Globalized Penal Populism and its Countermeasures

Explaining National Differences in the Use of Imprisonment

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Abstract

The paper explores explanations for differences in penal severity in industrialized countries. The analyses include cross-sectional and trend analyses taking account of a large number of factors related to crime: social, economic, and political factors; and public sentiments. Major findings include: Differences in imprisonment rates cannot be explained by differences in crime. Penal severity instead is closely associated with public sentiments (fears, levels of trust, and punitivity), the extent of welfare provision, differences in income equality, and political culture. The Scandinavian penal model, for example, has its roots in a consensual and corporatist political culture, high levels of social trust and political legitimacy, and a strong welfare state. The paper aims also to proceed behind these statistical associations to explain, why and how traits in political culture, contents of welfare policy, and differences in public sentiments are conductive to penal policies. Alongside these, attention is reserved to other factors such as demographics, differences in media culture, judicial and legal traditions and the roles of professional elites.

Much of the analysis is based on quantitative data from international surveys. Survey data for crime and social sentiments comes mainly from the International Crime Victimization Surveys, European Social Surveys and World Values Surveys. Data for social, economic and political indicators come mainly from OECD, Eurostat, United Nations and from the European Union System of Social Indicators. The Council of Europe Sourcebooks provides the basis for reported crime and prison statistics, complemented by national statistics from different countries.

Key words: prisoner rates, penal severity, political culture

TRENDS AND DIFFERENCES IN PRISONER RATES

Trends. The last decades have witnessed unprecedented expansion of penal control in different parts of the world. Since the mid 1970s prisoner rates in the US have increased by 320% from around 170 to around 740/100 000 pop. The US seems to have a strong model-effect in the English-speaking world. Similar - albeit smaller - changes have taken place also in Australia, New Zealand and the UK. Among the Anglo-Saxon countries Canada has a deviant role. During the last 15-20 years the prisoner rates have been more or less stable.
Trends in the continental Europe are diverse. Some Central European have fairly stable prisoner rates on the level of 80-90/100,000 (France, Belgium, Germany and Switzerland). However, there are notable exceptions. During the last two decades Netherlands has more than six-folded their prisoner rate from the low of 20 to 130/100,000. Spain has more than tripled their rates from 40 to 140/100,000.

The Scandinavian countries differ from many other European as well as non-European countries both in terms of stability and leniency of penal policy. For almost a half of a century the prisoner rates in Denmark, Norway and Sweden have stayed between the narrow limits of 40-60 prisoners.

However, Finland has followed its own path. At the beginning of the 1950s, the prisoner rate in Finland was four times higher than in the other Nordic countries. Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway were around 50. Even during the 1970s, Finland's prisoner rate continued to be among the highest in Western Europe. However, the steady decrease that started soon after the Second World War continued, and during the 1970s and 1980s, when most European countries experienced rising prison populations, the Finnish rates kept on going down. By the beginning of the 1990s, Finland had reached the Nordic level of around 60 prisoners.
Table I.3  Prisoner rates in selected Scandinavian countries 1950-2005 (/100 000 pop)

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<tr>
<td>NOR</td>
<td>51</td>
<td>44</td>
<td>44</td>
<td>44</td>
<td>56</td>
<td>57</td>
<td>69</td>
<td>+23</td>
</tr>
<tr>
<td>DEN</td>
<td>88</td>
<td>71</td>
<td>70</td>
<td>63</td>
<td>67</td>
<td>63</td>
<td>75</td>
<td>+12</td>
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<tr>
<td>SWE</td>
<td>35</td>
<td>63</td>
<td>65</td>
<td>55</td>
<td>58</td>
<td>60</td>
<td>78</td>
<td>+34</td>
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<tr>
<td>&quot;Deviants&quot;</td>
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<tr>
<td>FIN</td>
<td>187</td>
<td>154</td>
<td>113</td>
<td>106</td>
<td>69</td>
<td>55</td>
<td>74</td>
<td>+7</td>
</tr>
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</table>

Source: National Statistics.

