particularly encouraging. The lesson drawn from earlier projects is that the Council should participate quite from the very beginning of the planning of such projects.

Possibilities and threats

Future challenges for the Council are to recruit PhD students and younger researchers to participate in the Council's seminars and working meetings. One possibility is to aim for research seminars to have so high quality that doctoral student's participation in such courses is approved as a part of their studies.

It is possible to outline various visions for the Council's future. One of them is to continue as before with the same activities, another is to change its main emphasis and the third is a restructuring of all activities. It should be mentioned that the survey respondents were particularly satisfied with the research seminars and the newsletter. Therefore, it is of the utmost importance to try to raise the standard

of the research seminars and introduce commentators to all presentations. Other types of seminars can vary such that the contact seminars become larger and aim for a dialogue between researchers and administrators, whereas the working group meetings become research meetings. Experiences by prioritizing special topics suitable for grants are mixed. The priority given to prison research was especially successful but crime prevention as a theme did not result in novel research.

One model is to build on research that has been carried out in the member countries and use these studies as a basis for comparative criminological research. Another model is to initiate new themes that can be carried forward to national milieus. The Council's 50 years anniversary can be used to increase the Council's visibility.

If there was no Council, it would not necessarily have the consequences that all Nordic criminological collaboration would be brought to an end. The biggest university milieus would probably arrange professional exchange, but it would very likely recoil upon the smaller academic arenas which will not have the same accessibility to such collaboration. Very probably, the Council's criminological network would decline if the continuity of research seminars was broken. Ad hoc seminars organized from time to time would not create the same possibilities for establishing professional networks as the Council's research seminars have been able to do. Research and travel grants could possibly be replaced by national support, but the newsletter would disappear. No other party is likely to regularly collect equivalent information and making it available to old and new users. The continuum of Nordic criminological activities would be markedly weakened if the Council's activities were decentralized into smaller entities.

Another aspect is that the Council has aimed at relationships between the social scientific criminology and the juridical field. This relationship used to be stronger in the Council's first years, but even if it has declined as the criminological field has become stronger, this connection is still visible in the Council's activities. More recently, researchers representing other disciplines than law studies, for example economy and history have received support from the Council and contributed to the Council's activities. The Council has possibilities to strengthen such interdisciplinary collaboration because no other party is attending to this matter.

Irrespective of how well the Council functions, outer forces can affect its existence in the future. From time to time, the value of Nordic cooperation has been questioned and the Council has went through periods when its future economic has been insecure. Globalization and Europeanization have influenced the research community and these factors have been put forward by the university administrations in pressure on researchers to publish in English. In international fora, the Nordic countries will be considered a unity and such a view strengthens the Nordic identity. A Nordic cooperation as the Council has practiced for 50 years is unique in an international context. With a solid basis in continuity and a potential for new criminological viewpoints there are promising possibilities for the Council's future.

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Conservative and Radical Criminal Policy in the Nordic Countries

Inkeri Anttila

Abstract

This article describes some major types of criticism against treatment ideologies. Spokesmen for individualization, treatment, and a view of the criminal as an invalid have traditionally been perceived as the radicals within the field of criminal policy. On the basis on her analysis, the author suggest that these spokesmen actually represent a rather conservative point of view. The criminal policy of the future will probably be one based on a sociological view where criminality is seen as a conflict situation, and crime as the visible expression of a certain balance between differing social pressures.

When I use the designations conservative and radical, I do not allude to the meaning these terms had in text books on criminal law in my youth. At that time, the old, 'classical' criminal law was conservative, while, for example, von Liszt's criminologically oriented school was considered radical.

By the antithesis conservative-radical, I mean, in this connection, a difference of opinion concerning the rapidity with which institutions, opinions, legal systems and attitudes shall be changed.

Everyone agrees that society is changing; they are also agreed in principle that criminal policy should be adjusted to meet these changes. However, some consider that we must be careful not to make errors relating to the means of criminal policy and that we must be extremely careful in regard to its goals. Another group wants criminal

policy to quickly assimilate the knowledge that, for example, criminological research can offer, and requires that we must not let a sluggish and ill-informed public opinion exert influence.

With this as a point of departure, I will first briefly glance at development during the last decades and then look ahead.

1. Treatment ideology's breakthrough

First a backward glance. If we ask what has been the essential line of development in recent decades, it would seem reasonable to point to the breakthrough of treatment ideology. One can actually speak of a breakthrough—at least if we consider the entire area of society's programming for asocial behaviour.

It is not long since the nature of the offence committed, regardless of the individual characteristics of the criminal, determined the nature of the punishment. In nineteenth-century England, small children, guilty of petty theft, were imprisoned for years or deported. Then came the reaction, with its insistence on consideration for the characteristics of the individual. Young children should be educated not punished. Children, the insane, and the mentally retarded were the groups one first attempted to save from the threat of legal punishment and turn over to the physician's and the educator's protective hand. With the rising level of knowledge, qualitative classifications have changed to quantitative ones. We begin to ask whether it is meaningful to divide criminals into those to be punished and those to be treated; it is not more correct to seek an optimal balance between treatment and punishment?

Treatment — that has been equated with medical treatment.[1] Criminal psychiatrists found it natural to adhere to the same

[1] See e.g. Olof Kinberg, *Basic Problems of Criminology*, London, 1935.

classification as they used in classifying their patients in need of care. This classification determined society's measures, and the manner of treatment. It is at this stage that psychiatrists come to the fore and begin to compete with lawyers for the role of society's criminal experts. One of medical treatment ideology's most extreme manifestations is expressed in the term 'the asocial or antisocial psychopath', and in the demand for the establishment of special institutions for the treatment of psychopaths.

This new ideology naturally encouraged, in several ways, a sympathetic attitude towards criminals. However, increased understanding does not always mean more humane measures—from the criminal's point of view. The desire to force the non-conformist to behave normally, to behave like other people, can be as strong in the criminal psychiatrist as in the classical school's penal lawyer—at times even stronger. The individual must, at any price, even, if necessary, by means of intensive electro-shock therapy or lobotomy be molded to adjust, that is to say, to behave according to the norms of the majority. The non-conformist should receive treatment—in principle, until he conforms, has adjusted. And if it does not appear possible to adjust him, then he is to be subjected to treatment throughout his whole life.

The care afforded was, by its very nature, a coercive care. If his stay at the institution for psychopaths did not make a thief stop stealing, then, according to this ideology, he must be kept at the institution for psychopaths year after year, or even decade after decade. Purely medically-oriented treatment ideology had gradually taken on elements of practical social work and psychology, but, basically, the same ideology lies behind institutions for psychopaths, schools for juvenile delinquents, workhouses for vagabonds, alcoholic homes, and institutions for the incarceration of habitual criminals.

Conventional prisons have also been reorganized so as to afford treatment: more psychologists, psychiatrists, and social workers are hired. This does not involve any important fundamental change as long as the point of departure is still that while the lawbreaker is in prison he must be treated. The nature of the punishment and the duration of the imprisonment is still decided on the same grounds as earlier, even though we try to lessen the negative effect of institutionalization by varying types of treatment.

From the standpoint of treatment ideology such a narrow framework for treatment is, of course, unsatisfactory, and representatives of this ideology have consistently stated that treatment attitudes should also decide the nature and type of the punitive measures, including, inter alia, the decision as to whether the subject shall be deprived of his freedom or not, and how long he shall be kept imprisoned. It is proposed that the individual need for care should be the decisive criterion in determining the measures adopted by society.[2]

2. Criticism of treatment ideology

The advocates of treatment ideology have waged a hard battle for their opinions and they have not lacked critics. Those who believe in a deterrent penal policy have consistently warned of the treatment-ideology's destructive influence on respect for society and its threat to general law-abidance. However, treatment ideology is also criticized on entirely different premises. Little by little the threat that this ideology implies for legal safeguards has become evident, particularly if it is pushed to the extreme.

Warning voices have been heard earlier, but, in the Nordic countries, criticism first became a central issue in public

[2] See e.g. Marc Ancel, *Modern Methods of Penal Treatment*, 1955.

discussion in the 1960s. The fact that the reaction from the defenders of legal safeguards came so late is partly due to lack of objective data on the effectivity of treatment methods and partly to the misleading nature of the very terminology, with its humane-sounding words, care, treatment, therapy. These conceptions suggest associations with somatic medicine, the application of which has been relatively successful, and in which there is usually no conflict of interest between the patient and the doctor. The fact that the conflict of interests was not always observed, or that its existence was not admitted, is also due to the fact that the interpreters and critics of the law often drew their conclusions one-sidedly according to the motives for the treatment measures. The fact that the lawmaker in his preparation of the law, or the law enforcement agency in its reasons for a certain decision, has stated that it is a question of bestowing an advantage or providing assistance has at times been taken as sufficient proof that no conflict of interests exists.

The realization that a meaningful analysis of legal safeguards must be based, first of all, on how the individual experiences law enforcement and not on how the law enforcement officers do, has come rather late.[3]

The point of departure for the legal safeguards debate in the 1960s was perhaps particularly Nils Christie's book on the care of alcoholics in Norway.[4] Christie pointed out that, under the name of treatment and help for alcoholics deprivation of freedom is

[3] Kettil Bruun, Samhällskontrollörer och frihetsberövanden (Social control operators and deprivation of freedom) in *Varning for vård* (Beware of the Therapeutics), Helsinki, 1967.

[4] Nils Christie, *Tvangsarbeid og alkoholbruk* (Forced Labour and Use of Alcohol), Oslo, 1960.

used in a way which is reminiscent of punishment by deprivation of freedom and is just as ineffective in curing alcoholism. The client has even fewer legal safeguards than the prison convict, for the very reason that the measure is not called imprisonment.

How little the external form of the institution influences the effectivity of the punishment is made clear in a striking way by Paavo Uusitalo's investigation of the Finnish work colonies.[5] For labour market reasons work colonies were not used for a short period in the late 1940s and the types of prisoner that had been placed in a colony had to serve their sentence in prison. In as much as the work colony is a completely open institution, without walls, iron bars or wardens, where the internees perform ordinary labour for wages available on the open market, it was believed earlier, in Finland, that the risk of recidivism would be quite different than for those committed to the traditional type of prison. There were, it is true, differing opinions on the manner in which recidivism would vary. Supporters of deterrent and severe punishment were convinced that prisoners who served their sentence in work colonies would recidivate to a greater extent than the others—the punishment had not contained any lesson for them when the punishment situation, to so large an extent, resembled their normal life. Supporters of a prison system based on individual-psychological principles were, of course, of the opposite opinion: in as much as the social pressure is less in a completely open institution, the 'prisonization'—adjustment to the institution milieu—would be less pronounced and the prisoners less apt to be influenced by their fellow prisoners. Finnish criminologists believed generally—in accordance with the

[5] Paavo Uusitalo. *Vankila ja tyosiirtola rangaistukseng* (Prison and Labour Colony - a Comparison). Helsinki 1968.

common ideology in Nordic criminology at that time—that the investigation would show that open institutions were not only cheaper and more humane but also best suited to reduce the risk of recidivism. The results from both points of view were negative. When one compared recidivism in similar groups from the colony and the prisons, no essential difference was revealed. This result can perhaps best be interpreted as a confirmation of Börjesen's observations in Sweden, to the effect that the deprivation of freedom is, in itself, of decisive significance.[6] The way in which the deprivation of freedom is effectuated is perhaps, in spite of everything, of less importance for recidivism than is generally believed.[7]

The critical opinions on individual prevention in the prison system that I have discussed can appear destructive and overly pessimistic from the point of view of the prison personnel. Are, then, all individual treatment, group work and other things we have learned, in vain? They are not! In the first place, what I have said concerns the average criminal; I do not want to question that there are considerable groups among prisoners for whom group therapy and all the many treatment measures can appreciably influence the risk for recidivism. To identify these groups with certainty can be difficult. But there are other sides to this case. We can, surely, introduce ordinary humane elements into the

[6] Bengt Börjeson, *Påföljdernas verkningar* (Effects of Sanctions). Stockholm, 1966.

[7] Nils Christie, Reaksjonenes virkninger (Effects of Sanctions), *Nordisk tidsskrift for kriminalvidenskab* 1961, 49, pp. 129-144, pp. 121-143. R.F. Sparks, Types of treatment for types of offenders. *Report for Fifth European Conference of Directors of Criminological Research Institutes*, Strasbourg, 1967.

treatment of prisoners—the complaint against large, closed institutions, that they create a neurosis and contribute to 'prisonization' carries particular weight. Such measures do not need to be defended by more or less uncertain speculations as to whether neurosis and malcontentment are important recidivism-influencing factors. Furthermore, even if it were mainly for general-preventative reasons that we put criminals in prison, it is justifiable and reasonable that the prison should have at its disposal, psychiatrists, psychologists, and social workers, not to cure these people of their criminal tendencies, but to help them to bear the mental-hygienically oppressive prison existence, and to ease their mental and social situation. I maintain that it can prove dangerous for prison authorities to defend the existence of the treatment personnel solely by referring to their supposed effect on crime prevention. To base everything on this motivation can lead to bitter disappointments when better statistical calculation methods and systematically controlled experiments offer data on how large—or small—this crime prevention effect actually is in the case of the average criminal.

Those who have begun to doubt the suitability of the analogy between criminals and the sick have received support from observations outside of the institutions. Studies of hidden criminality have, in many ways, brought about a revolution in criminology. The investigations that have been made among youth in the Nordic Countries have, above all, shown that it is statistically normal to break the law. The average citizen has clearly been guilty of a number of major or minor crimes in his youth, perhaps also later. The crime has usually been mild but a considerable number of them have been so serious that, if discovered, they would have led to imprisonment. (I am here drinking of conditions in Finland.) But the interesting fact is simply that so few were discovered: in the investigations made in

Finland only 2-5 per cent of the lawbreakers in the types of crime investigated. These results give the hypothesis of the typical criminal as a psychologically disturbed or sick person a blow. It is, naturally, true that those who have committed several crimes have been discovered more often. But it is clear that there is not a complete correlation between the intensity of the criminal activity and the risk of discovery. There are, in other words, many other factors than the seriousness of the crime that lead to certain people being registered as criminals by the authorities; it is, for example, possible that lower social position and lower education increase the possibility of committed crimes being discovered by the authorities.[8] In the light of these results it would seem questionable whether the average registered criminal should, without exception, be termed sick if we wish to retain a meaningful conception of sickness.

In his analysis of the sickness concept, Patrik Törnudd[9] claims that the best way out of the present concept confusion would be to completely discard the sickness concept itself and all related terminology, and rather begin to use the strictly value-neutral expression 'susceptibility to medical manipulation' or, in concrete situations, 'specific susceptibility to medical manipulation'. The assertion that, for example, a disposition for sexual relations outside of marriage, reckless driving, or sympathizing with a particular political party is something that can be regulated by medical manipulation, contains no recommendation for *the use*

[8] Nils Christie, A study of self-reported crime. *Scandinavian Studies in Criminology*, Vol. 1, pp. 86-116. Oslo 1965. Inkeri Anttila & Risto Jaakkola. *Unrecorded Criminality in Finland*, Helsinki 1966.

[9] Patrik Törnudd, Sairauden määritelmästä (On the definition of the disease concept). *Sosiologia* 3, 1966.

of this method. Such a sharply drawn line between social and individual value goals and the instruments used to reach these goals, should, in a decisive manner, raise the level of the discussion in speaking of predictability in penal law, as well as in speaking of social treatment measures for nonconformists. The present psychiatrically influenced terminology that is used in criminal-political debates and by representatives of, for example, officials of social institutions, is, with its concealed or half-conscious value-burden, a hindrance for a rational debate, and, not least important, a danger for legal safeguards.[10]

To summarize what I have said so far: treatment ideology in the Nordic countries has made a breakthrough in so far as the social control of criminals and other non-conformists is concerned. Treatment ideology's equating of criminals and the sick was, in the beginning, when the ideology was still weak, often devoted to humanizing actual criminal care. But, as treatment ideology has increasingly dominated the system and as treatment personnel have gained increasing power, the negative sides of the ideology have become more evident and the criticism against treatment ideology has grown sharper. The parallel of the criminal-sick appears to be false, if one looks for effectivity of treatment and for the absence of a conflict of interest between the doctor and the doctored. This has led to an acute legal safeguards problem because of the absence of predictability and the absence of proportion between the seriousness of the crime and the strictness of treatment.

[10] Kaj Håkansson, Psykisk sjukdom: illusioner och realiteter (Mental illness: illusions and facts). *Research Reports from the Department of Sociology, University of Stockholm*. Mimeographed. Stockholm 1968.

3. Who is a radical today?

This has disturbed many advocates of reform. It has been customary to make a stand against the representatives of general prevention: it has been customary to see treatment as the alternative to punishment, as the substitute for punishment in the near future. The problem of the effectivity of criminal care has been seen as a question of a lack of psychiatrists, institutional planning, and education of prison personnel. Now the avant-garde position has become more complicated. Some of those who have previously considered themselves radical in their demands for a constantly more treatment-oriented criminal policy, have now noticed that, in the eyes of other radicals, they are now perhaps almost conservative, in that they defend the traditional thesis that criminals shall, first of all, have treatment. In Finland, among young radicals, the suggestion has been made that prostitution should either be legalized or again be made illegal. Before prostitution was de-criminalized in the 1930s, prostitutes were sentenced to relatively short imprisonment, now they are confined for longer periods in workhouses in accordance with the rulings of the vagabond ordinance. The—perhaps not too seriously intended—suggestion to make it a criminal offence, would, in all probability, lead to a more humane treatment of prostitutes.

