

# VISITING EXPERTS' PAPERS

## PRISONER RATES: GLOBAL TRENDS AND LOCAL EXCEPTIONS

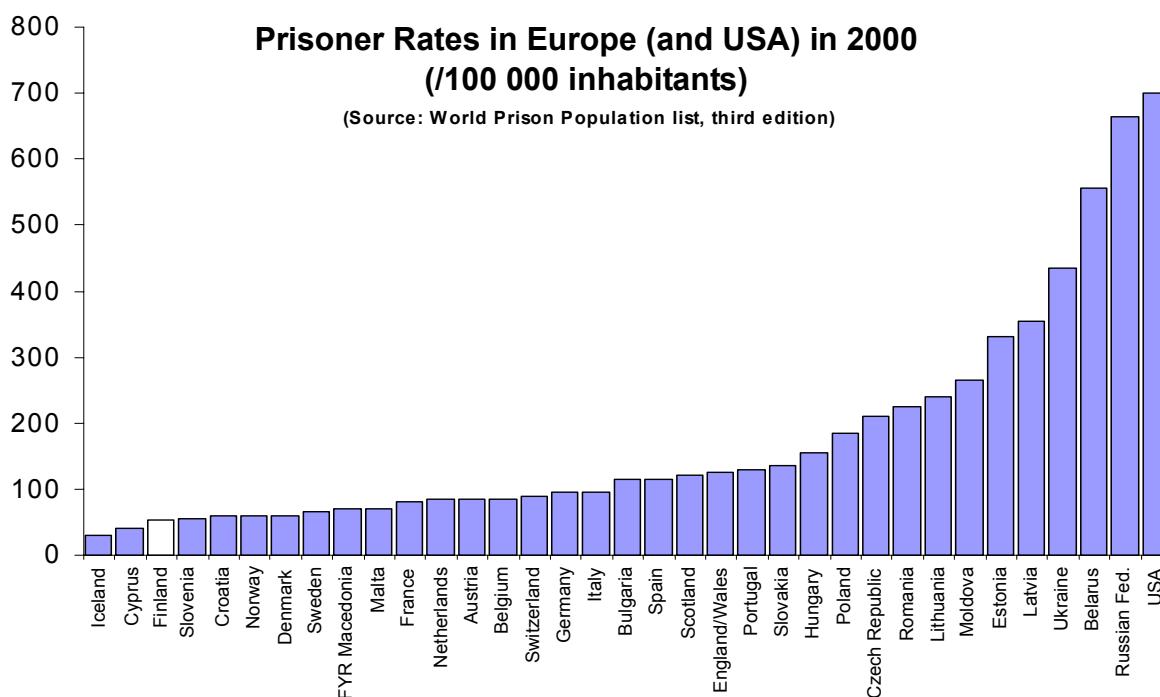
*Tapio Lappi-Seppälä\**

### I. THE GROWTH OF PRISON POPULATIONS

#### A. World Prison Populations Today

##### 1. The Highest Prisoner Rates

The third edition (2001) of the World Prison Population List, published by the British Home Office<sup>1</sup> shows that over 8.75 million people are held in penal institutions throughout the world, either as pre-trial detainees (remand prisoners) or as having been convicted and sentenced. Half of these are in the United States, Russia and China, and the first two countries also exhibit the highest prison population rates.



**Figure I.1. Europe and USA 2000**

At the beginning of the year 2000, USA had the highest prison population rate in the world, some 700 per 100,000 of the national population, followed by Russia (665). After these two countries come Belarus and Kazakhstan, and four small territories in the central America/Caribbean region whose high rates owe much to the imprisonment of drug smugglers who are not nationals of the countries in question (see Walmsley 2002). All these countries have rates of at least 460 per 100,000. On the other hand, 63% of all countries have rates of 150 per 100 000 or below.

##### 2. Local Variations

Prison population rates vary considerably between different regions of the world, and between different parts of the same continent. In Africa the median rate for Southern African countries is 260

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<sup>1</sup> Walmsley, Roy: World Prison Population List (third edition), Home Office, Research Findings 166/2002. See also Walmsley Roy, World Prison Populations: Facts, Trends and Solutions. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/unworld.doc>

whereas in Central and West Africa the rate is 50/55; in the Americas the median rate for the Caribbean countries is 295 but in South America 115.

In Europe, the median rate for Central and Eastern European countries is more than three times that for Southern European countries. In northern Europe the most striking difference is to be found between the Scandinavian countries and the neighbouring Baltic countries. In Scandinavia (Finland, Sweden, Denmark, Norway and Iceland) the rate is 55, in the three Baltic countries (Estonia, Lithuania and Latvia) it is six times higher (310).