Table I.4  Prisoner rates in selected Eastern European and Baltic countries 1980-2005 (/100 000 pop)

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<tbody>
<tr>
<td>Estonia</td>
<td>282</td>
<td>351</td>
<td>333</td>
<td></td>
<td>+18</td>
</tr>
<tr>
<td>Lithuania</td>
<td>248</td>
<td>273</td>
<td>235</td>
<td></td>
<td>-5</td>
</tr>
<tr>
<td>Hungary</td>
<td>122</td>
<td>155</td>
<td>155</td>
<td>162</td>
<td>-5</td>
</tr>
<tr>
<td>Poland</td>
<td>280</td>
<td>132</td>
<td>169</td>
<td>228</td>
<td>+72</td>
</tr>
</tbody>
</table>

Source: National Statistics.

Should we have included also countries from Eastern Europe, we would have found figures which are about double from that in Western Europe. Including Baltic countries would raise figures up to 300 and even higher.

Diverting trends in USA and the Scandinavian countries are highlighted in figure I.1. During the last 60 years things have certainly gone differently in Finland and in the US. What applies to US does not evidently fit to Finland.

Even among the European countries we could detect considerable diversity both in terms of the levels and trends. Scandinavian countries represent one end in that continuum in both stability and relative leniency. Among the Western European countries UK, NL and Spain represent the opposite end with rapidly raising prisoner rates.

The profile of Japanese imprisonment rates post 1960s resembles that of the Nordic countries, with its own characteristics (see figure I.2). Throughout the post World War Two period the rates had been declining (in absolute numbers from the level of 100 000 prisoners in the early 1950s to the level of 45 000 in the mid 1970s). Comparing Japan to Denmark and Finland shows resemblance to both countries. In the 1960s the number of prisoners in Japan was on par with Denmark, but unlike Denmark, following a downward trend. In this latter respect the profile was similar to that in Finland, however, Finland having twice as high incarceration rates. In the mid 1970s the Japanese figures stagnated, while the Finnish ones kept still going down. From the mid 1990s the Japanese rates started to rise, as did the figures in Finland (and in the other Nordic
countries as well). The end result of all this is, that these three countries have ended up to fairly similar overall imprisonment rates, however, via quite different routes.

Status and differences. In a global context Scandinavia as a region has among the lowest level of prisoners. At the moment around 70-75/100 000 pop. The corresponding figures for other Western European countries are around 110, in Eastern Europe around 200, in Baltic Countries around 300, in Russia 550 and in the US over 700. Prisoner rates by regions in 2004/2005 are represented in figure I.3.

This all presents several questions: a) what explains the steep increase in especially in the US and several European countries; b) what explains the diametrically opposing development in Finland; c) what are the reasons behind the overall leniency in Scandinavian countries; and d) what explains the most recent increases in prison populations in these countries (and in Japan) during the last years.

Majority of research has tried to explain the “American exceptionalism” and the rise of prisoner rates in the Anglophone world. This paper looks at the opposite view and seeks to explain the differences among (mostly) Western European countries. Major focus will be in explaining the “Scandinavian exceptionalism”: Why Scandinavia, as a whole, has been able to maintain a (comparatively) low level of penal repression for such a long time. The article presents main results of a larger cross-comparative study covering 25 countries. This abridged version concentrates on macro-level indicators related to social/economical circumstances, social/moral values and political economy/political culture, using imprisonment rates (per capita) as the major indicator for the levels of punitiveness and penal severity.

CRIME-RATES AND PRISONER RATES

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

Is the level of crime different in Scandinavia?

International Crime Victimization Surveys place the four Scandinavian countries around the
Table II.1  Victimization in the year preceding the survey (percentage: victim once or more)

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

* Car-theft, Burglary, Robbery and Assault & Threat
** Australia, Canada, New-Zealand

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

EU-average or little below, however, with considerable individual variations. The table II.1 summarizes the main results of selected offenses from the four sweeps 1989-2000. Column A describes aggregate victimization rates for 11 offenses. Column B includes same data for four serious offenses. Prisoner rates (/100 000) are in column C. Figures in columns D and E express the number of prisoners per reported victimization rate.