The fact that the debate is no longer dominated by the opposing demands of general prevention and individual prevention, deterrent versus educating measures, does not mean that the advocates of strict punishment and hard discipline have easier sailing. Quite the contrary. It is true that the research results that would directly undermine the general preventionist and the deterrent ideologists' basis for argument have not been brought out: the actual research problem is so incredibly complicated. But increased knowledge of the psychological background of punishment attitudes, of the criminals' inadequate knowledge of

the legal norms, together with observations of social factors that to a great extent explain criminal variation in time and space—all this has left less leeway for the hypothesis that the crime level in a society can be regulated mainly by varying the strictness of the punishment. Separate investigations have been made attempting to cast light on the influence of this strictness factor *Inter alia*, geographical areas in which a certain type of crime—for example drunken driving in Germany—generally punished by a conditional sentence, were compared with other areas where the punishment is unconditional.[11] In an experiment in Finland, the risk of a fine for apprehended drunkards was lessened in 3 towns. The alcohol situation in these places was strictly observed for some years and compared with other towns where the imposition of fines continued as before.[12] These investigations have not given conclusive results in either direction. At least: no obvious general preventive effect is observed. The purely speculative reasoning about strict punishment as an instrument of criminal policy has in any case become sophisticated. In the report that the Juvenile Delinquency Committee sent to Finland's Ministry of Justice in 1966,[13] it was stated that increased punishment as an instrument of criminal policy is the more effective:

[11] Wolf Middendorff, Desirable development in the administration of justice. *Report for Fourth European Conference of Directors of Criminological Research Institutes*, Strasbourg 1966, mimeographed.

[12] Patrik Törnudd, The preventive effect of fines for drunkenness. *Scandinavian Studies in Criminology*, Vol. 2, pp. 109-124, Oslo 1968.

[13] Nuorisorikollisuustoimikunnan mietintö. *Report of the Juvenile Delinquency Committee*, 1966: A2, Helsinki, p. 27.

a) the more the type of crime is characterized by a deliberate weighing against each other of advantages and risks, and also, the higher the average criminal's training and intellectual level is,

b) the greater the risk for detection,

c) the less the criminal's ability to influence the risk of discovery and detection by his own cleverness,

d) concerning increase of punishment: the more concrete and clearly delimited the type of crime in question and the more effectively the knowledge of increase in punishment can be spread to potential perpetrators,

e) within the imits set by the above-mentioned factors, the sharper is the increase in the latitude of legal punishment.

Reasoning of this sort leads to a differentiating of the criminal policy debate, according to type of crime, type of criminal, and external circumstances, a method which is undoubtedly more sensible than to speak of strict or mild punishment in general.[14]

4. Criminal policy of the future

I return to the question of criminal policy of the future. If the reformers, the radical circles, are no longer able and do not wish to propose an even purer treatment ideology and an even more extensive treatment organization as the highest goal for reform efforts, what may be found to substitute for this ?

Criminal policy's alternatives that, in today's situation, represent the new, the radical, apparently derive from a sociological view of

[14] As regards general prevention, see Johs. Andenaes, The general preventive effects of punishment. *University of Pennsylvania Law Review*, 1966, Vol. 114, pp. 949-983.

society, in the same way that earlier radicals based themselves on a psychologically or even psycho-analytically coloured picture of society and the criminal.

It is characteristic of the sociological view of criminal policy that criminality is seen as a conflict situation, and crime as the visible expression of a certain balance between differing social pressures. The balance ideology assumes that one no longer asks the question: 'How can we eliminate crime?' because it is a meaningless question. Every society has, must have, crime and criminals, by whatever name we may call them. As early as in 1897 Durkheim pointed out that even a society of saints would have its social norms and its norm-breakers. We therefore cannot merely propose the elimination of crime as a fundamental goal, but, we can strive for a certain type of balance, we can try to influence the structure of criminality, its gravity. The fact that criminality is experienced as a conflict between dissimilar pressures which keep each other in balance has an important consequence; in every problem situation in criminal policy it becomes equally important to take a stand as to the possibilities of changing society's control, its evaluations, its organizations, including both laws and control apparatus, as it is to take a stand on the problem of how the criminal shall be influenced.

The classical example of this phenomenon is, of course, the experiment with prohibition laws that different countries tried before the Second World War. An attempt was made to influence the general public with the threat of punishment, and to influence apprehended law-breakers with punishment. The results of these methods were, for different reasons, disappointing. In this situation certain countries experimented with even harsher control measures; other countries chose the opposite alternative of de-criminalizing the use and sale of alcohol.

There are many forms of de-criminalizing. What followed the prohibition law example may most correctly be characterized as 'legalizing': special institutions and special legal norms are provided for behaviour that was earlier defined as criminal.

Another type of de-criminalizing is to be found in those sectors where treatment ideology has been particularly strong. I have already mentioned the treatment of prostitutes in Finland as an example. This de-criminalization consists, in short, of substituting one kind of formal control for another kind of formal social control. It would perhaps be going a little too far to call this use of *alternative systems of social control* 'feigned de-criminalization'. None the less, a sociologist finds very few differences between these institutional measures and punishment, and workhouse internees undoubtedly experience these measures as a kind of punishment. In as much as this de-criminalization effects a lessening of the legal safeguards through tampering with the name of the measure, it is natural that the defenders of the legality principle and of the legal system's predictability do not approve of this sort of transformation trick.

It could, however, be that this type of de-criminalizing does not show to advantage in the treatment area, where the terminology is likely to confuse the conception of legal safeguards, and the clientele belongs to a social layer that cannot very effectively guard its rights. It is possible that a transition to other systems for social control than that of penal law would be more successful within certain sectors of property crime. The model for a change of system is already to be found in traffic insurance legislation. Insurance equalizes, eases the suffering inflicted on the victim: society can therefore be satisfied with an economic sanction in the shape of heightened insurance premiums, even in cases where the traffic injury is caused by actual criminal negligence. To a certain extent, the collection of damages is even more

effective in the modern data-machine-run society: extra charges or other economic sanctions should, in many cases, be able, wholly or partly, to take the place of punishment.

That such a development can be possible in respect to precisely property crime is obviously related to society's development towards a welfare society with a great wealth of commodities. The loss of a thing no longer means as much, does not cause the same suffering as earlier; this becomes even more pronounced if we introduce an insurance system that equalizes these losses, especially in cases when the guilty party is not caught or is not immediately in a position to pay for the damage. The structure of criminality has changed so that property crime has taken a completely dominant place. This means, as the Finnish sociologist Allardt has pointed out, that the general public may presumably be better prepared to replace punishment with a compensation arrangement, to the extent that there is any question of damage that can be compensated for with money.[15]

Another type of de-criminalizing is *complete 'de-criminalizing'* where the punishment is not replaced by any measure at all from society. This type of de-criminalizing is found particularly in the area of moral crime. Concerning problems within this area, it is obvious that criminological research can, here, in a decisive manner influence the structure of criminalization. Research can differentiate offence categories according to the consequences: for example, by finding out to what extent certain sexual behaviour, drinking behaviour, or a certain type of narcotic usage, causes suffering or risk of suffering to other people, and to what extent the behaviour only harms the person concerned

[15] Erik Allardt, *Samhällsstruktur och sociala spänningar* (The Structure of Society and Social Tensions). Helsingfors 1965, p. 228.

himself. Whether empirical studies of this sort can make possible the de-criminalizing of certain types of narcotic crime depends entirely on what results are reached through research. The parallel with alcohol legislation or gambling legislation hints at least that the fundamental possibility for de-criminlizing also exists in respect to certain types of narcotic crime, or in respect to certain types of narcotic drugs. An excellent example of a radical but well-motivated suggestion for de-criminalizing of this type is the Danish proposal to abolish penal regulations for the distribution of pornographic literature.[16]

I have referred in detail to official de-criminalizing through change of law; there may be cause to stress that the shifting of the emphasis of control which occurs by the laws being applied in different ways can be much more important, e.g. in traffic criminality. Here we are reminded of a very important alternative to the penalty sanctions and formal control, namely the informal control that operates through the approval or disapproval met with in one's environment or from one's circle of acquaintances. It is this type of social control that perhaps most obviously regulates the average citizen's lawfulness in his daily life. A certain elasticity in traffic is accepted, but the average driver will, in general, keep within the limits of the local etiquette code. Society, of course, to a certain extent, makes use of the possibilities in this informal control system and tries to influence it by a restricted use of the formal sanctions and by different forms of educational activity.

[16] *Straffelovrådets betænkning om straf for pornografi*, (Penal Law Committee's Report on Sanctions against Pornography) 1966 (Hurwitz, Waaben, Andersen, Olafsson).

In this manner de-criminalization proceeds in different ways. But the balance situation I mentioned earlier has its own inner logic that does not permit de-criminalization to go too far, nor does it permit the number of penal law provisions, crimes, and criminals to fall below a certain level. Side by side with de-criminalization arise new criminalizations: our society becomes constantly more complicated, the number of laws, norms, and norm-conflicts increase uninterruptedly. We must expect an increase in crime in the traffic, embezzlement and fraud, offences in public service and perhaps slander, bribery and deception of the authorities. But changes in the structure of criminality do not necessarily assume any radical change in the number of crimes and criminals. Studies of the sociology of law in different countries indicate a remarkable constancy in the number of criminals, looking back at the long-term perspective. I am personally inclined to believe in a corresponding constancy if we look to the future, though perhaps it is more difficult to foresee the future now than ever before, because the unique rapidity with which society and its institutions are now changing.

De-criminalization is not always possible. If we consider crimes of violence, for example, it is clear that we are dealing with a development that has gone in the opposite direction to property crime. While property crime has undergone what we could call inflation—the damage, or at least the suffering from theft is, today, noticeably less per crime than 100 years ago—the damage and suffering from crimes of violence have, however, rather increased. In our welfare society, materially safe, protected from war and disease, with long life-expectancy, death or severe bodily injury is a greater evil than perhaps ever before. Here de-criminalizing of the sort I mentioned as possible for certain property crimes does not come into question. It is also probable that the critical opinions I cited concerning the effectivity of and

justification for medical treatment do not apply to the most serious crimes of violence. My reasoning concerning treatment ideology's failure applied expressly to the average criminal; this statistical fiction is either a property criminal or a traffic criminal, depending upon which definition of crime is used. The type of re-allocation of control potential that is conceivable for crimes of violence is displacement in the direction of purely preventive measures, e.g. the protective arrangements preventing taxi robbery.

It is my impression that we will, in the future, more consciously than heretofore, make use of various preventive measures against many types of crime. We are used to obligatory steering locks; it will not be long before there are mandatory rules concerning safety devices for business premises and summer homes, rules concerning how much money may be kept in private safes, and how openly stores may display their wares on the shelves. In traffic it is important to bring out the underlying facts for our policy judgements in, for example, road layouts: what do different road layout alternatives cost in money and in human life. Crime emerges, perhaps, as a secondary feature in this appraisal but it must, none the less, be a topic that is of interest to criminologists and criminal policy makers. Research is still concentrated to far too great an extent on so-called causation research—for example, in the very case of traffic criminality. In spite of the fact that no general criminal theory has as yet been found within this field, the attempt is made to estimate the 'causes' of, for example, traffic crimes or traffic accidents and perhaps arrive at such statements as that '80 per cent of all traffic accidents are dependent on the human element'. It has been asserted by others besides myself that such claims are meaningless phrases, but this is just the sort of meaningless result one gets so long as one seeks only the 'causes' instead of

looking for a realistic balance between theoretic research and research concerning criminal political alternatives. Practical policy-orientated research is just what is now more needed, posing questions of the type: how much would a liberalizing of alcohol distribution influence alcohol criminality, how much would an increased police control influence traffic and property criminality, or, even, how much would an intensification of punishment for income tax evasion increase the State's income?

As I have described the case, a radical policy should now, first of all, be based on a consciously balance-oriented ideology and recognize control of physical crime opportunities and control of the process by which acts and individuals are labeled deviant as fundamental instruments of society's criminal policy.

Measures of this type are nothing new, but it may be rather novel to formulate fundamental action programs on this basis: that de-criminalization, etc. should be made a principle instead of as now perhaps rather a situation-conditioned emergency measure to be used only in cases when it becomes evident to all that the situation so requires.

One advantage in formulating abstract principles is that we can make use of them in long-term social planning which, of course, must usually be based on other evaluations than those of the moment: long-term planning must be able to foresee reforms which will be necessary and possible in 10 or 20 years, even if, for example, the attitudes of the general public at the present time do not permit such reforms.

A radical criminal policy, in the sense in which I here use the word, should therefore be a policy prepared for a swift realization of, among other things, the future plans I mentioned, even at the risk of being wrong, while a conservative policy would be to let the changes occur at a slower pace, retain the present balance

between, for example, treatment viewpoints and punishment motives until this appears obviously wrong.

I have now neglected one group: the extreme treatment supporters who would do away with punishment in its present form and go completely over to enforced treatment of criminals. I have no room for them in my scheme. They are not conservative, for they have not yet achieved the practical political goals they might wish to conserve. I would not call them radical either because their retention of the traditional treatment ideology is perhaps actually related to conservatism as far as attitudes go, perhaps an inability to accept newer research results and adjust their own attitudes accordingly. Voluntary care is of course quite another matter. The fundamental principle for socio-legal treatment arrangements should be that the non-conformist is offered the possibility of receiving care.[17] It is up to the individual to decide whether he will make use of the possibility or not.

With these speculations I do not wish, personally, to recommend either a radical or conservative criminal policy. But I believe that it is valuable to attempt to map out and discuss the discernible trends in the new criminal policy, *inter alia*, to provide a basis for a conscious planning of criminological research strategy.

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[17] Alvar Nelson, Rättssäkerheten och individen (Constitutional Rights and the Individual) *Brott och straff* (Crime and Punishment) pp. 34-60, Stockholm 1966.

Scandinavian Criminology Facing the 1970's

Nils Christie

Abstract

This is an article covering the last ten years of development in Scandinavian criminology. Major types of studies of crime, criminals, and systems of control of criminals are covered. The very last section is a deviation from the necessarily rather 'dry' reporting in the article as a whole. In this last section, the author discusses some possible customers of criminological know-how: international or national, legal administrators or society at large or, maybe, criminals? The lack of defenders for the weak makes it next to impossible for the criminologist to remain as a balanced observer. The difficulties in this situation of cross-pressure are reduced by our lack of clear propositions, the certainty of not being listened to, and the rather general level of our insight. Maybe we ought to perceive ourselves not as problem solvers, but as problem raisers. Our situation has a great resemblance to that of artists and men of letters.

1. General background

Criminology, as well as crime, is the outcome of social forces. Culturally, the Scandinavian countries are a mixture of the Central European and the Anglo-American countries, but with a definite leaning towards the latter. London is more easily accessible than Paris, New York than Rome—particularly when Mr. Fulbright pays for the tour, as he most often does. This cultural blend has had consequences for criminology, as for other sciences. First and foremost it has meant that the social sciences of the Anglo-

American type have come to play an important part in the development of criminology. But, and here we have the Continental influence, not an all-important, dictatorial, part. Criminology in Scandinavia has—as in Central Europe—mostly developed within the Law Faculties, while maintaining some contact with psychiatry. It is not obvious that this close contact between the social sciences, on the one hand, and law/psychiatry, on the other, has been only beneficial for the development of the science of criminology. But the blend—a synthesis one hopes—has created some particular possibilities seldom found elsewhere, and awareness of the blending makes it easier to understand the outcome.

Some other basic conditions for criminology in the Scandinavian countries ought also to be known. These societies are all rather small, with populations as follows:

Denmark	4.7 million inhabitants
Finland	4.6
Norway	3.8
Sweden	7.8
(Iceland	0.2)

They are also easily supervised countries. Small and easily supervised countries offer reduced possibilities for 'big crime', particularly the organized type. This probably means a slightly more relaxed atmosphere around the crime question than in countries closer to the big money. A tradition of non-violence —except in Finland—adds to this and gives some freedom for at least experimental thinking around these matters. Smallness combined with relatively highly developed systems of social book-keeping also creates some particular opportunities for research.

2. The total population approach

2.1. Registered crime and criminals

The combination of social sciences, law, smallness, and good social bookkeeping has at least saved us from an abundance of studies of the type: 'A study of 100 criminals biasedly drawn from an unknown universe'. Instead we have had several attempts to study total areas (Fremming 1946), total age-groups (Christie 1960), the total number of registered criminals within the population (Christiansen in collaboration with Nielsen 1959), the total number of recidivists during a period of time (Christiansen & Pål 1965), random samples of all registered criminals (Wolf 1962, Wolf & Högh 1967), or based on all this: attempts to predict future development, as done by Törnudd (1968). One major type of finding in most of these studies is that the registered criminal differs from the general population in several attributes, but to a considerably smaller extent than is usually found on the basis of more limited (as well as more biased) samples.

When minor samples of criminals are drawn, it is also rather clear how they relate to the universe. Gustav Jonsson (1967) has undertaken a study of delinquent boys who we have every reason to believe are the most difficult ones in all Sweden. He was particularly well prepared to make this study by first having produced an extremely illuminating book based on a random sample of 222 'normal' boys from Stockholm—boys who did not turn out to be so normal after all (Jonsson & Kälvesten 1964). Törnqvist (1966) is on equally safe ground with regard to his recidivists—more persistent ones are not to be found in Sweden. Through observations of needle punctures found on the total universe of criminals as they enter prisons, Bejerot (1967) has been able to reach an estimate of the very high incidence of drug-usage in that segment of the population. In Denmark, Manniche & Wolf (1969) have outlined the major characteristics of all

imprisoned drug users, illuminating their considerably better social and educational backgrounds than are usually found within prison populations. In Norway the same is registered by Heen & Egeland (1969).

Technically more sophisticated than any of these studies is the contribution of Petersen (1967). His problem was found within the Danish Navy. His basic–and most interesting–approach was to investigate not only his sample of seamen and their personal background, and not only the 22 posts in which they served, *but to relate the sailors to their post of service and to describe the interplay between these two variables.* Following methods developed by Rasch (1960, 1961), he is able to specify the probability of deviance for any seaman serving at any post in the Navy. He is able to show that some men–not all, which is the important point from an administrative perspective–will have ten times as great a chance of becoming criminals at one post of service than at another one. His method is dependent on a situation where the same persons are serving at several posts. These situations might also be found within school–systems, departments of large firms, etc., and Rasch/Petersen have probably opened a new research-frontier within this area.

Another major contribution in this field and one also in nice accordance with the Central European tradition, is Christiansen's study of twins. But his material has qualities not found in any earlier study of twins. His point of departure is the choice of the total number of twins born on the islands of Denmark between 1880 and 1910, 6,000 pairs in all. The research problem is the classical one: Will identical twins show greater resemblance in crime than non-identical? According to preliminary data they will (Christiansen 1968), but typically enough with cases representing a complete universe, to a considerably smaller extent than in older studies based on incomplete samples. Christiansen

introduces the useful term 'twin coefficient' in his study. By this he is able to specify how much the probability of committing a crime for a twin increases, compared to the frequency within the total male or female twin population respectively, if the other twin is convicted. He is thus able to show that the probability for concordance in crime increases when the twins are identical, when their sex is female, when they live in rural areas, and when their parents at birth belonged to the middle class.

Another Scandinavian twin-study including all male twins born in Finland between 1920-1929 where both partners were living in the country in 1958, also has a certain criminological interest (Partanen, Bruun & Markkanen 1966). The main object of the study was to determine to what extent hereditary factors determined whether an individual is an abstainer or a user of alcohol, and if he uses alcohol, to what extent do his drinking habits and his possible addiction to alcohol relate to hereditary factors. The main results of the analysis indicate that normal drinking as well as abstinence and heavy usage show considerable hereditary variation, whereas no hereditary determination was observed for arrests or other social complications due to drinking. The authors conclude that whether one drinks, how often, and how much are to some extent determined by hereditary factors, while on the other hand arrests and other social consequences of drunkenness, which are used to define alcoholism in Finnish society, do not show any hereditary determination.

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2.2. Actual behaviour

A good system of social book-keeping also makes it clear where the system of registration fails. One important task for Scandinavian criminologists has therefore been to establish their own system of registration. Studies of actual behaviour have been a major occupation in recent years. In 1960 questionnaires on

self-reported crime were given to all males coming before military draft boards within four districts in Norway. The items included in the questionnaire had been inspired partly by the earlier studies of the Scandinavian student population (Andenæs, Sveri & Hauge 1960) and partly by the rich literature from the USA on the subject.

Roughly the same questionnaire was later applied to the same type of samples of draftees in Denmark, Finland, and Sweden. Results from Norway are published by Christie, Andenæs & Skirbekk (1965), and from Finland by Anttila & Jaakkola (1966). Preliminary results from Denmark have been presented at Nordic Research Seminars in Criminology by Greve. Results from Sweden are still pending. The plan is to integrate all these results in one final report—a task being carried out by Ragnar Hauge in Oslo. In the meantime, Norway has made a new attempt to refine the instrument on the basis of earlier experience, and particularly to use a better sample. Instead of using whole districts with the trouble they create for sampling, we have this time relied on sampling every seventh work-day in all the draft-districts throughout Norway. This gives us approximately 4,000 Norwegian 18-year-old males. We lose a greater proportion of sailors—probably people with more criminal behaviour than usual—and we lose people obviously unfit for military service. Conscientious objectors are, however, obliged to go through the screening process before they leave for their non-military duties. This material is being processed just now.

In Stockholm Kerstin Elmhorn (1969) has approached school-children with questionnaires on self-reported crime. Knut Sveri has chosen the less common method of questioning, not the culprits, but the victims. Before the research done for the U.S. President's Commission on Law Enforcement and Administration of Justice was known in our part of the world,

Sveri was engaged in a door-to-door investigation among families in a small rural community in the south of Sweden. No formal results are yet published, but informally we have got to know that countryside life in Sweden is as filled with problems as we in Norway have always expected it to be. In Oslo, Øystein Björgum (1968) has concentrated on shoplifting. As one form of approach he interviewed a sample of 45 shopowners on their degree of victimization and tried to relate this to types of shops, opportunities for control, and habits with regard to formal police-action. Brit Bergersen Lind is now engaged on a study of victims of violence, a group very heavily loaded with alcoholic and crime problems.

To get information on illegal distilling of alcohol, Brun-Gulbrandsen (1965 and 1967) has used interviews with a random sample of the population. We had attempted direct interviews also in our studies on hidden crime among youngsters, but the topic seemed to be too loaded for such an approach–at least when the interviews were carried out in the informants' homes and not in a more secluded laboratory situation. The study on distilling does not, however, ask the informant directly whether he has been engaged in the illegal act himself. It only asks whether he knows the method of distilling or has tried the product–conduct which does not amount to a breach of the law. Cannabis–smoking has been another major target. Roughly the same questionnaire has been mailed to youngsters in Copenhagen (Manniche & Wolf 1969) and Oslo (Bergersen 1968), showing a considerably greater amount of smoking and also more tolerance towards smoking in Copenhagen than in Oslo. A second investigation in Oslo one year later seems also to indicate a surprising lack of increase in the cannabis-smoking population there (Bergersen Lind, personal communication). A new study on cannabis-smoking among university students in Oslo is now

under way. Here the researchers are in trouble. They included questions on political and ideological backgrounds in the questionnaire, and this has resulted in a strong reaction among the students. The left-wing students have tried to organize a boycott of the project. This is an interesting outgrowth of the students revolt: students–as well as prisoners–are not longer so easily accessible as guinea pigs for the social scientist. It is probably a healthy development. We shall even when we apply anonymous questionnaires, be forced to treat our research objects more as they always ought to be treated–as perceptive, reacting and interacting human beings.

Much of the data from these studies of actual behaviour is under processing just now. It is therefore too early to evaluate their full impact. But two major features seem to be clear. First, the new criminal, whom we know from data on self-reported crime, does not completely resemble the old one. The new one is to a greater extent recruited from the upper rungs of the social ladder, he has a better education and a more stable family. It is still unclear whether these features protect him against being registered by the official machinery of justice or whether the registered criminal actually differs from the non-registered criminals in quality or quantity of criminal behaviour. Here we might add that by 'the old criminal' is usually meant the perpetrator of the traditional crimes against the criminal code—mostly against property or persons. A Danish study (Wolf & Höegh 1967) somewhat widens this scope by paying special attention to offenders punishable by statutes other than the criminal code. This group is compared to the more traditional criminals as well as to a sample of non-registered criminals, with regard to various aspects of social status. And these offenders are, on an average, found to be higher up the social ladder than the old criminals—but not reaching the level of the non-registered. This and other

results of the study seem to support the hypothesis that crime is a by-product of our total social organization, and considerable changes of the types and the extent of crime can only be expected as consequences of changes in the social structure.

To return to research on self-reported crime, Elmhorn's (1969) results indicate that there *are* real differences in criminal activity between the registered and the non-registered criminals, while most of the other studies indicate that the difference is related to the system of selection and control.

But these studies have also had more direct social consequences. First and foremost, these studies have once and for all shown that criminal activities are not limited to one small segment of the population. Crime is not the way of life for the general population but neither is it an uncommon activity. On the basis of these studies of self-reported crime, it seems to be fair to state that we are all criminals, but most of us only to a very small extent.

This is of course nothing new. The Holy Bible is interspersed with the same or more severe statements, and ministers have always propagated the same view. But, at the same time, this is a point of view that is not easily accepted. Strong forces within most social systems pull towards a polarization between sinners and saints. Seen in this perspective, the major importance of studies of hidden crime is probably their social consequences. They inhibit polarization. They add to the forces in society attempting to perceive the population not in dichotomies of white and black, but distributed between extremes, with the bulk in the middle grey. This image has further consequences both for law-abiding behaviour in general and for resocialization of criminals. Resocialization is probably more easily accomplished when society is not so much of a caste-society with regard to criminal behaviour. On the other hand, there are probably some risks of

increased criminal activity when moral polarization is hampered. Why should I not steal, when stealing is so common? My personal guess is that this tendency is more pronounced the further away the norm in question is from what we could call 'normative core areas'. The guiding effect of technical norms on traffic or taxation is probably more easily influenced by the knowledge of the amount of our neighbours' illegal behaviour than is the case with norms against breaking and entering or norms against inflicting grievous bodily harm. My belief—and it is obviously nothing more—is that the results from studies of self-reported crimes might eventually lead to a more realistic discussion of what ought to be *defined* as crime or delinquency. Since norms at the core of the normative systems probably have more resistance than norms at the periphery, this might be a healthy process. Studies of self-reported crime might be able to give us—in plain words—better societies, by forcing us to concentrate on the defense of values that are perceived as the most central, most important, and most dear to most members of the particular society in question.

Studies of actual behaviour represent a promising opening, but of course not the final answer to all criminological problems. For some purposes, it is still of greater interest to know the registered criminals than the non-registered ones. We must also guard against over-estimating the importance of the findings with regard to the non-registered criminals. We have solved the problems in sampling people, but not in sampling criminal acts from the universe of all possible criminal deeds (cf. Christie 1968). Here a major breakthrough is still pending. But nonetheless, we have advanced; we know more when we are acquainted with actual behaviour. This is of particular importance for comparative purposes. Some attempts have been made to co-ordinate the Scandinavian crime statistics, so that

comparative analysis could more easily be undertaken. Several meetings have been held and a lot of energy put into this project. In general, however, I think it is fair to say that very little has come out of these efforts compared to the gains when the researchers themselves took over the counting.

3. Types of crimes and criminals

The intimate relationship between law and sociology within Scandinavian criminology has had its definite advantages. But it has also created some problems, maybe particularly for the sociologists. Being few among the many they are striving desperately to keep their identity as sociologists, and to avoid being absorbed into the legal framework and ending up as lawyers without legal training. In this situation, it seems to have been a common defense for the social scientists among us to shy away from fields where we actually could have collaborated most intimately with jurists. This has in particular meant an underdeveloped interest in the description of types of crime and types of criminals. Characteristically enough it is Knut Sveri, the only criminology professor with a legal training among us, who has entered this field with the greatest vigour. He and his collaborators have gone into the field of car theft (Fernström 1963), valuables lost by theft (Karlsson & Lithner 1966), and also into the field of safe-breaking (Sveri & Wærner 1963). The problem within this last study was to find out whether the safe-breakers—the upper class among the registered criminals— had some resemblance to professional criminals as described by Sutherland, or whether they were mostly self-made amateurs. The latter turned out to be the truth. In Oslo, Lind (1967) finds the same lack of professionalism among Norwegian safe-breakers. Klette (1964) has made a study of arrested drunken drivers in Sweden, Kaltenborn (1967) has made one on the same topic in Norway, and Aarvala (1968) has followed suit in Finland.

All shake up our stereotypes of the drunken drivers. In folklore these people are seen as a random sample of the general population. They are considered as normal people who suffer from particularly bad luck in being apprehended by the police. The studies, however, tell us a different story, particularly one of alcohol problems. Drunken drivers are a group of offenders very much in need of help and guidance. Fernström (1963) and Wærner (1963) both destroy some of our beliefs about young car-thieves as somewhat 'less criminal than other young delinquents'. A further category of offences is looked into by Bratholm & Thune (1969)—the crime of 'receiving stolen goods'. One of the major problems is why so few people are apprehended by the police for this offence and why even fewer are brought before a court and sentenced.

Another study has concentrated on negligent homicide in Scandinavia (Andenæs & Hauge 1965). The legislation concerning this offence is very similar in Scandinavian countries. In Norway, however, only a very small number of people are convicted of negligent homicide, while the number of convicted offenders in the other Scandinavian countries is many times higher and has been steadily increasing. After examining all the cases of negligent homicide in a certain year in all the Scandinavian countries and all the cases concerning fatal accidents in traffic in Norway, it was possible to show that the differences were not due to any variations in actual behaviour, but to a reluctance on the part of Norwegian officials to prosecute or convict those responsible for traffic deaths under the criminal law statute.

Another approach to the problem of types of crime and criminals is more geared to the phenomenological aspects. What is it like to be such a man or woman? In this regard we shall probably always get the best insight from literature and art. Scandinavian criminology has probably never got more insight into juvenile

delinquency than through Lars Görlings' (1962) book with the title 491—a title only comprehensible to those familiar with the Bible. One shall forgive not seven times but seventy times seven. Görling then goes on to describe situations where even this demand proves to be too limited. Nothing of what he tells about belongs to the area of grave crimes. This is probably why he is able to give so much through his description. Görling obviously writes out of personal experience; he combines the roles of delinquent and poet. Finn Carling (1962, 1965) combines the role of a poet with that of a social researcher. He has an outstanding position in Norwegian literature, and also a long attachment to the social research community. Through systematic observations formulated with the craftsmanship of a poet, he has conveyed to the rest of us what is it like to be blind (1962) and later what it is like to be homophile (1965). Social scientists so often start the counting too early. If we followed the guidance of those who can give us a professional insight into these matters, we might be better at deciding what is worth counting. An attempt to follow this line is now being carried out in Oslo by Liv Haavik. She is an unusually perceptive broadcasting interviewer, who now uses her old techniques partly on new clients and for a completely new purpose. The research problem is: What is the fate of female criminals some years after they have had their first encounters with the legal machinery? She is interviewing a sample of females who were in contact with the probation service some ten years ago and will attempt to get as broad a coverage of their total life situation as possible. Is it a relatively normal life they are now leading, or is it an aborted one, frustrated and deprived, or is it perhaps a richer life than most women in their forties usually live? The point with the interviews is not so much to get a representative picture of limited aspects of all female criminals, as to get a coverage of the total situation for some of them.

Two studies of female delinquency ought to be mentioned in the same connection. One is done by Willy Martinussen (1969). By questionnaires to all police authorities in the country, he has found that the number of known prostitutes is extremely low. By using the files of the Oslo police, he has also been able to show that a large proportion of these few prostitutes are to be regarded as amateurs, girls moving swiftly through this field of activity. These amateurs, however, turn out to have many more alcohol and social problems than the more professional prostitutes. Anne Rasmussen (1969) has given a very detailed description of spare-time activities and group formation among some delinquent girls in a town in Norway. She became a member of the group, sitting with the girls in their cafe and also joining them on visits to German ships in the harbour. One major finding: the activities onboard these ships were much less dramatic and also less sexually oriented than the general population liked to imagine. To be a 'boat-girl' is regarded by the general population as an extremely bad thing. Anne Rasmussen indicates that the girls are very good at protecting themselves and that the visits onboard are to a large extent, similar to the sort of parties in which girls from higher social classes participate.

This method of participant observation is also used to learn about young cannabis-smokers. Two graduate-students in psychology (Teigen & Rotbæk 1968) have spent several months with a group of so-called hippies in a park in down-town Oslo. They felt that, after some time, the youngsters had gained confidence in them; and this personal contact was necessary to really understand their situation. Among the users they found two main types: some who had started smoking hashish, but who were also using heavier drugs; and the other group, probably the larger, who did, in fact, limit their intake to hashish even if they had access to heavier drugs. A Norwegian psychiatrist, Hans Jakob Stang, has

for a considerable period been observing imprisoned users of narcotics; through a number of intensive interviews he learned about their backgrounds, their motives for using drugs, their family difficulties, and other social and personal problems (personal communication).

4. Studies in social control

Some officials functioning within the machinery of law and conviction complain that modern criminologists seem more interested in studying them—the officials—than in studying the criminals.

They are right—and it was high time the criminologists turned their attention towards them. Officials have previously been too little studied as compared to criminals. Officials are supposed to have *an impact* on the crime situation in a society, and one also hopes that they can be more easily *changed* than criminals if it should turn out that they do not produce the desired effect. They really ought to be studied.

Four major areas of studies have developed:

4.1. Studies of the effects of sanctions

This area splits up naturally into two: the effects of sanctions on the persons *subjected to the sanctions*, and secondly, the effects of the sanctions on *other people*— the general preventive effect.

Within the first sub-area, several studies have been made with some control built into the design. Börjeson (1966) constructed a predictive instrument and compared different risk-categories. His general conclusion is that imprisonment shows higher recidivism for all risk-categories than non-imprisonment. But as he himself states, this difference might be a function of two simultaneous relationships. (a) The penalties have different effects so far as readjustment is concerned for the persons

receiving the sentences in question; and (b) the sentences affect persons with different possibilities of readjustment, which in its turn is due to the fact that the deciding body can, to a certain extent, identify the individuals in this respect and allow its decision to be dictated by this circumstance. The intention with the predictive technique is of course to keep (b) under control. But as we know from the logic behind ex post facto experiments, we can never be quite certain whether we have succeeded in this control. We can never—by working backwards in time—feel quite certain that the judges have not intuitively detected some subtle factors showing bad risk, factors that are not covered by the predictive instrument. Paavo Uusitalo (1968) has applied another design. He has made use of the natural experiment that occurred in Finland during the years 1949-1950. During these years criminals who would normally have been placed in so-called work-camps were instead detained in ordinary prisons. The work-camps are open, without censorship and without any great need for prisoners to join together in opposition to the guards. The expectations were that they would produce a smaller degree of prisonization of the workers and therefore also less recidivism among them later on. Uusitalo's results, however, are nicely in accordance with the major trend in the world literature; no difference in recidivism rate was found between the two systems. As Inkeri Anttila states in a book review (1969), these non-effect results should not create any pessimism. Work-camps are better places to live in and they are less expensive. The fact that they do not give worse results than the prisons should be reason enough for wider use of them.