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

Cross sectional comparisons on crime and prisoner rates

Figure compares prisoner rates victimization (ESS) and reported crime.
Figure II.2 Reported homicide and assault in 2003 (/100 000)

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

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

Trends in prisoners rates and reported crime 1980-2005

Trend analyses provide a third way of testing the associations. Figure II.3 compares trends in prisoner rates and reported crime in Finland, Canada and USA in 1980-2005 (1980=100).

These four countries provide an example of diverging trends. In Finland prisoner rates fell as crime rates were in increase (1980-1990). Canada kept its prisoner rates stable while crime was either stable (1980-1990) or falling (1990-2000). USA has an almost identical crime-profile with Canada, but sharply increasing prisoner profile. Japan had a declining prisoner rate trend in 1985-early 1990s and a fairly stable crime rate, but after that first the prisoner rates took an upward trend, and after that also reported started to increase. It is hard to conclude from all this that there should be any systematic association between these series.
Crime-rate and prisoner rates in Scandinavia 1950-2005

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

The Nordic countries with strong social and structural similarities but with very different penal histories, provide an unusual opportunity to assess, how drastic changes in penal practices in Finland have been reflected in the crime rates compared with those countries (with similar social and cultural conditions) which have kept their penal systems more or less stable. Figure II.4 shows incarceration and reported crime rates in Finland, Sweden, Denmark and Norway from 1950 to 2000.

There is a striking difference in the use of imprisonment, and a striking similarity in trends recorded crime. That Finland has substantially reduced its incarceration rate has not disturbed the symmetry of Nordic the crime rates. These figures, once again, support the general criminological conclusion that crime and incarceration rates are fairly independent of one another; each rises and falls according to its own laws and dynamics.

Prisoner rates are unrelated to victimization rates as well as to reported crime. The development of prisoner rates in 1980-2005 showed no consistent patterns with total recorded crime. In different times different countries showed different patterns. These results fit well with the conclusion from prior literature that imprisonment is largely unaffected by the level and trends in criminality. Crime is not the explanation, neither for differences nor for trends. The rest of this
**Figure II.4** Prison rates and crime rates 1950—2000

Prisoner rates 1950-2000
(/100,000 population)

Offences against the criminal code 1950-2000
(/100,000 population)

Compiled from: Falck et al 2003

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

**Income inequality and social expenditures**

There is a strong positive correlation between income inequality and prisoner rates among the Western European countries (figure III.1, left panel). Including the Eastern countries weaken the association significantly. But on the other hand, among the Eastern countries by themselves this association remains strong (right figure plots separately also Eastern countries).
There is equally clear (inverse) relation between the commitment to welfare and the scale of imprisonment (see figure III.2). Below the extent of welfare provision is measured both in relative and absolute terms (as % of the GDP and as €/per capita).

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

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

Both associations may be examined also over time. In 1980-2000 the association between income inequality and prisoner rates has become stronger. Also the association between imprisonment rates and spending became also greater over time. Countries which decreased their (relative) social spending had also the steepest increase in prisoner rates.10

In closer analyses it also turned out that countries cluster in terms of their penal policy into 5-6 “penal regimes”, closely related to those regimes developed in comparative welfare theory. The analyses in Lappi-Seppälä 2008 further develops the Esping-Andersen’s classical (1990) clustering of Western welfare states between Social-Democratic (Scandinavian) regime, the Christian Democratic (Conservative/European regime) and the liberal (Anglo-Saxon) regime by adding Mediterranean, Eastern (former socialist countries) and Baltic regions. In general, these penal regimes revealed similar patterns, both in terms of the distribution of social welfare, income inequality, trust and political economy.11

Why welfare?

The connection between commitments to social welfare and prison rates is explicit in the old slogan “Good social policy is best criminal policy”. This was just another way of saying that society will do better by investing more money in schools, social work and families than in prisons. Welfarist penal policy is, almost by definition, less repressive. No wonder, the general scaling down of welfare states especially in the Anglo-Saxon countries during the last decades coincides with simultaneous growth of control. But this is not to explain the association between social policy orientation and penal severity: We still need to ask, why welfare affects penal severity? Several propositions can be put forward.

Solidarity. Should one follow the Durkheimian tradition one would end up emphasizing the feelings of social solidarity. In David Greenberg’s words, the comparative leniency and low degree of economic inequality may be seen “as manifestations of a high degree of empathic identification and concern for the well-being of others”.12

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

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

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are given a wider interpretation.

As described in cultural-anthropological studies, in individualistic cultures risk-posing is attributed to specific individuals and, as a rule, the weak are going to be held to blame for the ills that befall them.\(^{13}\) In other words, not only the social sentiments of solidarity, but also the prevailing view of the origins and causes of social risks (in this case crime) are of importance. From this point of view rehabilitative penal policies express themselves as procedures of risk-balancing between different parties (the offender, victim and society). As pointed by Simon, institutions like parole, probation, and juvenile justice all reflected a willingness to take a risk on offenders, and reduce the risk that adult imprisonment would do them more harm.\(^{14}\) In Barbara Hudson’s words, penal cultures in the late modern risk-society, are marked by “atomistic and aggressive individualism.” The balancing of rights of different parties has gone, while the only right that matters for most are the safety rights of selves (“there is only one human right - the right not to be victimized”). Also the sense of shared risk and shared responsibility is gone, as we now cope with the risks by a constant scanning of all whom we come into contact to see whether or not they pose a threat to our security.\(^{15}\)

**Material prosperity and security.** Behind less repressive social policy orientation one finds feelings of solidarity and a broad, less individualistic understanding of the origins of social risks. But a welfare society which organizes its social life from these starting points has triggered also other mechanisms which may contribute to less repressive direction. Taken into account material resources and economic security of an affluent welfare state, it may be easier to express tolerance and empathy, when one’s own position is secured. Prosperity as such may also contribute to tolerance. David Garland (quoting Mary Douglas) writes, how the “no fault” approach to crime - which is what penal welfarism implicitly tends towards - depends upon an extensive network of insurance and gift-giving. Cultures, which rely on restitution instead of blame-allocation, are typically the ones where restitution can reasonably be expected and relied upon. “Non-fault” approach requires material background and mutual trust.\(^{16}\) In other words, only under certain conditions “one can afford to be tolerant”. Empathy and feelings of togetherness are also easier to achieve among equals. Consequently, growing social divisions breed suspicions, fears and feelings of otherness.

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

Between Durkheim and Weber

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

Social and institutional trust

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

There prevails a strong inverse association between the levels of repression, legitimacy and social trust (see figure IV.1). The legitimacy of social and political institutions remains the highest in Scandinavia and Switzerland. These countries also tend to have the lowest prisoner rates. Close to these rankings in trust come Austria and the Netherlands. In the opposite corner one typically finds the East-European countries, and often also the UK.

Why trust and legitimacy? Evidently, trust and the level of repression are interconnected. For Fukuyama high prisoner rates constitute “a direct tax imposed by the breakdown of trust in society”. Again we are faced with the question, why trust and legitimacy bring leniency and why
distrust produces severity? Trust in institutions (vertical, institutional trust) and trust in people (horizontal, personalized trust) are essential for the functioning of social institutions, norm-compliance, and for political responses to law-breaking, in different ways (and for various reasons).

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

Trust has also social dimensions. Trust in people, fears and punitive demands are interrelated. The decline in trust, reported in many western countries since the 1960s has been associated with the weakening of community ties, the rise of individualism and the growth of the “culture of fear”. In a world of weakening solidarity ties, other people start to look like strangers rather than friends. We do not know whom to trust. This together with the increased feelings of insecurity caused by the new risks beyond individual control provides a fertile ground for fear of crime. Crime is an apt object of fears and actions for anyone surrounded by growing anxieties and abstract threats. Crime and punishment are tangible and comprehensive targets: We know what causes crime and we know how to deal with the problem (especially when the media and the politicians do such a good job in teaching us). Declining trust and increased fears go a long way together. Fears, in turn, correlate strongly with prisoner rates (figure IV.2 below left), as well as with trust (below right).