Several of the major studies within this area are from Denmark. The first is by Berntsen & Christiansen (1965). A random sample of prisoners were given social welfare service of an unusually high standard while they served their time. The authors claim that this

led to a considerable reduction in recidivism compared to that found in a control group. Maybe the unexpected positive result is the reason for my feeling that a more intensive analysis would indicate that the control group is not so representative after all.

Christiansen's next contribution within this field is something of a milestone (Christiansen 1968). Here he has used an intriguing natural experiment. After several previous studies of Danish men convicted of collaboration with the Germans during World War II (Christiansen 1950 and 1955), he has now gone into their recidivism. As expected, these collaborators show considerably less recidivism than ordinary criminals. But among these collaborators, there were also some former 'ordinary criminals'. And now to the major point: it turned out that these earlier criminals showed less recidivism than expected. They recidivated more than ordinary collaborators, but less than ordinary criminals. The fascinating possibility exists that these criminals have become more respectable through their collaboration. They gained respectability; they left prison with less stigma than they entered; they left as political prisoners, not as ordinary ones.

Karen Berntsen, Karl O. Christiansen, Georg Stürup and Knud Waaben are the major persons responsible for a new study in which delinquents from selected areas are given extraordinarily high quality social, psychological, and psychiatric services. The outcome is then compared with what happens to delinquents from other areas within Copenhagen who only get the traditional child welfare services. The demand that all experimental children should come from the same area was intended as a device to minimize feelings of injustice. If person A came to the experimental group while his brother B only got traditional service, this might have unpredictable consequences. This solution has, however, created other problems; experimental and control *areas* are now the units to be compared. But areas might

change over time, and in different directions. This seems to have happened in Copenhagen, and now the researchers are attempting to keep these changes under control (personal communication).

In Finland, Patrik Törnudd (1968) has carried out a study of the effect of fines. By agreement with the police authorities in three middle-sized towns in Finland, drunken people were arrested as before, but the average prosecution percentage was brought down from 40-50 per cent to 9-24 per cent. A comparison of drunkenness arrest trends in the three experimental towns and in three control towns of the same size revealed no systematic differences over a subsequent three-year period.

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The other major interest within this field is concerned with the so-called *general preventive effect of sanctions*.

By this is meant something wider than mere deterrence—it relates to the effects on the general population of all measures of control initiated against lawbreakers in society. Professor Johs. Andenæs (1952 and 1966) has been the major contributor to this field. In the first article he gave several examples of how a modern complex industrialized society would be in trouble immediately if the system of law and order was put out of action. In his second article he has done much to split up the big problem into smaller parts that might be handled by modern social research methods. What sort of sanctions on what sort of criminals committed to what sort of institutions will have effects on what sort of members of the general population? It is a tempting area, but also a complicated one, at least when we leave the clearest cases for a positive general prevention effect.

Andenæs himself claims that 'we have more knowledge, at least more useful knowledge, about the general preventive effects of

punishment than about special preventive effects' (e. g. effects on the prisoner) (Andenæs 1966, p. 973).

This is probably a correct description of *how results from these two types of studies function within the courts*. Common sense tells us, and no research denies, that a policeman on every doorstep has a certain effect. More systematic studies do also underline the fatal effects of removing the police force from a community. On the other hand, studies have generally not been able to verify common sense notions that, for example, treatment is better than traditional imprisonment. These bits of information are easily transformed into a view that general prevention works, while individual prevention does not. Therefore, let us stick to general prevention! This conclusion, based on comparing the incomparable, is certainly not what Andenæs would advocate, but I fear that this often evolves into the major conclusion among the students. To counteract this, I think it is useful to differentiate between the relative usefulness of general versus special prevention for law-makers on the one hand, and judges on the other. Modern laws have—rightfully so—been heavily influenced by knowledge from both the field of general prevention and the field of special prevention. For judges, however, data from studies on general prevention seem much less relevant.

The variables in studies of general prevention are not of the type the judges can manipulate. In contrast to this, the variables in the many studies of special prevention remain in the sphere where the judge is allowed to operate. And the negative findings are of particular importance. Differences are *not* found, and arguments related to special prevention get decreased importance. It is in this situation not so easy to argue that a criminal ought to come into a special institution for an extra period of time because it will be *good for him*, or that he ought *not* to serve an ordinary sentence because it

will be *bad for him*. Together all this underlines a conclusion by Aubert (1968) that judges ought to pay reduced attention both to the general preventive and the individual preventive effects of sanctions, and probably instead give more attention to the old-fashioned quest for justice—the right decision according to the value standard of the particular society.

For research purposes, the competition between general and individual prevention might prove particularly fruitful. We see more clearly what we need: within the field of general prevention, more relevant studies of variations of the type judges can manipulate; within the field of special prevention, comparative studies of sanctions implying stigmatization versus non-stigmatization.

4.2. Content of sanction

What happens inside the institutions? Thomas Mathiesen (1965) gives some of the answers in a book with the characteristic title *The Defences of the Weak*. His study is based on participant observation. He claims that a Norwegian prison is less homogeneous and less characterized by a unified prison opposition to the authorities than some studies seem to indicate is the case in the United States. He also points to the tendency among the prisoners to select strategies of defense according to their particular needs and opportunities within the prison. His prison was a special one for prisoners serving indeterminate sentences. The prisoners were supposed to have treatment-needs, and the prison had slightly better treatment-facilities than is usually the case. In this situation the prisoners turned against the authorities, not with asocial claims, but on the ground that the authorities did not comply with their own rules of the game. They did not fully live up to standards of justice, but neither did they completely implement standards of treatment. Another important study of the prison society has been carried out by Stanton Wheeler. In collaboration with criminologists from all

four Scandinavian countries he has gathered material on the inmate culture and also on the prison organization in general from thirteen Scandinavian prisons. Except for a preliminary report and a short article by Cline (1968), the final results are still awaited. Wolf has used the Danish part of the material for a description of Danish institutions, and Blegvad is carrying out a comparative study of two other Danish institutions with roughly the same questionnaire as Wheeler applied.

Vedeler is attempting another approach. He has several years of personal experience working at youth institutions. He is of the opinion that the differences between the so-called 'progressive psychiatric treatment homes' and the more old-fashioned ones are of rather limited importance. One common feature of nearly all such institutions is that they are called 'homes'. Working with categories from sociology and social anthropology, Vedeler now tries to give a concise description of their resemblance and non-resemblance to ordinary homes. Some analogies between treatment homes and kinship structure within non-industrialized societies seem to give fascinating openings.

Ulla Bondeson (1968) has applied another technique. She has gone to an institution for young females and acquainted herself with the particular language used among the girls. She finds a clear relationship between the length of the stay and the knowledge of the special argot used among the girls. All other things being equal, girls with a high knowledge of argot also showed a high degree of recidivism. This argot consists of secret terms unknown to the authorities but very useful for the girls. The function of prisons and youth institutions as schools for criminals is once more illustrated. So also is their importance as cultural transmitters. A large part of the argot language used by the girls turned out to have linguistic roots back in Sanskrit, the old Indian language still used by the gypsies.

4.3. Types of control

What I have in mind here are studies of a broader scope than the ones mentioned above. Attention is particularly focused on studies of the inter-institutional relationship activated by deviant behaviour. The relationship between law and medicine has been elaborated in several studies, by Aubert (1958, 1965), Christie (1960), Törnqvist (i960), Mathiesen (1962), and Mathiesen & Aubert (1964). More specific studies have been carried out on particular types of control. The Child Welfare Boards have been described from a sociological point of view by Christie (1961) and by Blegvad (1968). The boards are here seen as bodies under cross-pressure from law and welfare, entailing severe complications both for the boards and for children. Tove Stang Dahl is now engaged in a study trying to describe the historical development that has led up to our current arrangements for deviant children. To a large extent this evolves into a study of *residual categories*. To preserve the democratic idea of *one* public school system for all children, special schools for the deviant ones were a necessary appendix. Benneche (1967) has studied the legal protection of these children and found it severely lacking. Within the field of alcoholism, Christie (1964) made a study of the so-called temperance boards in Norway. These boards were to a large extent created to protect their clientele against undesirable encounters with the police. The realities, however, have turned out differently. In practice, most of the clientele of the temperance boards come to them through the police—the very same body they should be protected against meeting. This is probably related to built-in handicaps within the role of the temperance board member. He is without most of the important *protections* found in the judge's role and also without the qualification found in the doctor's role. The result is passivity. Ragnar Hauge (1966, 1968) is engaged in a similar study of the probation service in Norway. Christie (1962) has tried to

generalize some of the preliminary findings from this whole field in an article on the sociology of the so-called 'special measures'—sanctions not intended as punishment—within the field of legal justice. Inkeri Anttila has (in this volume) given a synthesis of the implications for criminal policy of this line of research.

Cressey & Elgesem (1968) have made a report on certain aspects of police behaviour. Their main target was the procedures by which police departments and individual policemen, as representatives of a broader society, attempt to maximize the amount of conformity to that society's criminal law. Information was gained through questionnaires circulated to all Oslo policemen. The respondents agreed that the police should be strict in the enforcement of the law, but they also agreed that reporting law violations is not as important as maintaining general peace and order. When asked how to tackle a certain concrete situation, many of the respondents seemed to modify their general and ideological ideas to make them fit the requirements of the problems the police encounter as they go about their daily work.

Kamber (1969) has concentrated on the problems facing the policemen in the Traffic Division, and made a report on research concerning the effects of police surveillance on the number of traffic violations and road accidents.

Another major type of study within this field has just recently been started. The slogan for it is 'action studies'. These studies have the closest resemblance to 'natural experiments', but with scientists being involved—often very actively so—during the happenings. There is probably nothing completely new in 'action studies', but behind the slogan can be found advocates of an extreme solution with regard to at least three major dilemmas facing most researchers. They choose:

Political activity - instead of passivity
Value-exposure - instead of disguise
Interest in process - instead of end-product.

The last choice might seem paradoxical. Knowing their interest in change, we might expect interest in measurement of end-product. The explanation is probably that the deep emotional involvement of action researchers makes the process much more meaningful. The major immediate impact of these studies has probably been an activating of the resources that can be found within the clients themselves. Odd Ramsöy and collaborators have organized a place where skid-row alcoholics can have a more decent existence than they are usually offered in the Norwegian community. Thomas Mathiesen has, after his prison studies, become completely absorbed in his duties as chairman of an organization for the improvement of the conditions of criminals in Norway. This is a movement with great resemblance to Alcoholics Anonymous, but now with former criminals as key members. But people without any criminal record are also important members - they may be too important to judge from the lesson from AA (cf. Maxwell 1950). Similar organizations have developed within all the Scandinavian societies, first in Sweden, later in Denmark, Norway, and Finland. National and comparative studies of what happens when former convicts acquire responsibilities in fighting to improve conditions for other convicts seem to call for new criminological insight. These studies are just commencing, and we regard them with great interest.

4.4. Theories of deviance and social control

With this topic we are back to our point of departure: small and easily supervised societies, good social book-keeping, contact between sociology and the power elite within law and psychiatry—altogether it makes it a bit more easy than usual to

look at the societies as *total social systems*. The long histories of criminal statistics make it particularly tempting to play with the idea that these societies have a sort of 'natural level' of crime. At least for Norway it can be stated that the number of registered criminals back to the 1840's has shown a surprising degree of stability. It seems as if our quota of sinners is regulated within an upper and lower level by some thermostatic device. These levels might differ from society to society, or over time within a society. They are probably linked up with basic features within each society; one task of criminology must be to show how. Christie (1963, 1966) has worked with these problems for a while, and Patrik Törnudd (in this volume) has added new dimensions by stating that this way of thinking might help us to get rid of the idea that crime can be reduced in a society, an idea with inevitable disappointments. Törnudd's views clear the ground for a discussion of *which crimes do we prefer to fight*? Maybe we could exchange some of our recent major worries for new ones.

This perspective will also lead our attention away from crime-rates as measures of success, and instead allow for a differentiated set of variables such as human suffering, economic costs, predictability (that the participants do know what is going to happen to them and others in the system), justice, capacity for change, dignity in handling deviance, etc. Successes according to these dimensions are probably both more important and more realistically attainable than successes according to the traditional ultimate goal of a crime-free society.

Another dimension of this problem is related to our selection of sanctions over time. Again our particular Scandinavian systems are relatively well suited for analysis. Christie (1968) has described variations in the prison population over time within the four Scandinavian countries. He has shown how the prison population greatly expanded in the middle of the nineteenth century as an

effect of the abolishment of capital punishment and various forms of physical punishment. Later on new ideas led to a further reduction of the prison population. It is probably a dead-end line of thought to perceive these changes as an increase in humanitarian trends within the population—that we have become more kind towards our criminals. Of greater heuristic value is probably a perspective similar to the one applied within the science of economics: punishment is the infliction of what is bad and, correspondingly, the deprivation of what is good. Choice of punishments is related to the perception of what it is possible and feasible to take away from human beings. The struggle for penal reform represents continuous efforts to adapt penal measures to changes in evaluations of things of which offenders can be deprived.

A third major area within the field of deviance and social control concerns the definition and conceptual framework applied both with regard to deviance and to measures inflicted on the deviant behaviour. Here we meet the old problem of the consequences of designating a man as criminal or as sick. This problem has been taken up in several of the above-mentioned works. With regard to the definition of deviance, an interesting area has been found within the field of drugs. Seeley (1959) has most elegantly shown what a terrible mess we are in with regard to the definition of *alcoholism*. Haakansson (1967) has equally convincingly shown the extreme confusion behind the WHO definitions of drugs. Christie & Bruun (1968) have tried to move the discussion one step further by raising the question of whether this conceptual mess with regard to alcohol and drugs would—after all—have some consequences that at least some of the participants appreciated. It seems obvious that some of the new drugs—cannabis in particular—can only with the greatest difficulty be placed under the same concept as, e.g. heroin. When the World Health Organization's expert group on terminology still insists on tarring

them both with the same brush, this is probably related to the need for control of the new substances. Control purposes are more easily taken care of if the new substances can be met by the well-established anxieties attached to the old narcotics. Words have social consequences. The choice of concepts is of importance to politics and to law-making as well as to individual actions.

5. Organizational setting

There exist institutes for criminology in all the Scandinavian countries. In Denmark, Norway, and Sweden, these institutes are integrated in the university systems, while in Finland the institute is formally attached to the Department of Justice. In Denmark, Norway, and Sweden, there are professors of criminology. In Denmark and Norway the professors are members of the law faculties (even though they are not lawyers); in Sweden the criminology professor is also a member of the Social Science faculty. In Finland the head of the institute is a criminal law professor. Some criminological research does also take place outside these institutes. Generally, the researchers in criminology represent a blend of legal and behaviour-science training. In Denmark the leaning is perhaps a bit more towards psychology, while there is a slightly stronger sociological orientation in the other countries.

Table 1. Spending on law enforcement and on criminological research within the four Scandinavian countries in 1967, in thousand dollars per 1 million inhabitants and in percentages

	Denmark	**Finland**	**Norway**	**Sweden**
Gross Domestic Product	2,577,000	1,845,000	2,504,000	3,181,000
Law Enforcement	20,101	17,607	12,605	25,049
Law enforcement in percentage of Gross Domestic Product	0.78%	0.95%	0.50%	0.79%
Research	14.4	5.6	13.8	15.8
Research in percentage of Law Enforcement	0.07%	0.03%	0-11%	0.06%

Compared to the general costs of crime and criminals in society, criminology is indeed kept on a very narrow budget. Professor Karl O. Christiansen (1969) has made a very rough but illuminating calculation of the costs of the machinery of justice within the four Nordic societies. It is impossible to differentiate between the cost of crime and the costs implicit in the civil legal machinery, so in his figures all are included. Some major results can be seen in Table 1. The gross domestic product per million inhabitants gives a rough estimate of the general wealth of these four countries. The rank order is clear with Sweden and Denmark at the top followed by Norway and then Finland. The spending on law enforcement is related to this, with Sweden and Denmark at the top, but then with Finland as a good number three and Norway at the bottom. However, when spending on law enforcement is seen as a percentage of the gross domestic product, Finland is the leader with Denmark and Sweden following and then Norway at the bottom. This means then, that Finland spends relatively more money on law enforcement than the other Nordic countries.

Let us then turn to research. We find here that the spending on research is highest per million inhabitants in Sweden and Denmark, with Finland in a very remarkable bottom place. This is even more accentuated when the spending on research is related to the spending on law enforcement in general. Here Norway is at the top followed by Denmark, Sweden, and then with Finland in a very accentuated bottom place.

The importance of these figures must not be over-estimated. The measures are extremely rough, and some criminological research does also take place under the cover of sociology, law, medicine, education, etc. Particularly in Finland, a lot of interesting criminological research goes on at the Institute for Alcohol Research. It is more important than the internal comparison to

give attention to the fact that the general level of resources applied to research within this field is so disgustingly low. Any industrial enterprise operating with a research allocation of between .1% to .03% would realize that something was wrong. Another way of illustrating the situation would be to compare the manpower within the institution of law in general—that is police, judges, prison-officers, secretarial staff, etc.—with the manpower on the research side. In Norway there are about 6,100 persons connected in some way with the working of the criminal law. On the research side there are 14 persons working, or 0.23 per cent of the total. Again in an international perspective, this is probably not too bad. But compared to other national fields such as industry, the health service, or the military system, it is extremely bad.

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There is an extensive co-operation between criminologists in the Scandinavian countries. There exists a Scandinavian Research Council for Criminology with Professor Karl O. Christiansen of Copenhagen as its chairman. Research seminars with about 50 participants are held every spring, and contact-seminars between researchers and practitioners from different fields within the criminal law are held nearly every autumn. The Scandinavian Criminological Research Council is behind the publication of *Scandinavian Studies in Criminology*. Further a Scandinavian periodical is published (*Nordisk tidsskrift for criminal-videnskab*), and a yearbook for the Northern Associations of Criminalists. The Scandinavian Research Council helps to co-ordinate much of the research mentioned above.

6. Teaching

The close and traditional connection between criminology and law is reflected in the fact that the law students have up to now had the benefit of most of the teaching resources within the field of

criminology. In all the four countries some criminology has been included in the obligatory reading in criminal law. In addition, law students have had possibilities of choosing a substantial amount of criminology as one among several selected topics. But now times are changing. More and more students are entering criminology with a background from other social sciences. In Denmark, a course in criminology has been obligatory for psychology-students since 1947. Last year we created a complete criminology course for social research students in Norway. The course runs for one and a half years, the first year with very compact reading and lecturing, the last half year with freedom for specialization. Since criminology in Norway is rather sociologically oriented, the major contents of the course will be criminal sociology. This course in criminology can be built into a sociology major or a political science major. Other combinations are also possible. It will from now on also be possible to take criminology as a so-called master thesis, which is a very free and specialized study lasting between five and seven years.

7. Gaps and limitations

I have mostly reported on the last year's activity and also on what we are doing in Scandinavian criminology just now. I have not mentioned everything; time, energy, and a failing memory create limits. More important, I have only to a very limited extent looked into the future. I have not tackled the problem of what is wrong with the present and where we ought to go, but it may very well be that I am the wrong man to answer these questions. You cannot expect a revolutionary answer when questioning one from the establishment and one with some responsibility for the development up to now. My answer will naturally be: let us get more of what we have.

I am, however, well aware of the fact that this is contrary to the opinion of several officials within the legal machinery. To them

Scandinavian criminology has often been a great disappointment. Compared to the harmonious relationship in the old days between lawyers and psychiatrists, criminologists have created conflicts and refused to keep in line. Very often we have transmitted the criminal offenders' point of view of society and often we have also agreed with him, and furnished him with new ammunition.

8. Criminologist: Technician or poet?

In the original request from the Council of Europe for this report, I was asked to participate in preparing the ground for:

establishing a dialogue between research workers and administrators in order to arrive at a selection of problems which should be studied in priority. From this, advancement of knowledge in crime problems and, in consequence, the collection of data useful to Governments in their action for the prevention of crime and the treatment of offenders could be expected.

I have done my duty. But I feel strongly that the result will not be very useful to authorities. And the question as stated by the Council of Europe caused me considerable pain. I should here like to examine some of the general reasons for this painful lack of usefulness. Criminologists are often very much of a disappointment to authorities. I think we ought to guard against making their disappointment into our own. We can guard against this by an analysis of the situation, and maybe also by sticking to an image more closely pertaining to that of a poet than that of a technician. I will elaborate on this solution towards the end. Let me first expose some of the sources for the above-mentioned pain.

First, I wondered *which* authorities I should be useful to. As a scientist, I am not particularly concerned by being a Norwegian. I am a member of a world society, and it is there I from the outset have to look around for potential customers. By doing this, I might easily be called upon by some States to help to curb what they perceive as crime problems, but what others might easily

perceive as political problems. The task of 'changing' or 'brainwashing' political enemies of some States (or even seemingly less dangerous culture carriers such as, e.g., hippies or flower-children) might bring the criminologist into severe doubt regarding his role as expert adviser to States.

But even restricting ourselves to national customers of criminological know-how is far from unproblematic. It is a well-established tradition to perceive *administrators* as the major customers of criminological knowledge. But then, *which* administrators? Police chiefs, prison directors, administrators within the Department of Justice? Most of us do believe that crime is a by-product of our total social organization; that it tells us something about our societies in general. And that it can only be rationally handled by being understood in its broadest perspective. If we have any customers it ought to be the total society, and the officials responsible for the economy of that total society. It is not only a task for the specialists within the limited sector of law and social control.

Administrators within the legal framework have, of course, special problems and quite extraordinary responsibilities. They represent one of the most important groups of customers. But again, it seems essential not to jump too fast into any proposed type of interaction. In particular, it seems essential not to start working too fast with research problems *as formulated by the administration*. A typical question is the traditional 'How to curb recidivism from prisons?' I will not for a minute doubt the value of probing into this problem. But, and this might turn out to be essential also for administrators, some researchers ought to be in a very free and independent position where they could ask a whole lot of *other questions* in relation to the first one:

What sort of functions do the prisons in that particular society take care of? Curbing rebellion, hiding retreaters, punishing violators of rules on body or soul, sex or money?

What is claimed by officials? What is the prisoner's opinion? What is the result from research?

What sort of people are actually imprisoned?

What sort of alternative social arrangements could be invented?

But prisons are kept cheap,—just by letting society in general bear the costs. At least to influential power elites in society they are considerably less expensive than alternative types of social control. The writing of bad cheques is an example. From a purely technical point of view, there are no problems in creating a system which would make it immensely difficult to write bad cheques. Electronic systems of control could easily be constructed which would immediately tell whether the account was a good one and whether the signer was the right one. But such devices have their costs, both in money and convenience, and here we are, of course, facing the question of priorities. Seen from the banks' point of view, maybe even from the general public's point of view, it might seem preferable to use imprisonment for those not able to resist the temptation in the present system, instead of spending money on a system of control which would eliminate most possibilities for this type of crime. A parallel example can be seen within the field of shoplifting. The frequency of shoplifting could be immensely reduced by changing the crime-provoking situations within the shops; more sales people, less abundance of temptations spread throughout the stores, and we would have less of this type of crime. But again, these arrangements would imply costs for shopowners and, it is claimed, thereby also for the public at large. Police, judges, and prison officers represent functional alternatives to sales personnel.

With these examples, I hope to have illustrated the usefulness in keeping at least a certain distance between the problems as originally formulated by the prison authorities, and the final piece of research. We might in the long run prove more useful to society—at least to society at large—by being outsiders than by being too obedient insiders.

This point must not, however, be stretched too far. The prison administrator is still left with his prison, and he has a right to be helped. Even if we have no optimism with regard to the possibilities offered by prisons for curbing recidivism, we might prove useful with ideas—and the testing out of these ideas—on how to make prisons *better places to live in*. The growing amount of knowledge on total communities gives an equal amount of knowledge on how to reduce their totalitarian character.

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The situation of the criminologist, is, however, much more complicated than indicated up to this point. Administrators are not the only specific group of potential customers. *Criminals* represent another major one. The old criminology was to a large degree a servant of society in the fight against crime and criminals. Some new breeds have gone very far in the other direction. There is not much doubt whose side they are on. The extremely interesting and deeply penetrating Becker (I967)/Gouldner (1968) controversy exposes most of the dilemmas. For Becker it is a matter of course that the sociologist has to assume the role of defender of the weak, while Gouldner argues that this only means strengthening the top-man against the middle man with stabilization of injustice as the end result.

Personally, I am in the awkward position that I agree with Gouldner (most of him) but act according to the Becker recipe. Most of my Norwegian colleagues do the same. Clarification of

some of the reasons behind this inconsistency might help to bridge the gap between the two positions.

As criminologists—most of the time working within the official system of control—we always meet the losers in society. They are the losers because they get caught. And they are most often losers from the outset. We meet the deprived childhood, deprived for years within the school system, poor people, handicapped people, suffering people. They have only two features in common: they are stigmatized, and they are in need of defense. Most of them have a public defender while in court. But before that stage, and particularly after the court appearance, there exists a striking lack of balance between their needs and the resources activated to restore them to the normal level of well-being in society. In this unbalanced situation, it is next to impossible for the criminologist to remain as the balanced observer. The obvious lack of defenders of the weak will—in an egalitarian culture—force the researcher into that role. It will force him to speak out on behalf of criminals, pointing to circumstances leading to their situation, trying to communicate their point of view, attempting to eradicate the stigma, often claiming that other types of behaviour ought to be met with the sanctions now meted out to these unfortunates. I agree with Gouldner: We have to protect our freedom vis-à-vis the clients. Our obligation is to develop a science of man, to give the total picture, not only the partial one, as seen through the eyes of the criminal. In the long run, that might also lead to opening the way for much more fundamental structural changes of society. We strive to live according to that text, but we will never achieve it. Never completely.

There are exceptions. But they only illustrate my major point. We are within my culture blessed with one just now. As mentioned in section 4.3, organized pressure groups to improve the conditions of former criminals have recently been evolved in all the

Scandinavian countries. These organizations have escaped any take-over by government; they have not evolved into formal instruments of control like probation services or parole services. Up to now they function as intended: as defenders of criminals—before, during, and after trial.

Then to my major point with this example: these pressure groups for the improvement of the conditions of registered criminals have come to me as a terrific relief. They are, of course, extremely interesting from a sociological point of view. But they are even more important for the peace of my soul. They take care of the generalized need for defenders and thereby ease some of the strain of my role; they make it easier for me to live in peace both with Howard Becker and the Attorney General of my country—even though most of us are brought into new types of troubles by being *members* of these new types of pressure groups. One well-known criminologist, Thomas Mathiesen, is even president of the Norwegian one. I can, with considerably improved conscience, leave the underdog-involvement and concentrate on the analysis of what I believe might represent intake to other basic features of my particular society.

But this is an unstable condition. Criminologists are by definition working with the outsiders. New ones are emerging all the time. War criminals and traitors, child molesters and criminal prison guards, corrupt judges and pimps; some will tend to be kept outside the ranks of honest criminals. Furthermore, no society can give equal rights to saints and sinners. Organizations for the weak will remain weak and criminologists will always be tempted to take on the role of defenders.

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Researchers on crime and deviance are working at key-areas in society. They have as their major area of study, the rules in

society, the infringement of rules, and society's use of power against their own or foreign members. It is an area where values are at stake, and where pressure runs high.

The severity in this situation is somewhat reduced by three phenomena:

First: We have *so few* propositions to offer potential customers at the world market.

Second: Most of our few potential pieces of advice will be of a character *which most people would ignore anyway*. We can predict an increase in the crime of theft when the population moves from rural into urban areas. Few nations would halt the pattern of urbanization because of this. We can predict that the phenomena of prostitution will diminish if the relationship between wife and husband develops into interactions covering most life areas both inside and outside the intimate household. But again, few societies will change their types of families to get rid of prostitution. We can also claim that it has never been proved that institutions for criminals are any better than non-institutional treatment, measured in rates of recidivism. But institutions seem also to be employed for other than the officially given reasons for curbing recidivism and survive therefore the death of the original motive. We are also aware of how to solve our alcohol problems in Scandinavia: We could give alcohol the same ritualistic importance among us as it has among Jews. We are not, however, very optimistic advocates for that solution. We think we know exactly how we could reduce the over proportion of crime among males as compared to females. We could just bring up the males as the females are brought up. And related to this: We do even know how to get rid of nearly all juvenile crime both among females and males: We would only have to restructure some of our basic social arrangements so that we got

rid of the period of adolescence altogether. Or, as another alternative, we might create social systems with the type of integrated, tough, and detailed control that we find in several of the Eastern European countries. If we added to this last solution some laws and actions against hooliganism, then we could get rid of most of the visible skid row problems as well. Crime is to a large extent the costs implied in the social arrangements which are dear to us. Even if we become aware of the costs, we are still not willing to change the basic social arrangements that imply these costs—since they also lead up to effects which we evaluate as highly desirable.

Third: Most of our insight is at a rather *general level*. I think it is fair to say that criminology—and certainly the criminology I appreciate—consists more of broad cultural views of society and its deviance, than of concrete applicable techniques. It is more *a perspective* on crime and social control—new ideas for factors to be studied, and maybe slightly more sophistication with regard to methods. But this is at the same time a perspective which demands a highly educated group of consumers, and we are thereby, to a certain extent, protected both against abuse of our know-how and of repercussions because of our lack of any.

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Our weakness is our protection. But this might easily turn out to be frail armor for those among us who have internalized other peoples' expectations. They will experience the limitations as defeat. This, however, is because their frame of reference is mistaken. In our eagerness to please customers (and receive power and funds), we have not made clear that our role as criminologists is not first and foremost to be perceived as useful problem-solvers, *but as problem-raisers*. Let us turn our weakness into strength by admitting—and enjoying—that our situation has a great resemblance to that of artists and men of

letters. We are working on the culture of deviance and social control. We are making attempts to create distance, perceive the essential elements, confront society with dilemmas, and suggest some tentative solutions. Changing times create new situations and bring us to new crossroads. Together with other cultural workers—because these fields are central for all observers of society—but equipped with our special training in scientific method and theory, it is our obligation as well as pleasure to penetrate these problems. Together with other cultural workers, we will probably also have to keep a constant fight going against being absorbed, tamed, and made responsible, and thereby completely socialized into society—as it is. The life style of the Bohemians, the solitude in the monasteries, or the slightly deviant value system within the ivory tower might all prove to be helpful devices in the struggle for remaining somewhat outside the major system. Some will claim that we are useless embroideries (or even worse than that) on the affluent societies. The same can be said about most cultural workers. A completely stable society, one with a strong will and the ability to remain so, would probably do away with most of such useless activities. Some societies have done so. But if the concrete situation as well as the ideology is one of open acceptance of change, then the need for some 'irresponsible dilemma-raisers' seems pretty well established.

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The Crime of Rape and Criminal Policy

Annika Snare

Introduction

In the Scandinavian countries[1] the number of reported rape offences increased during the 1970's. Violent crimes such as murder, assault and robbery, however, showed a larger increase during the same period. On a quantitative basis, rape constitutes a minor category of all registered criminality. In Denmark, for instance, no more than 0.1 percent of all violations of the Penal Code concern rape offences.

The official crime statistics show that in 1983, 527 rape offences were reported in Denmark, 296 in Finland, 176 in Norway and 923 in Sweden. Allowing for yearly variations, the overall annual rate varies from a low 5 to a high 15 reported rape offences per 100,000 population aged 14/15-67 years, with Sweden and Denmark ranking highest. In Iceland about twenty rapes are reported every year.

Examination of the crime statistics alone fails to account for the increased interest in sexual violence against women. In recent years the position of the rape victim has been given considerable attention. Mass media exposure has influenced public opinion and pressure groups connected with the women's movement have laid the ground for criminal justice reforms. When past and present research is compared, it can be seen that the focus of study has largely shifted from the sexual offender to the victim of sexual assault.[2] Sociological approaches have by and large replaced clinical studies.

From a criminal policy perspective two areas of scrutiny will be selected. First, empirical evidence shows that victim and offender often know each other in advance of the rape event. What judical weight should be given to their personal relationship and other circumstantial factors? A second related focal concern is the processing of rape complaints and the victim's encounter with criminal justice authorities.

Research on rape

In a Swedish study commissioned by the Government Committee on Sexual Offences, nearly 1,000 criminal events, reported on a nation-wide basis, have been investigated (Persson 1981). Other Scandinavian and international research confirms several of the main findings.[3] The offence is primarily an urban phenomenon, taking place in the evening or at night, during weekends and in the summer season. The normal scene of the crime is a private home.

Identified offenders tend to be around 25 years of age, frequently single and, in comparison with the average male population, are of markedly lower social status. Close to 70% -as opposed to an expected 10% - have a criminal record. There are indications of a high prevalence of social and psychological problems. A majority of the registered offenders were under the influence of alcohol at the time of the offence.

Close to half of the victims turn out to be 15-25 years old. The largest category consists of married or »cohabiting« women. The social status of registered rape victims corresponds closely to that of the general female population. But the group as a whole is not homogeneous. A lesser proportion displays deviant characteristics such as a criminal background and heavy drinking habits. The Swedish researcher concludes that the »average rape victim« is a concept that preferably should not be used, precisely because of the group's heterogeneity. If it nevertheless must be used - in a

purely statistical sense - and with regard to the so-called personal conduct of the victim, then she is an »ordinary woman« (Persson 1981:157). Systematic and representative data do not substantiate the commonly held negative image of the rape victim presented in Scandinavian literature (see Kongstad 1983).

In terms of relationships, the study shows that in 60% of cases the involved parties had had some kind of contact prior to the reported rape. Two polar opposites of victim-offender patterns are outlined. In the stranger-pattern, a man, totally unknown to the woman, suddenly attacks her violently, most often in a deserted public place. This type of assault, the so-called classic rape situation, is easily recognized, accounts for a large number of the reported offences and consequently corresponds to the common conception of rape.

At the other end of the scale is the partner-pattern where there has been a prior sexual relationship between the offender and victim. These cases are relatively few in terms of registrations.

In between these extremes lies a large residual category of relationships showing various degrees of acquaintanceship. Swedish data thus suggest that although there exists some kind of personal connection in a majority of reported rape offences, the involved parties are usually not closely related. Dichotomizing the degree of relationship into known-unknown offenders grossly misrepresents the wide diversity ranging from a superficially familiar face to a husband.

Non-stranger rape events escape simple categorization and have tended to vanish from the public view. But this form of violence has lately come into sharper focus. The well-known fact that crime statistics only portray the visible peak of the iceberg is highlighted in the context of rape between non-strangers for the closer the victim's relationship with the offender, the greater are

the obstacles for her to report the incident to the police. There are firm reasons for believing that sexual assaults by strangers very often get reported while rape in »couple« situations does not. As the survey from Sweden shows, the real level of rape criminality is much higher than that which is registered and the true picture turns out to be an inversion of the official picture. To put it pointedly, in reality the violent attack by a strange man represents the exception and the sexual assault by a partner the rule. Similarly, rape events which have been preceded by some prior consensual contact are much under-represented in official figures. When some kind of voluntary meeting is the startingpoint for the subsequent course of events, the notion of shared responsibility diminishes the inclination to report the offence.