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

On the other hand, communities equipped with trust are better protected against disruptive social behavior. They are “collectively more effective” in their efforts to exercise social control. This ability may also be gathered under the broad label “social capital” including i.e. the existence of those social networks and shared values that inhibit law braking and support norm-compliance. There goes a link from trust, solidarity and social cohesion to effective informal social control.

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

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

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

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

Typologies of political economy

Consensual and majoritarian democracies. In political theory the differences between democratic political systems has been characterized with the distinction between “consensus- and majoritarian democracies”. The terms themselves express the main differences. In relation to the “basic democratic principle”, majoritarian democracy stresses the majority principle: It is the will of the majority that dictates the choices between alternatives. Consensus democracy wishes to go a little further, and tries to maximize political participation over mere majorities. Majority principle means that the winner takes all, consensus means that as many views as possible are taken into account. Majority driven politics are usually based on two-party competition and confrontation, whereas consensus driven policy seeks compromises. Instead of concentrating power in the hands of the majority, the consensus model tries to share, disperse, and restraint power in a various ways, i.e. by allowing all or most of the important parties to share executive power in broad coalitions and by granting widespread interest group participation.

Several institutional arrangements separate these two systems. Consensus democracies typically have larger number of political parties, a proportional electoral system and either minority governments or large-based coalition governments. Political decision making processes are characterized by consensus seeking negotiations with well coordinated and centralized interest groups actively co-operating.

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

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

*The relevance of political economy: Initial remarks*

In Lijphart’s own analyses consensus democracies outperformed the majoritarian democracies with regard to the quality of democracy and democratic representation and the “kindness and gentleness of their public policy orientation”.31 Consensual democracies were also characterized by better political and economic equality and enhanced electoral participation. Moreover, Lijphart found that (in 1992 and in 1995) consensual democracies put fewer people in prison and held much more restrictive views on the use of death penalty.32 Table V.1. compares trends in prisoner rates in consensual and majoritarian democracies in 1980-2004.

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

*Measuring political economy*

More detailed empirical testing requires operationalizations. Lijphart measured the “consensus—majoritarian quality” of democracies with a set of indexes concerning things like the extent of interest group participation and centralization, the number of political parties, the balance of power between governments and parliaments, the type of electoral system etc. Lijphart’s summary-index “Executives-parties” (or “joint-power”) index offers a possibility for quantitative measurements between prisoner-rates and the type of democracy, as well as the degree of corporatism. The other major indicator available, comes from the Luxemburg income study. This 11-compo-
Figure V.1 Political culture (Lijphart index), neocorporatism (LIS) and prisoner rates

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

There are, in addition, more direct links between penal policies and the established political traditions and structures. They flow from the basic characteristics of political discourse. While the consensus model is based on bargaining and compromise, majoritarian democracies are based on competition and confrontation. The latter sharpens the distinctions, heightens the controversies and encourages conflicts. This all has its effect on the stability and content of the policies, and in the legitimacy of the system.
In a consensus democracy there always remains the need to maintain good relations with your opponent. You will probably need them also after the election. As expressed in Scandinavian politics: "There are no knock-out winnings in politics, only winnings by scores". In consensus democracy there is less to win and more to lose in criticising the previous governments achievements. There is also less criticism and less discontent due the fact that policies and reforms have been prepared together by incorporating as many parties as possible in the process.

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

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

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

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

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

What has been said about the Finnish law drafting process applies more or less to other Scandinavian countries, too. There are, certainly, some differences. From the Finnish point of view it seems, that the Swedish legislator is more willing to act quicker and to pass "single problem solu-
tions”. There may be also other differences between the Scandinavian countries. The closer you look the more differences you find.34 But in a picture that covers not only the Scandinavian countries but also the UK, these differences look small. And if one wishes to incorporate the USA in the same picture, the Nordic countries look more or less identical.