Criticism of the criminal justice system

In a Danish study of the processing of rape complaints based on all cases in Copenhagen during a five year period, the conclusion is drawn that considerable weight is given by the police when deciding to accept or reject a charge, as well as the courts, to the women's demeanour at the time of the assault and her general conduct (Carstensen et al. 1981). It appears that negative moral judgements circumscribe application of the actual legal definition of rape. Cases involving voluntary companionship -so-called contact or date rape - are especially likely to be dismissed. A similar filtering procedure is described in an earlier Norwegian work (Lykkjen 1976).

Qualitative aspects of the victim's interaction with criminal justice agencies have also been studied. The most frequently cited reason for withdrawal of charge in the Swedish documentation was the mentally burdensome character of the pre-investigation (Persson 1981). In this study, false accusations were found to be less than two percent of all the reported offences.

A key factor in the move towards a victim-oriented outlook on rape has been the knowledge provided by women who have experienced sexual violence and its aftermath. Through the establishment of counselling services, at public hearings and in writings, the trauma of rape has been brought into the open.

Immediate or long-term needs for psychological help and other support, as well as the inadequate response of the police to victims, are matters which are often taken up.

Critics allege that, especially when testing the complainant's credibility, police methods and practices are founded on misconceived ideas. These concern provocation or precipitation of the act, the notion that lack of sufficient resistance is proof of consent, the prevalence of unfounded complaints, etc. Verification of this criticism has, for example, been found in the wording of the Danish textbook for police trainees. Even the courts are repeatedly under attack for tending to place the rape victim on trial with the burden of proving her innocence.

The advocacy of the women's movement, popular scientific reports and research findings have - in combination - made the crime of rape and its victims a highly visible ideological issue. The prevailing attitudes to women and sexuality have undergone profound changes during the past decade. Whilst sexual assault previously connoted an offence against public morality, emphasis is now placed on the violation of personal and sexual integrity. The criminal justice system has been confronted with an opposition claiming that a too-narrow definition is often applied when answering the basic question of principle: Who really is to be considered a rape victim?

The case of Sweden

The development in thinking concerning the legal response to the phenomenon of rape can be traced by examining two consecutive Swedish governmental reports on sexual offences. The first one appeared in 1976 and the second late in 1982.

The earlier committee report (SOU 1976:9) caused lively and, in part, indignant reactions. Critics singled out one point in particular. As a mitigating circumstance for judging the offence as being less severe, the proposed legislative text expressly made allowance for »the coerced individual's behaviour prior to the offence«. That is, it was a matter of substance whether the woman had permitted (improper) advances by the man. The various bodies to which the report was referred for critical consideration responded negatively toward this codification of a practice which partly blamed the victim for the offence. The ideological climate had overtaken and passed the committee during its five-year working period. None of its proposals led to legislation. Instead a new committee was appointed, this time with substantial parliamentary and substantial female representation.

In contrast to the terms of reference for the earlier committee, the new ones clearly stated that judicial practice attached too great an importance to the conduct of the rape victim. Court decisions in many instances had stressed the woman's responsibility for the course of events in a way that rightly could be seen as alarming from a female point of view. From the outset it was thus made clear that an altered rape provision had to be formulated in such a way that the assessment of the case would be focused on the assault itself rather than on the relationship between the parties or other prior circumstances.

The offender's disregard of the woman's »no« and the breaking of her resistance through physical or mental coercion constitutes the

essential element of rape as defined in the new governmental report »Rape and other sexual offences« (SOU 1982:61). He thereby violates her integrity and legal intervention is necessary. The second committee strongly maintained that the relationship between the parties and events taking place before the assault are irrelevant factors when deciding whether an offence has been committed, nor, in principle, should either influence the choice of sanction.

In the spring of 1984, the Swedish government presented a Bill to parliament amending existing legislation on rape and other sexual offences and this was adopted later in the year. The explanatory statement makes clear that personal details related to the alleged assault and an examination of the offender's intent are factors which cannot be excluded in a proper handling of the case. But they ought not to influence the classification of the offence. The assessment of whether rape was committed shall be made without reference to the relationship between the parties or prior events.

The nature and degree of the violence applied or threatened and the sexual humiliation caused are the fundamental elements in the selection of the sanction for the offence. Other circumstances may also enter into the court's total assessment but whether the offender and the victim spent time together before the offence occurred should in no way lead to a milder sentence. Under the legislation adopted, information about the woman's lifestyle is regarded as irrelevant and it can in no sense be held that for a woman to follow a man into his car or home, or to permit him certain advances, is contributory to the assault.

The separate offence called violation (i.e. the woman's relationship to the man could be a reason to assess the crime as less grave than rape) has been abolished. Three grades of offence gravity with varying scales of punishment are now stipulated: rape, gross

rape and sexual compulsion. The new classification implies stricter punishment for the offence of rape. That legal term has not only been retained but expanded to include, in addition to forcible coitus, any comparable sexual intercourse, e.g. anal or oral penetration. The provisions are formulated in sex-neutral terms, thus offering better legal protection for homosexuals.

After nearly ten years of debate, the provisions concerning sexual offences - formerly crimes against morals - in the Penal Code of Sweden have thus been significantly revised. To a large degree the amended legislation takes note of criticism of discriminatory views on women. The proclaimed wish »to intensify the reaction of society to the serious assault that rape implies«, has resulted in a strengthening of the victim's position.

On the legislative framework

Traditionally all Norwegian penal statutes, inclusive of sexual offences, are phrased in a sex-neutral terminology. Offender and victim can legally be of either sex. Denmark (in 1981) and Sweden (in 1984) abolished sex-specific terms concerning sexual offences whereas under Finnish law, a male person cannot be the victim of rape and a woman can only aid and abet the perpetration of the crime.

Legislative immunity for a spouse exists only in Finland. In the other Scandinavian countries there is no formal exception made for rape within marriage.

The Norwegian rape concept includes carnal abuse and, as mentioned, the newly adopted Swedish provisions pertain to sexual acts comparable to enforced coitus. In Finland, as previously in Sweden, such coercive sexual relations are dealt with under the heading sexual infringement of personal liberty. In Denmark a separate provision concerns sexual abuse other than through intercourse.

Difficulties in delimiting the application of the rape notion have mostly been discussed in connection with subclassifications. The Danish Standing Penal Law Committee, in a 1981 revision of provisions on rape, found that in practice the choice of a less severe designation (unlawful sexual coercion) had been employed improperly for some time. Judicial instances had tended not to use the provisions on rape in a series of cases where the legal requirements for such use seemed to be fulfilled. The Committee considered in addition that these decisions might well have been founded on an incorrect assessment of the violence criterion and the relationship between victim and offender. The intentions of the legislator had not been followed. Instead a too restrictive view when judging violence or threats of violence to secure sexual intercourse had been taken (Voldtægt, røveri og brand-stiftelse,1980). The law was subsequently amended to ensure a greater certainty for the use of the rape statute rather than the lesser offence provision.

On much the same grounds as Denmark, Sweden has just abolished the provision on violation but it was further argued that practical delimitation problems cause significantly divergent punishment practices. The milder type of offence, sexual compulsion, refers chiefly to non-violent force such as the threat to disclose an event to the victim's family. (Cf. the formal retention of the Danish provision on unlawful sexual coercion.)

Apart from the statutory approaches to sexual assault which have been discussed, there are provisions in all the Scandinavian countries dealing with the carnal abuse of those of young age, exploitation of a person in a dependent position or in an unconscious or mentally deficient state of mind, etc.

Rape as defined by law in each country is punishable by at most ten years of imprisonment. The Danish statute also provides for a

six year prison sentence as a maximum for »ordinary« rape offences. In Sweden, rape is now punishable by imprisonment from two to six years whilst for gross rape, the scale ranges from four to ten years imprisonment.

Finally, Scandinavian rape laws require proof of criminal intent. There are no legal provisions for reckless rape. In borderline cases with a blurred distinction between consensual sex and forcible rape, conclusive evidence is difficult to obtain. The courts have in some cases confirmed the dilemma by deciding affirmatively that objectively a rape has occurred but negatively concerning the subjective condition of intent which was not satisfactorily proven. This double declaration gives victim status to the woman and accepts that she, due to overwhelming fright, has not been able to offer any resistance.

Victim assistance

Rape victims have recounted their negative experience of police stations and court rooms. To lessen their burden Denmark (since 1980) and Norway (since 1981) grant the rape victim the right to legal aid at public expense, during both the initial questioning and throughout the case. The police are requested to inform the complainant of this option, subject to court approval. When a charge is filed by the prosecutor, the appointed lawyer is given full insight into the documents. A more active part in the proceedings, however, is limited by the fact that the victim retains the status of witness. Sweden has to date only a legal possibility for personal assistance in the form of a contact person during the legal process. The wording of the new law is expected to result in a less stressful trial for the victim and, through information and training, the various judicial authorities are expected to be better equipped to meet the needs of persons who have been subjected to sexual assault. Nevertheless, the tenor of continuing deliberations suggests that legal aid will be provided in the future.

So far as trials are concerned, discussions in Scandinavia have centered on protecting the victim's right to privacy about her former sexual experience. Thus, in Denmark, for example, a stipulation to this effect was inserted into the Code of Criminal Procedure in 1981. Other issues concern the use of measures to protect, where necessary, the victim's anonymity in the massmedia and for the victim to be able to give evidence without having to face the accused.

No legislative revision was necessary for a noteworthy change in court practice to be accepted in Denmark. Nowadays rape victims are commonly awarded monetary compensation (as a rule some 20-30,000 Danish crowns) for physical and mental damage suffered during or after the assault. The claim for damages is treated as part of the criminal proceedings instead of being dealt with in separate civil proceedings or through the national scheme to compensate victims of crime.

The reforms described have met with some criticism -especially from defence advocates - concerning the assisting lawyer's »preparation« of the victim/witness, the necessity in certain cases to take up the victim's sexual history as a part of the evidence and the possible financial interest in a conviction as the pre-requisite for compensation.

As in other parts of the world, legal counselling and other forms of support to sexually abused women have been organized by voluntary groups. Not seldom these organizations take an active part in public debate, working for change within the judicial system and in society at large.

For a certain period, an officially funded »rape clinic« was operating as a pilot project in the city of Stockholm (see Hedlund et al. 1979). The official Swedish view, however, is that aid to the rape victim can best be provided through the regular social

welfare and medical agencies. Battered women became the main users of the crisis centre established in 1978 in the city of Oslo which offered shelter and assistance to rape victims as well. Subsequently, initiatives with various amounts of state contribution, have created a series of local crisis facilities for victims of domestic violence. This development can be seen in all the Scandinavian countries along with national recognition of violence against women as a social problem.

In addition to the offence of rape, physical assaults on female partners and incest and sexual abuse of children have become public issues (see e.g. Ekselius 1982). The question of the true number of the involved but often officially unknown victims - and offenders - is a matter of controversy. However, the publicity given to these issues has led to intensified interest in reactions to the personal abuse of female victims, both in the criminal justice system and other sectors of society. As with rape, it is alleged that stereotyped notions require the victims to take a share of the blame and that mistrust disqualifies some of them from receiving the support they need. The impact of the debate is to be found in changes in attitudes and in police and judicial practices. However, given that many of these offences occur in the context of family relationships, there is a certain caution in urging the use of criminal justice measures for victims seeking protection and redress. Other societal regulators and welfare strategies are more in demand than penal intervention.

Footnotes

1. This report focusses on Denmark, Norway and Sweden. Because of language problems the Finnish situation receives less attention and that of Iceland scarcely any notice at all. Due to very different social and legal conditions, Greenland is totally excluded.

2. During the 1970's sexual offenders and their treatment were not the subject of much interest but the question has now been brought up again (see e.g. Hedlund and Lundmark 1983, and recent journal articles).

3. »Gang rapes« seem to be uncommon in Sweden - at least in comparison with data from the United States. Eighty-five percent of the reported offences involved a single offender.

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The Dragon's Egg - Drugs-related Crime Control

Per Ole Träskman

Introduction

It would be impossible to avoid the issue of drugs in any kind of review of the past 25 years of criminal policy.

This article is an attempt to discuss steps taken in the Scandinavian countries aimed at controlling drugs. The penal policy for controlling drugs clashes head-on with the once universal image of Scandinavian criminal policy. What impact the penal anti-drug measures have had on the criminal policies as a whole and on the norms for what is acceptable within penal practices and procedures will be discussed. The basic notion is that drug control has had the effect of an evil dragon's egg. As the egg hatched, evil dragon offspring made their way into a good system and started devouring it from the inside (see also Heckscher 1985, pp. 64-72).

"The fight against drugs" - international efforts

The international narcotics conventions

The adoption of many penal provisions on the international as well as national fronts has been ascribed to "the fight against drugs".

Internationally, the control of drugs has been regulated under *conventions*. The earliest conventions (from the early 1900s) mainly concerned opium and other "classical drugs", that is, morphine-

based drugs and cocaine (Greve 1985, pp. 100-102; Hauge 1985, pp. 33-36). These conventions were replaced by three conventions all under the auspices of the UN. The first, Single Convention on Narcotic Drugs, was passed in 1961. It was complemented ten years later (1971) by a convention on psychotropic substances (Convention on Psychotropic Substances). The third convention, primarily concerning the international trade in narcotics, was passed in 1988 (Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances).

Furthermore, additional conventions formally aimed at controlling other criminality have in actuality been passed to escalate the control of drugs. Such conventions include the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as well as all of the international instruments concerning laundering money, such as the EC's directives on money laundering (Laursen 1993, pp. 61-74).

Together, the international conventions and other international legal norms constitute a system of rules that permit an excessively harsh penal control. Nearly all dealings with drugs, except those for legitimate medicinal purposes, have been criminalized. Many drug offences are designated "world crimes", which partly means that each state's jurisdiction over them is universal (Nord 1992:17, pp. 53-57). Drugs have been proclaimed as the world community's enemy number one.

The international cooperation

Over the most recent decade in particular, the international struggle against drugs has been intensified by enhanced *police cooperation*.

In Europe, strategies and methods for a supranational control policy have been developed, especially within TREVI[1] - the EU-countries' special body for policy and security issues - as well as

within Europol and other organizational forms outlined in the Schengen agreement.[2]

In practice, drug policies play a central role within these international organs. For example, Europol is to be built up step-by-step based on the informational systems and other police activity forms that already exist. The first step consists of a central observation unit for drug information and organized crime (EDU, European Drugs Unit). This international unit is to function as an umbrella-body encompassing the national police units for drug investigations. EDU is to gather information from its national member states about drug criminality, to analyze it, and to systematize it in a way easily available to control organs in all of the member states (Morén 1993, p. 80-81).

"*The fight against drugs*" *in Scandinavia*

I. New criminalizations and tougher sanctions

"Scandinavia - a drug-free zone"

The international regulation and control of drugs has been furthered on the national level, especially in the form of expanded criminalisation and harsher sanctioning.

To understand what has happened in Scandinavia, it is best to look at the early 1970s when the goal of *a drug-free Scandinavia* was first articulated (Bruun 1985, p. 58). This meant that more was needed than merely tracking international developments and contingencies in the fight against drugs. Instead, the Nordic countries would attempt to distinguish themselves in the view of the outside world.

In an international perspective, the sanctioning system in Scandinavia has long been fairly "liberal". But this view cannot be stretched to encompass attitudes towards drug-related offences.

In recent decades, the Scandinavian countries have adopted much tougher policies than even are stipulated in the international conventions on narcotics (Hauge 1985, pp. 35-36).

In fact the label "a drug-free zone" was misleading for the Scandinavian countries from the very beginning. In this context the notion "drug" was used quite arbitrarily: all drugs which are produced and distributed by the pharmaceutical industry and consumed on a daily basis in large quantities were excluded from the concept. The intent was never to free the Scandinavian countries from such drugs, which were and still are under the control of the pharmaceutical industry.

Tougher sanctions for drug offences

Until around 1970, the penal provisions on drugs were in no way remarkable in Nordic legislation. The penal provisions concerning drug offences and the penal scales attached to them were included in special legislation, and the sanctions were not particularly harsh. The most severe possible sanction for a drug offence was two years' imprisonment in Denmark, Norway, and Sweden, four years' imprisonment in Finland, and fines in Iceland (Laursen 1992, pp. 73-85).

Today the situation is another one entirely. There are still special laws regulating narcotics, which contain some penal provisions, but the criminalisation of the most serious crimes have generally (with the exception of Sweden) been incorporated into the *penal codes* themselves.3 This has been done in part to chisel in stone the message that drug offences are among the most condemned by society.

In addition, *the penal latitudes* are completely different than what they were 25 years ago. The most severe penalty for a drug crime is ten years' imprisonment in Denmark, Finland, Sweden, and Iceland, and twenty-one years in Norway (see also Träskman 1980, pp. 46-61). When the provisions concerning the

measurement of sentences in a case of recidivism are also taken into account, the most severe possible sentence for a drug offence is even harsher. Unusually high minimum penalties for aggravated drug offences have also been introduced in several of these countries. In Finland, the minimum sentence for a serious drug offence is one year in prison, in Sweden two years, and in Norway three years.

The escalation of sentences in Sweden illustrates this development well. In 1962, the maximum sentence for a drug offence was two years' imprisonment. This maximum was successively raised: in 1968 to four years, in 1969 to 6 years, and in 1972 to 10 years' imprisonment.

The exceptionally high minimum penalties must also be seen as a result of a lack of confidence by legislators in the judgement of the judiciary. The minimum penalties curtailed the discretionary powers of the courts.

Further, the penal latitudes for normal cases ("the basic offence") have been raised, and at the same time these penal provisions (or their application) have been changed so that even cases previously considered misdemeanors are now designated as the equivalent of "felonies". For example, the minimum punishment for the basic drug offence in Sweden is three years' imprisonment (see also Laursen 1992, pp. 80-81).

A universal criminalisation of all drug-related offences

The considerable reach of the criminalisation of drug-related offences in Scandinavia is also reflected in the fact that the definition of "narcotics" has exceeded stipulations in the international narcotics conventions, leading to the use of much broader *national definitions* (Christie and Bruun 1985, pp. 111-113).

For example, the intention to adopt one such national definition was expressly stated when the Finnish drug legislation was amended in 1993.

Under the new (Finnish) Narcotics Drugs Law, narcotics include substances and preparations covered by the international drug conventions as well as all plants containing any substance referred to in these conventions as having been classified as a narcotic drug.

In the Government bill, this was motivated by the fact that it should not be possible for plants containing substances prohibited by international conventions to be sold freely and then later used as drugs. The Finnish decision resulted in the possible classification as a narcotic of the khat plant which contains the narcotic substances katinon and katin, regardless of the fact that it had not been explicitly prohibited in the international conventions.

In the experts' comments to proposed law amendments being drafted at the Ministry of Justice, it was suggested that drugs be defined similarly as in international conventions. This was eventually rejected by the "political" legal drafting committee (Reg. prop. 1992:216, p. 7).

An example of the use of a national definition of narcotics is a sentence in a judgement passed down by the District Court in Gävle, Sweden in 1992. A person was convicted of possessing drugs after he had picked a forest mushroom "brockskivling" (Panaeolus campanulatus). On consumption, this mushroom had possible hallucinatory effects.

Typical for the criminalization of drug-related offences is the diminished distinction between various narcotic substances and preparations. What characterizes the "basic criminalisations" is the equal treatment of all forms of drugs. This has meant that in the penal provisions as written there is no indication as to

whether it is less serious to sell heroin or to possess hash for one's own consumption. A differentiation is first made at the point of determining of whether an offence is to be considered as aggravated for sentencing purposes.

Another result of such conscious non-differentiation among drug offences is that attempted offences are penalized as heavily as completed offences. An example of that is found in the Finnish Criminal Code, where the provision on the basic narcotic offence is formulated in such a way that the penal scale for a completed offence is the same as that for an attempted one (Finnish PC chap. 47 sec. 1; see also Greve 1985, p. 108).

The trend towards allowing criminalisations to sweep up all acts in their paths is perhaps most clearly seen in the fact that *personal consumption* of drugs is now punishable in most Nordic countries. This is yet another step in the deliberate effort to employ any means possible to tighten the penal control of narcotics.

The issue of whether to penalize use / consumption of drugs is among the most debated in Scandinavia. Originally, consumption was punishable only in Finland, where it was criminalised in 1966 (Lahti 1985, p. 113). The issue was reconsidered though when a new narcotics law was passed in 1972 in the Parliament with a very small majority in favor of a continued criminalisation (Hakonen and Kontula 1988, p. 164). In Norway, the criminalisation of consumption was passed in 1968 and in Sweden in 1988. In Iceland, the consumption of cannabis and LSD has been criminalised since 1969 (Laursen 1992, p. 73-85).

The penal scales for consumption vary. In Norway the maximum penalty is six months' imprisonment, whereas in Finland after the law amendment of 1993 the maximum is two years' imprisonment. A proposal to set a penalty maximum for consumption at six months was rejected with a reference to the

criminal policy exigency of sufficiently harsh punishments for all forms of drug offences (Reg. prop. 1992:180, p. 12 and OLJ 47/191). In Sweden the maximum penalty for use according to the law is three years' imprisonment. In practice, however, such cases would probably be considered only misdemeanors, which means that the maximum penalty is six months' imprisonment.

In recent years, the criminalisation in the narcotics area have been expanded by the criminalisation of further acts that facilitate the commission of drug offences or that increase the chance of deriving economic profits from them. For example, the new penal provisions on the promotion of drug offenses in the Finnish Penal Law (PC chap. 47 sec. 4) cover those who "by loaning money or by other financing promote drug offenses or the preparation of drug offences ... with the knowledge that the financing is used for this reason". Other examples of such new criminalisations deal with "money laundering" (see also Greve 1994, pp. 113-136).

II. Extensive police powers - effective narcotics surveillance and crime investigations

Harsh "control" can be seen as characterizing the applications of laws in the area of drugs. In many respects, norms as to what is acceptable in Scandinavia have been violated. Not least of all, this is true of crime investigations and surveillance practices where "untraditional methods" have been successively adopted, and greater and greater resources appropriated to the police. In a report published in 1985, the situation was described as follows (Heckscher 1985, pp. 64-65):

> The police have received expanded personnel resources for controlling narcotics. The police have also received new equipment especially designed for drug surveillance, such as optical equipment and special vehicles. Third, the police have begun to use special methods in the fight against drugs, methods that previously were largely unheard of or at least very unusual. These include wire-tapping and

> entrapment. But I am also referring to more polished methods for gathering and especially compiling, processing, and analyzing information of all possible types.

This general picture of a "*high preparedness*" remains largely unchanged today a decade on.

In a review of the means by which the police in practice try to detect and investigate drug offences, it becomes clear that these tactics have not solely been aimed at combatting widespread international drug commerce. Quite surprising in itself is the amount of police resources which have been expended in actions primarily aimed at individual narcotics' users.

Police actions against the hash trade in Christiania in Copenhagen is a special case. The intention here was not only to "harass the market trade" so that new and unnerved buyers would refrain from making their purchases (control of the demand for drugs). The activities had more general political motives and objectives.

It is also striking, queer, and at the same time alarming how strenuous the police authorities and the prosecutors have been in their efforts to control and punish minor drug misdemeanors.

A case from Norway (1994) is illustrative. The prosecutor charged a 40-year-old unemployed man with a drug offence. The offence consisted of the accused giving a friend in distress three tranquilizers pills, pills that the accused had a legitimate prescription for. The accused did not take payment for the pills. Since the pills contained diazepam, which in Norway is defined as narcotics, the accused was punished for illegal distribution of drugs. The punishment was, however, quite formal, a diminutive fine.

In another case from Denmark in 1993, a person was charged with the illegal possession of drugs. The police had stopped him and found in his pocket a pipe they thought smelled like hash.

From what was left in the pipe bowl, the police succeeded in scratching 0.02 gram of a mixture of tobacco and hash. Based on an estimation based of the "normal mixture" of tobacco and hash when smoked, the amount of hash found in the pipe was set at 0.004 gram. The city court acquitted the person after he denied being the owner of the pipe, and the pipe was the sole piece of evidence against him. Unfortunately for the prosecutor, the pipe had been destroyed by the police before the trial, and it could therefore not be submitted to the court as evidence.

Thus, so as to not lose the right to use coercive measures, the police have deliberately thwarted any efforts to differentiate between the essential elements of the drug-offences or to alter the penal scales for drug offences that might limit police intrusive powers (arrest, detention, and searches and seizures). This applies equally to cases where suspicion is limited to the possession of drugs for personal use or to the consumption of drugs.

There are many examples of the excessive police use of *coercive measures* which are clearly in violation of the proportionality principle, a central component of the criminal law and criminal procedural law.

One example involves the practice of the Finnish police prior to amendments to the coercive measure legislation in 1987 to detain and isolate very young persons (15-18 year olds) who were suspected of having used drugs (usually hash). These young people were detained for the longest period then legally allowed under police discretion, that is, for 18 days. Justification for this praxis was given in terms of deterrence effects and the chance to get these young people while in custody to "inform" about their own crimes and those of others (Träskman 1986, pp. 17-24).

III. Trials in drug cases - lowered burden of proof and dubious evidence

The rules about the allocation of burden of proof in criminal cases and the requirement that a conviction must be based on a high standard of evidence of the defendant's guilt create difficulties in all criminal cases. In the area of drugs in particular, attempts have been made to hurdle these obstacles by unconventional means.

For instance, how do judges deal with evidence obtained by use of new police methods? The issue is how detailed the prosecutor (who presents the evidence emanating from the preliminary investigation) has to be about how the evidence was obtained, and how thoroughly he will detail these methods during the trial. Is it sufficient for the prosecution to point out that the evidence presented had been obtained through electronic bugging and surveillance, or should there also be detailed accounts of how this had been accomplished (to be able to check whether it was carried out within legal parameters)? Can evidence obtained through police entrapment or provocation be used as evidence and to what degree is it possible during the presentation of evidence to use witnesses who remain anonymous?

Legal praxis in narcotics cases have often been on a collision course with the demands of fair trials and the minimal guarantees for the accused found in international human rights documents.

In Denmark, the question of using *anonymous witnesses* is topical and has been heavily debated since the beginning of the 1980s. In one case, the High Court and later the Supreme Court decided that the identity of two witnesses should be kept concealed from the accused. He was denied admittance during their testimony and received no complete account later of what they had claimed (Heckscher 1985, pp. 64-65).

The decision triggered sharp criticism and the Danish Parliament adopted a law proposal that prohibited the use of anonymous witnesses. Further, a decree was passed that the accused was always to be provided access to copies of the evidence catalogue. This regulation was repealed shortly afterwards, and several new proposals for allowing anonymous witnesses have since been made. The proposals have been motivated in part by the special needs associated with criminal cases involving the organized drug trade (see Smith 1994, p. 336).

In Finland, convictions in drug cases have sometimes been exclusively based on the testimony of co-defendants (with some weak accompanying circumstantial evidence), who often themselves have earlier been convicted of similar (or the same) offences. In some cases, these witnesses' testimonies have not even been given in person at the new trial, but instead had been extracted from previous court and preliminary hearing records. This amounts to denying the accused the possibility to interrogate or allow interrogation of the witness.

Such a violation of the principle of immediacy has led the Supreme Court to refer some cases back to lower courts for retrial (i.e. HD 1991:84). Such a decision is entirely correct according to the European Convention on Human Rights, Article 6.

Nor has the *principle of legality* always been upheld. An example of this is a decision from Finland where a person was convicted for attempted distribution of drugs when he was sent by someone else to an apartment rented by people who dealt drugs. Evidence indicated that his intention was to pick up a package of drugs that had been found in the apartment. He never took possession of the package, however, since the police had arrived at the apartment before he did. The Supreme Court ruled that despite this, he was guilty of an illegal attempt to distribute drugs. By use

of analogous interpretation of the existing narcotics law and by identifying the "attempt" as having occurred at an earlier point in time than had previously been the praxis under Finnish criminal law, it became possible to convict and sentence the accused (see Backman 1990, pp. 8-9, Frände 1989, pp. 15-17, and Klami 1990, pp. 458-460).

IV. Deterrence through harsh schematic sanctions

Sentences in narcotics cases are severe. In criminal cases in general, it is unusual for a penalty from the upper end of the penal scale to be applied. In several narcotics cases, however, the full range of the stipulated penal scales have been used. Due to the rules concerning the determination of punishment in cases of recidivism and concurrent offences, the sentences in several individual cases have far exceeded any sentence provided for in the penal latitude for a (single) aggravated drug offence. The harshest sentence handed down in Sweden, for example, was 18 years' imprisonment (when the maximum punishment provided for in the provision concerning the aggravated drug offence is in general 10 years' imprisonment). One justification often heard for increasingly harsh penal scales is that the previous parameters are inappropriate for the types of offences appearing before the courts today (Träskman 1980, pp. 46-61, Laursen 1992, pp. 73-85).

Sentences for drug offences vary somewhat between the Nordic countries. The highest level of punishment is found in Norway and Sweden, whereas the level in Denmark has generally been lower (see Nordnark 1991:1).

The assessment of punishment in cases involving drugs is in practice *schematic*. Despite the fact that the sentencing principles are not identical in the various Nordic countries, it can generally be said that the sentence given for an individual offence

is always supposed to be in proportion to the offender's culpability and the criminal act's harmfulness and dangerousness. The requirement for uniformity in court practice is also to be considered.

In drug cases, the sentence is determined (with the exception of cases involving personal consumption only) by the use of a model developed centrally by prosecutors and judges. The severity of the sentence is to be set taking three factors into consideration: which illicit substances were involved in the offence (harsher sentences for dangerous or very harmful substances); the quantity of the substances involved in the offence; and any prior conviction of the accused person for narcotics offences. All other factors are of subordinate significance. This means in part that all factors related to the accused's personal and social situation will have no tangible effect on the sentence.

V. Enforcement of punishment

A look at Nordic prisons provides us with clear-cut proof that the expressed policy goal of creating a drug-free Scandinavia was not based on commonsensical realism. Not even in the prisons, the most totalitarian institutions in society, is it possible to ensure that people will refrain from taking drugs.

The reality is that drugs are dealt and used in all Scandinavian prisons. This has led to the introduction of several control measures that counteract any efforts to make correctional care less restraining and more humane. Such measures include searching visitors, using glass walls to observe visiting room activities, the undressing of prisoners and searching of their and visitors' clothing, body searches, urine tests, and special raids by visiting patrols (Bødal 1985, pp. 64-65, Eskeland 1991, pp. 337-343, Lagrådsremiss 16 June 1994).

Nordic criminal policy and nordic drug policy

I. The ideal image of Nordic criminal policy

To illustrate recent developments, a comparison can be made between changes in Nordic drug control policies and what is generally believed to characterize Nordic criminal policy.

It would not be entirely incorrect to discuss this in terms of a common Nordic criminal policy. Summarily and idealized - it is possible to say that Nordic criminal policy is characterized by, first, an emphasis on caution in the use of the criminal justice system (control by means of punishment should be the last resort ["*ultima ratio*"]. See Jareborg 1994, pp. 41-53; Träskman 1994, pp. 111-121.). Second (as a consequence of the ultima-ratio rationale), the criminal policy measures are to be *rational and socially defensible*, that is, the criminal policy objective is not to abolish criminality, but rather to regulate its structure and level so that it can be endured (Anttila and Törnudd 1983, pp. 124-136). Third, the attempt will be deliberate to *reduce the level of repression*. This means that it is characteristic of the criminal policy to work purposefully against the expansion of the penal system.

The following properties are related to responsibility for the individual, especially for a socially weak individual. The penal system shall be *socially just*, that is, shall not discriminate against certain weak groups of individuals. Not least important, there must be a certain degree of *humanity*, which primarily means that cruel, inhumane, and unreasonably harsh measures cannot be justified. In addition, trials in criminal cases shall be designed in such a way as to guarantee high levels of justice. These *procedural guarantees* shall apply throughout the entire process, that is, from the first phase of the police investigation to the final court decision.

These particular traits of the "ideal Nordic criminal policy model" shall (one would assume) be reflected in the decisions made by the various actors within the criminal justice system, that is, in those made on the legislative level (criminalisation decisions), in decisions on the judicial level ending in the court judgments, and in decisions related to the enforcement of the sentence.

When the *criminalisation* of an act is being considered, it should be the utility value possible to attain through the criminalisation that first and foremost should be assessed; subsequently, this value should be weighed against accompanying societal costs as well as against alternative measures. Necessary for a legitimate criminalisation is the act's obvious harmfulness for society and thus reprehensibility or blameworthiness. The demand for blameworthiness implies in part that the act in "its empirically normal form" reflects a "guilty mind" on the part of the offender. If the act is criminalised, the act's *reprehensibility* is to be reflected in the design of the penal scale (Jareborg 1994, p. 45).

The application of the penal provisions (that is, affecting decisions made during the preliminary investigations, about prosecution, as well as in the court decision, or in any other type of final disposition by the court) must be preceded by a stringent recognition of *due process* guarantees. These requirements are in part based on the principle of legality and its various dimensions (Frände 1989, pp. 4-18). An essential requirement is that the provisions to be applied must be interpreted in a rather strict manner and not to the detriment of the suspect/defendant. In the Nordic countries (with the possible exception of Denmark, see Waaben 1994, pp. 130-139), it is generally approved that analogous dispositions are not to be made in decisions as to whether an act is criminal or not.

A clear-cut demand is that defendants are to receive *fair trials* and their rights are to be protected. The burden of proof ought to lie with the prosecution, and the defendant has a total right to passivity. S/He is not obliged to prove his/her innocence; rather, it is up to the prosecution to prove the defendant's guilt. Doubt created by the evidence should be decided in favour of the defendant, and a very stringent criterion of guilt is required for a conviction (see also Träskman 1987, pp. 469-486 and Träskman 1993, pp. 594-617).

There are also some *minimal guarantees* to be enforced in connection with the *implementation of the sentence*. Especially in the case of deprivation of liberty sanctions, special care must be taken when further limiting an offender's rights or infringing on his/her personal liberty.

II. Criminal policy and drugs

Requirement of harm(fulness)

The criminalisation of an act is not warranted if the act is not harmful.

The criminalisation of certain drug-related acts is usually motivated by the fact that the use of drugs results in substantial harm, primarily medical and social. This is based on the notion that the use of drugs end in extreme mental and physical dependence, which in turn leads to a need for increasingly large doses, eventually destroying the drug user's health. The drug user becomes incapable of working or of conducting an orderly social life. Reference is also made to all the cases of death from overdose. Narcotics are designated a "deadly poison"(Ege 1985, pp. 44-52).

Thus, what is to be achieved with a criminalisation is the protection of both individual and collective legal values. These values include

the health and social welfare of potential users, the well-being and security of others (who may face considerable risks when encountering people high on drugs), and the preservation of society's social and medical services (which may be overburdened by people marginalized as a result of drug abuse).