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

SOCIAL, POLITICAL, ECONOMIC, AND CULTURAL CONTEXTS OF Penal POLICY - AN OVERVIEW

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

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

Indirect effects take place through enhanced social and economic security, lesser fears, lower punitive projections and, especially, via high social trust and political legitimacy, both supported and by sustained by welfare state. The type of welfare regime may also be of importance. Need-based selective social policy concerns “other people”, those who are marginalized and who are culpable for their own position. This feeds suspicion and distrust. Universalistic social policy that assigns benefits for everyone, grants social equality and makes no distinctions between people, has different moral logic. Social policy concerns us all. Debates on social policy are efforts to solve our common problems. This all gives strong support for social trust. Addition to all this, the
Figure VI.1 Modeling penal policy in social, political, economic and cultural contexts

Social and economic security granted by welfare state as well as the feelings of social trust it promotes, sustains tolerance, lower level of fears and less punitive projections.

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

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

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

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

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

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

Legal training, judicial expertise and professional skills matter, as well. The judges and prosecutors may differ in their criminological knowledge, both individually and in different jurisdictions. Countries with trained professional judges and with criminology included in the curriculum of law faculties may expect to have judges and prosecutors who have broader and deeper understanding of issues such as crime and criminal policy. This expertise may be enhanced by professional training programs and by organizing seminars and meetings for judges etc. Evidently the receptiveness of the judiciary for this kind of activity and the exchange of information varies between different jurisdictions. Effective networking between research community and judiciary is essential, if one wishes to increase the impact of criminological knowledge in sentencing and penal practices.

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

CONCLUDING REMARKS

Nordic penal policy has been an example of pragmatic and non-moralistic approach, with a clear social policy orientation. It reflects the values of the Nordic welfare-state ideal and emphasizes that measures against social marginalization and inequality work also as measures against crime. It stresses the view that crime control and criminal policy are still a part of social justice, not just an issue of controlling dangerous individuals. These liberal policies are to a large extent also a by-product of an affluent welfare state and of consensual and corporatist political cultures. These structural conditions have enabled and sustained tolerant policies, made it possible to develop workable alternatives to imprisonment and promoted trust and legitimacy. This all has relieved the political system’s stress for symbolic actions and it also has enabled norm compliance based on legitimacy and acceptance instead of fear and deterrence. Further factors explaining the
Scandinavian leniency included strong expert influences, (fairly) sensible media and demographic homogeneity.

Whether this state of affairs will continue also in the future, goes beyond the scope of this paper. Critical remarks have been put forward by a number of Nordic commentators, already during the 1990s. However, should we view the Nordic countries from a broader comparative perspective, there still may be room for some optimism. In overall, the prisoner rates are still low. Neither is the path taken by many other penal systems, an inevitable one. Very few of those social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the U.S and U.K apply to any of the Scandinavian countries, as such. The social and economic security granted by the Nordic Welfare State may still function as a social backup system for tolerant crime policy. The judges and the prosecutors are, and will, remain career officials with professional touch to these matters. Political culture still encourages negotiations and appreciates expert opinions - at least that is something one may hope for.

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

Notes
1 Together with Japan, Cambodia and Indonesia in Asia, and Slovenia, Switzerland, Italy and Ireland in Europe.
3 See Lappi-Seppälä 2008 a and b, forthcoming). The sample includes 16 Western European countries, 3 Eastern European countries (CZ, HUN and POL), two Baltic countries (EST, LIT) and 4 Anglo-Saxon countries outside Europe (US, Canada, New Zealand and Australia). Information of prisoner rates is taken from KCL http://www.prisonstudies.org/, Council of Europe Prison Information Bulletins, Sourcebooks 1995, 2000 and 2006, SPACE I, National statistics and various research reports. Main factors explaining prisoner rates include fears, punishment and trust (measured by survey data from ICVS, EU ICS, ESS and WVS), income inequality and social welfare expenditures (data from LIS, Eurostat, UN, EUSI and OECD) and political culture and corporatism (on political indicators see Liiphart 1999 and Huber et al 2004). The sources are described in more detail in Lappi-Seppälä 2008 (a). Due to the availability of data, Japan has not been included in the cross comparisons. However, several observations in the text may have relevance also from the Japanese point of view (see especially Johnson 2007). The specific features of the Nordic penal policies have been explored more recently also by Pratt 2008.
4 Other possible measures for penal severity have been discussed in more detail in Lappi-Seppälä 2008 (a and b). Despite of it’s limi-
tations, imprisonment rates remain, still, "an excellent proxy for many other measures or societies’ responses to acts defined as crimes" (Wilkins 1991, p.13).