It is well-documented that this depiction of the harmfulness of drugs is a cliche and even sometimes incorrect. The term "narcotics" has become a generic judicial concept without a medical basis. The substances and products classified as narcotics have varying properties. Pharmacologically, some of these substances and products are rather harmless. The opiates (such as opium, morphine, heroin, methadone) have been shown to be non-poisonous; in other words, a person could use them in large doses on a daily basis over a lifetime without incurring lasting damage to any body organs (Bejerot 1985, p. 43).

The information on how dangerous various types of drugs are varies considerably. There are studies that identify several forms of narcotics that are less harmful than legal intoxicating substances. Medical studies comparing the negative consequences of cannabis and alcohol (measures include organ damage, acute toxicity, damage to foetus, increased aggressiveness, and so on) have concluded that cannabis is less damaging (Ege 1985, p. 45). This conclusion has nevertheless been criticized, at least with regard to possible long-term harm from cannabis use. There is a lack of unambiguous research results, and opinions differ (see also Papen-dorf 1995, p. 52).

There are also some studies involving comparisons between the use of illegal drugs on the one hand and certain "stimulants" or dangerous activities approved by society on the other hand. Douglas N. Husak says the following about such comparisons

between the use of illegal narcotics and the use of tobacco and alcohol (the figures refer to USA):

> There seems to be no correlation (except perhaps an inverse one) between the illegality of a drug and the likelihood that it will cause death. Nicotine causes many more deaths (between 350.000 and 430.000 annually) than all other drugs combined, both legal and illegal, and the toll is still rising. Next highest in number of fatalities is alcohol (between 50.000 and 200.000 annual deaths). These data become only slightly less alarming when adjusted for the fact that nicotine and alcohol are used more widely than illegal drugs. When the risk of a given drug is expressed as a ratio of the number of fatalities per weekly users, nicotine (83.3 deaths per 10.000 weekly users) is still far and away the most deadly drug. About 25 percent of all adolescents who smoke a pack of cigarettes daily lose, on average, ten to fifteen years of their lives. Illegal drugs seem benign by comparison, although the data on their long-term effects are less reliable. Significantly, no known fatalities have ever been attributed to the consumption of marijuana, despite use by 51 million Americans in the past fifteen years. Cocaine, even when smoked in the form of crack, was cited as the primary cause of death in only 2.496 cases in 1989 .... Since 862.000 Americans reported using cocaine weekly in 1988, the number of deaths per 10.000 weekly users is about 29. This figure is roughly comparable to alcohol (perhaps 20.6 deaths per 10.000 weekly users). (Husak 1992, p. 95.)

Husak concludes:

> When placed in perspective, illegal drug use is not an extraordinarily dangerous recreational activity. The risk of fatality encountered by users of illegal recreational drugs is not as unlikely as that faced in many permitted recreational pursuits. About 4.200 Americans died in motorcycle accidents in 1987, even though there are fewer motorcycles than cocaine users. The risk of recreational drug use may be roughly comparable to that of mountain

> climbing in general, but is far smaller than the risk of an assault on the Himalayas in particular (which killed 47 of the 1.609 non-Nepalese who attempted it). Furthermore, illegal drug use is probably a good deal less hazardous than race car driving or boxing. (Husak 1992, p. 96.)

It has also been shown that the use of (some types of) illegal narcotics may have positive effects. Some drugs previously viewed as totally void of medicinal value have been shown to possess positive properties earlier overlooked. Examples include the use of cannabis and heroin for medicinal purposes (see Bruun 1985, p. 60; Grinspoon and Bakalar 1993; Baum 1993).

Thus, any overall, general, or schematic description of "narcotics" as unambiguously damaging is not correct. For these reasons, the criminalisation without exception of all drug-related actions - due to the "harmfulness of narcotics" - is unjustified.

Requirement of reprehensibility/blameworthiness

The second requirement for criminalisation in an ideal criminal policy model is that the action is reprehensible. The act to be criminalised should be such that the offender is rightfully condemned for its commission (or omission). The degree of blame is to be reflected in the penal scale attached to the offence description. The harsher the sentence, the more reprehensible the act.

Are narcotics-related actions reprehensible? To this, most people in Scandinavia would respond spontaneously in the affirmative, largely without any reservation. Apparent as well is the fact that it is possible to describe all drug-related acts in such a way that their reprehensibility becomes obvious. The international drug commerce is sometimes depicted as a far-reaching organization for the distribution of accidents and deaths, where immoral and unscrupulous "mafia bosses" and "drug barons" remorselessly profit off unlucky victims. On a national level, the drug trade could also be described as a market where "drug sharks" spread their deadly

poisons for the sole purpose of enhancing their own personal wealth. Even the reprehensibility of consumption by individuals can be highlighted. What "junkies" do is to inject "poison" into their bodies, thus wasting themselves as conscientious members of society. And who is to pay for this, if not "the upright citizens" (see also Christie and Bruun 1985, pp. 88-95).

Naturally, such depictions are tainted by the fact that narcotics-related acts have already been criminalised. But the entire approach is based on simple circular reasoning. Narcotics-related acts are reprehensible because they are punishable (and therefore "per definition" also harmful!). An essentialist and definitive view, however, would be that certain acts are reprehensible even when not punishable by law.

But this is not really the case in the case of consumption of narcotics. No generally accepted moral code supports the view that it is a priori reprehensible to chew cocoa leaves, for example, or to use cannabis products. What this could mean is that in a society based on the free exchange of goods and products, it would be *a priori* reprehensible for a human being to deny another human being something that the latter so intensely desires. A "tabula rasa" review would thus lead to the conclusion that the narcotics-related acts are neutral.

It should also be noted that empirical studies in the USA show that only about half of the population believes that the taking of drugs is immoral in all circumstances. Consequently they also support the view that the non-medical use of drugs shall be criminalised without any exceptions (Husak 1992, p. 63)

Some forms of drug dealings can clearly be defined as "reprehensible" on the grounds that the behaviour violates societal norms for the trade and distribution of various goods. Imports and exports of or trade in narcotics can be compared

here with other illicit trade and distribution. At most, an act is not reprehensible because it is drug-related, but rather because it violates society's norms for trade and order.

It may be contended, that the view that all drug-related offences presently criminalised are not - despite the criminalisation - reprehensible was the strongly supported hash-judgement of the German Bundesverfassungsgericht 1994. It is clearly stated in the judgement that a person who receives and possesses a small amount of cannabis for his/her own use commits an act so harmless to the society that there is in general no need for society to assign blame by means of punishment (see also Papendorf 1995, pp. 50-55). It can also be noted that the European Parliament in a report in January 1994 stated that the possession and personal use of small amounts of narcotics shall not be punishable (Report 25, January 1994).

Benefits and disadvantages

In other words, how drugs are viewed is a product of the control strategy chosen.

It is probable that today's attitudes towards drugs are a result of various historical events and global political constellations in recent centuries (Olsson 1994). Throughout the 1900s, organized international drug control has consisted of far-reaching prohibitions and extensive criminalisations (Bruun 1985, p. 61). Certain gains have been made, but with very definite and significant costs.

Such prohibitions and criminalisations have most certainly led to a lower level of narcotics use than would have been the case if drugs had remained totally unregulated. But it is impossible to estimate even approximately the dimensions of the ensuing reduction in the level of damage from the overall use of various intoxicating substances. Had there been no restrictions on drugs

and drug use, alcohol consumption would undoubtedly have been reduced, but we are totally unable to calculate what this would mean for health care and the social care of addicts.

Prohibitions and criminalisations of narcotics-related behaviour are implemented at considerable economic cost. Only in part do these costs directly stem from the control of drugs (police, courts, and prisons). Other costs result from increased criminality committed by users to finance their individual habits (Balvig 1985, pp. 89-94). Finally, other costs are indirectly related to the consequences of the adopted drug policies (Andenæs 1994, pp. 5-14).

Consequences

The crime situation

What has been achieved by the adoption of the present drug policies? The goal of these policies has not been attained, that is, a drug-free society. On the other hand, the use of narcotics has to a certain degree been checked. Furthermore, other things of a completely different nature have resulted as well.

Drug policies are aimed both directly and indirectly at *actual crime levels*, that is, at the nature and scope of criminality. Naturally, it is obvious that there would be no drug offences if narcotics-related acts were not criminalised. When both the use and possession of drugs for personal consumption are criminalised, the aggregate actual criminality rises substantially. The increase in the number of crime and offenders is probably in the hundreds of thousands.

Information about how common the use of narcotics is varies. In Denmark, it is claimed that there are approximately 10,000 "drug addicts" and between 300,000 and 500,000 people who more or less regularly smoke hash.

Thus, the criminalisation of drug-related acts results in a very large group of - in all other aspects law-abiding - people being made into "criminals". As the punishments for drug offences in general are quite severe, it is hard for public opinion to consider the offences they commit as very minor. It is likely that this results in a certain two-pronged morality: certain penal provisions are serious, while others are the kind that can be overruled in the confines of our private lives (see also Husak 1992, p. 56).

Criminalisation of drug-related acts, however, also leads to *corollary criminality*. The criminalisation of narcotics removes the possibility of obtaining drugs in a legitimate manner, which in turn means that the prices on the only market, the illegal one, are quite high. A drug abuser is therefore often compelled to finance his/her drug habit by committing crimes. A substantial part of traditional property offences are committed to finance drug habits, and many who sell or otherwise distribute narcotics also do so to finance their own consumption (Balvig 1985, pp. 89-94; Balvig 1989, pp. 16-17).

Moreover, it is not unreasonable to speculate that the design of narcotics control in Scandinavia has contributed to the "import" of *organized crime*. In that the entire narcotics market is both illegal and fully developed, there is something to gain for all actors who wish to enter the market to exchange some types of goods. Without the illegal drug market, there would be less room for organized criminality from, for example, the former Soviet Union and other East-European states to expand their activities into Scandinavia.

A certain paradox is at play here. The totally closed and hidden drug market in Scandinavia (allowing no open exchange of goods) greatly furthers a free exchange between this hidden market and hidden markets elsewhere.

Control costs

The drug policy adopted in Scandinavia has been accompanied by high *control costs*. As yet, no calculations have been compiled as to the degree of police and other authorities' operational resources that are entirely or largely spent on controlling narcotics. It is clear, however, that the total police force in Scandinavia has expanded in recent decades, and this expansion has primarily been explained by the increased efforts in the drug sphere (see also Christie and Bruun 1985, pp. 174-177). Nor is there any doubt that the number of police years spent in the struggle against drugs has increased by several hundred per cent since the beginning of the 1960s.

Another result of the Scandinavia drug control strategy is a rise in the prison populations. According to Nils Christie, the number of prison years meted out by Norwegian courts increased from 1,620 in 1979 to 3,199 in 1990, and the number of prison years for drug crimes increased from 219 to 789. This means that 25 per cent of imprisonment years people were awarded for drug offences (Christie 1993, p. 67).

Perception of criminality

Drug policies not only influence the crime situation but also our perception of criminality. It is highly unlikely that all this intensification of penal norms for drugs could have been achieved in Scandinavia if the political goals for the measures had not at the same time been so unrealistic.

The wide chasm between the established goal of "a drug-free Scandinavia" and reality has lent weight to the argument for more severe penalties greater power. When reality is not affected by enacted measures - in fact, drug criminality has increased - the support for even harsher sentences in the name of general deterrence grows. Much support has been voiced for the

viewpoint that it is now more important than ever to stake out a clear position on drugs. And this is best accomplished by further condemning drug-related acts by means of harsher penalties (Laursen 1992, pp. 73-85).

"The fight against drugs" has been based on values always associated with conservative-liberal politics. This is reflected in the *terminology used*. It is not only asked how we as a society intend to solve this societal problem including the means provided under the penal law - but a crusade has also been proclaimed against crimes and offenders. Nor is the problem formulated within the framework of a social welfare model, with an estimation of the social gains and losses. Instead, the scenario resembles a classical fairy-tale. Drugs are evil, and this evil must be fought by the forces of good.

Such a struggle presupposes the use of strong antidotes. In this context, bypassing otherwise adhered to "due process guarantees" of legality, the right to a fair trial, and so on, is defined as legitimate. The same is true for ignoring cost constraints. When reaching certain goals is given such a high priority, the costs are of secondary importance.

The view of crime control

The prevailing penal drug policies are thus incongruent with the criminal policy otherwise favored as the correct one. During the designing of these drug policies, it was either the case that no effort was made to assess the deleteriousness and blameworthiness of the various drug-related offences, or that available findings were ignored or rejected. Nor have alternative action models been unbiasedly considered in terms of benefits and costs when choosing the most appropriate policy. What happened was that a political objective ("a drug-free society")4 was articulated first, accompanied

by a declaration that this objective both should and will be achieved by means of penal policy.

What this has meant is that constraints normally incorporated into the crime control system have been disregarded. Decisions were made that these goals were to be attained by means that were unrealistic - at the same time that it was persistently asserted that this was the only viable path. Other possibly more realistic - and even more suitable - means were completely ignored. Later, when it was no longer possible to deny that the means chosen were faulty, adherence to the basic principle was steadfastly held: "the medicine is the right one, but the dose has been too weak". This has resulted in an escalation. Several additional drug-related acts have been criminalised, penalties raised, and the procedures for attaining convictions relaxed.

The Nordic criminal policy as described above has with good reason been described as "rational". The same cannot be said about the Nordic drug policy. The measures which have been adopted for intensifying penal control could more accurately be described as emotional manifestations and political demonstrations of power. To some degree, the Nordic policies can also be seen as evidence of subservience to the large nations, in other words, the adoption of primarily American solutions, despite the fact that these were not especially suited to Nordic needs or Nordic values.

What is regrettable with this approach is not only that it has led to a misguided drug policy, but also that it has resulted in a misguided criminal policy. Here I am not primarily referring to the ignorance or lack of judgement reflected in the design of the new criminalisations (the failure to rationally assess the harmfulness and dangerousness of the acts in question, and the failure to evaluate the effects of criminalisation as compared with alternative measures) or

to the adoption of the abstract principle of "penal value" for sentencing the criminalised actions. Unfortunately, there are many other examples of irrational criminalisation. Further, it has been shown to be too easy to renounce due process protection previously adopted as guarantees of the rights of persons suspected of and charged with crimes.

There is no doubt that it has been possible to introduce many unconventional police methods that have become routine after first having been launched as part of the war against drugs (and against other organized crime). What previously was observed as a nearly unalienable protection against the violation of private life and personal integrity has been substantially weakened by the use of an international computerized police surveillance system. The legal basis for wiretaps and surveillance, which were initially allowed for the prevention and investigation of drug offences, have quickly been adopted to an extent impossible to justify by increases or other changes in the levels and nature of criminality (see Cornils and Kohls 1992, pp. 60-61).

The use of agents and entrapment are other examples in the area of drugs where methods previously condemned as unethical or otherwise inappropriate have become acceptable. It has long been the view in Scandinavia that the use of "agents provocateur" violated fundamental legal principles governing our societies as well as universally recognized legal protection. Nevertheless, the police have gradually resorted to agents for enticing suspects into com-mitting drug offences for the production of evidence necessary for convictions. Subsequently, clauses allowing such unconventional police practices have been enacted into statuary law.

It is in cases involving the international drug trade that the first signs are seen of a willingness to abandon the minimum guarantee of a fair trial as well as to weaken due process protection of accused

persons. An example of this is the intensive efforts by control agencies in several European countries to legitimate the use of anonymous witnesses, even though such a practice would clearly mean a substantial curtailment of the accused's rights as a party to the criminal trial on an equal footing.

Interpol today makes use of undercover police, and the acceptance is total for the use of agents, anonymous accusations, and in many cases, an inverse burden of proof (see Rantanen 1994, pp. 24-26, and also Inrikesministeriets publikation 3/1994).

The greatest threat to due process protection in criminal procedures is at hand when it becomes clear that the application of the highest burden of proof - that the accused's guilt is proven beyond any reasonable doubt - has been dispensed with in drug trials.[5] Furthermore, a weakening of the principle of legality by allowing more extensive analogous interpretation to the detriment of the accused than previously permitted signifies a threat to the legal culture that has prevailed in Europe for more than 200 years.

To this ominous scenario should be added the fact that penalties in drug cases have served as a model for the matter-of-fact application of extremely harsh prison sentences in other kinds of criminal cases.

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Notes

1. The anagram TREVI refers to those areas to be covered by the cooperation, that is, the struggle against Terrorism, Radicalism, Extremism, and International Violence. All EU-countries participate in TREVI (Sweden and Austria did even before joining the EU), as well as Norway, Switzerland, Canada, and Morocco.

2. Some EU-countries entered into the Schengen agreement to ensure an efficient crime control in Europe after the abolition of the traditional security

control at the frontiers. According to this agreement, mutual assistance is given between police authorities in different countries. In certain cases it is also possible for the police from one state to pursue crime in another member state. Furthermore, a common crime file is planned.

3. In Sweden, the penal provisions on drugs are still placed in a special law.
4. Regarding the reasons for this political aim, see Christie and Bruun 1985, pp. 57-113.
5. See also the decision in the Salabiaku-case. European Court of Human Rights. Salabiaku-case (14/1987/137/191) Judgement. Strasbourg, 7 October 1988.

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Prisoners, Prisons and Punishment in Small Societies

Erlendur Baldursson

Abstract

This paper aims to analyse the subject of prisoners, prisons and punishment in small societies. An attempt is made to compare the prison system in a small society (Iceland) with those of other larger societies, in particular those of other Nordic countries. Small institutions function better in many respects than larger ones. The problems that emerge, and there are problems in all prisons, are more visible and can therefore more easily be discussed and solved.

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