5 With that purpose table I.1. above included separate columns (B and E) for more serious offenses. As shown, higher prisoner rates in the English-speaking countries may be partly explainable by higher victimization in these offenses.


7 Greenberg 2001, p. 70.

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

9 The "fairness" of income distribution is measured with Gini-index. The index expresses to what extent the real income distribution differs from the "ideal" and fair distribution (0=total fairness, 1=total unfairness). On the associations between income inequality and imprisonment see also Killias 1986 and Tham 2005.

10 For changes over time see in more detail Lappi-Seppälä 2008 (a) and Downes & Hansen 2006. For similar results in the U.S. see Beckett & Western 2001.

11 For a full account, see Lappi-Seppälä 2008 (a and b).

12 Greenberg 1999 p.297.

13 On this see Hudson 2003 p.51-52 with references.

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

15 Hudson 2003 p.74.


17 See Killias 1986.

18 See Garland 2001 p. 103 ff.

19 See Tonry 2004 p. 41-44 with references.


21 Fukuyama 1995, p. 11.


23 See LaFree 1998.

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

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

26 See Tyler 2003.


29 Lijphart 1999.

30 Lijphart 1999 p.34 ff.

31 Lijphart 1999 p.301.

32 Ibid. p. 286, 297-298.

33 See in more detail Huber et al 2004.

34 Trends and differences between the Scandinavian countries are discussed in more detail in Lappi-Seppälä 2007.

35 On the role of demographic factors in shaping penal policy, see in more detail Lappi-Seppälä 2008.

36 See in more detail Lappi-Seppälä 2007 p.241-244, see also Christie 2000-

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38 See in more detail Lappi-Seppälä 2001.

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


References


Huber Evelyne, Ragin Charles, Stephens John, Brady David and Beckfield Jason, 2004, Comparative Welfare States data Set,
Northwestern University, University of North Carolina, Duke University and Indiana University.


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Ⅰ 課題研究 グローバル化する権威化ポピュリズムとその対策

拘禁刑（Imprisonment）の活用のされ方の違いを説明する

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この論文は、先進諸国における刑罰の厳しさの違いを説明しようとするものである。分析においては、市民感情、社会・経済・政治的要素、そして犯罪に関連する多くの要素を考慮に入れた横断的分析、そして経年による分析を行った。主な知見は以下の通りである。拘禁率（imprisonment rate）の違いは、犯罪の違いによって説明することはできない。そこで、刑罰の厳しさは、市民感情（恐怖、相互信頼度、硬帯的傾向（punitivity））、福祉給付の程度、収入の平等度の違い、政治文化などと密接な関連性を有している。たとえば、スカンディナビア諸国の刑罰モデルは、合意形成的（consensual）で労使協調的（corporatist）な政治文化や、高いレベルでの社会的信頼や政治的正当性、強大な福祉国家といったものにその根を有しているのである。またこの論文では、上記のような統計的関連性の背後にある、なぜ、そしていかにして、政治文化における諸特徴、福祉政策の中身、市民感情の違いなどが刑罰政策に影響を与えるのか、といったことを説明することも狙いとしている。こうしたことと並んで、人口統計、メディア文化の違い、司法・法学的伝統、専門職エリートの役割、といったその他の要素にも焦点を当てている。

分析の多くは、国際調査からの量的なデータに基づいたものである。犯罪・社会感情に関する調査データは、主に国際犯罪被害調査（International Crime Victimization Surveys）、欧州社会調査（European Social Survey）、国際価値観調査（World Value Surveys）から得ている。社会・経済・政治的指標に関するデータは、主にOECD、欧州委員会統計局（Eurostat）、国際連合、欧州連合（EU）の社会的指標システム（European Union System of Social Indicators）から得ている。欧州議会（The Council of Europe）の資料集は、異なる国々の国家統計によって補完された犯罪統計・行刑統計の基礎を提供してくれた。

キーワード：受刑者人口比、厳罰度、政治文化