### Prisoner Rates in Different European Regions 2000

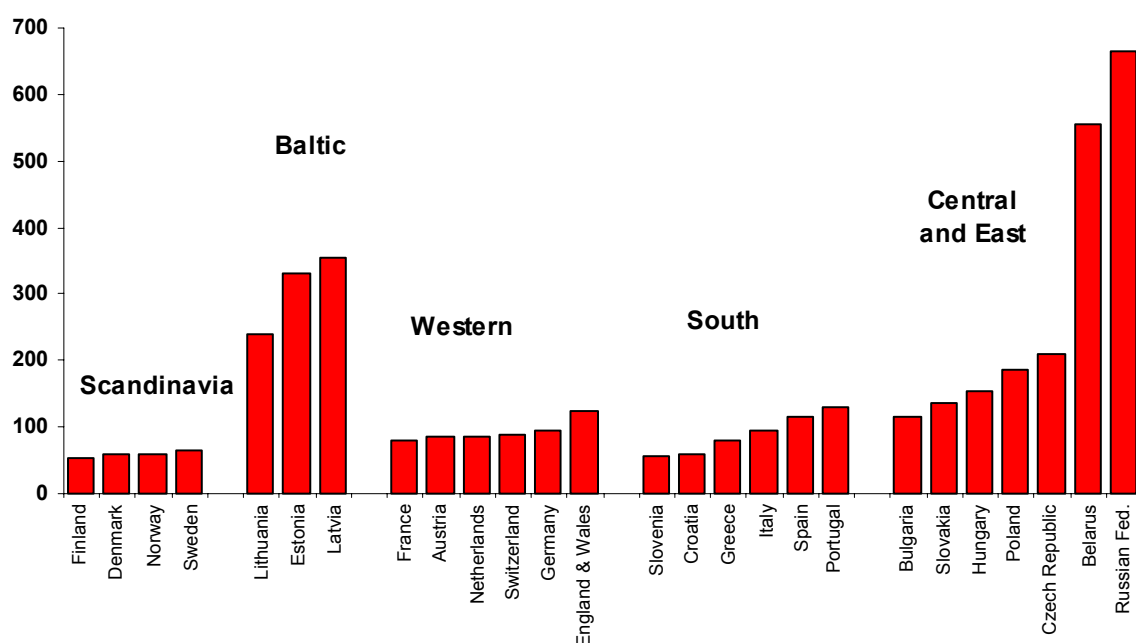


Figure I.2. Europe, Different Regions 2000

Similar differences are to be found in the Asian region. In Asia the median rate for the South Central Asian countries is 55 whereas for (ex-Soviet) Central Asian it is nine times higher (425).<sup>2</sup>

<sup>2</sup> See in more detail *Kitada, Mikinao, Prison Population in Asian Countries. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/ridraft.doc>. Prisoner rates in Latin America and the Caribbean are described in *Carranza Elias, Prison Overcrowding in Latin America and the Caribbean: Situation and Possible Responses. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/caribbean.doc>**

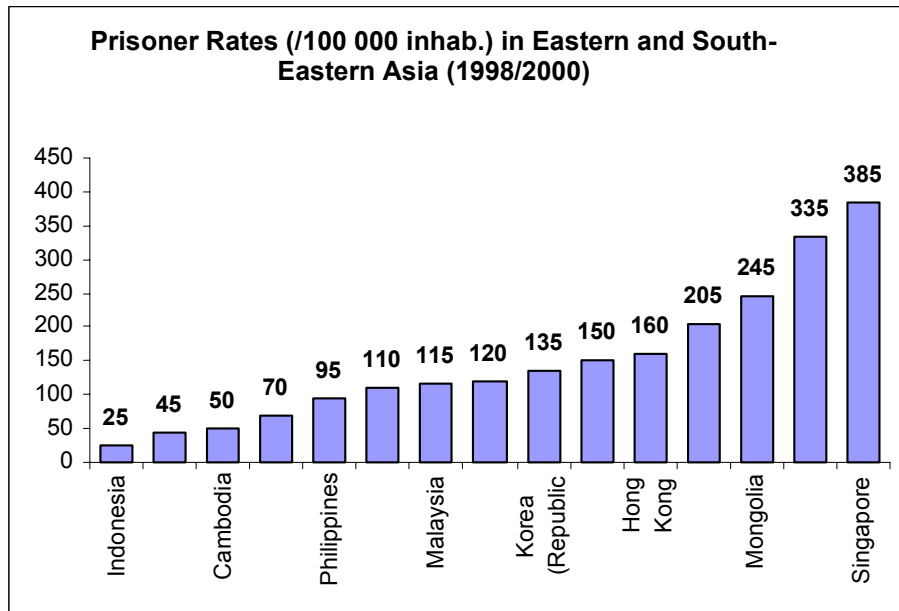


Figure I.3. Eastern and South Eastern Asia

**B. Growth and Trends in Prison Population Rates**

Prison population rates are not only high - they are constantly growing in most parts of the world. In many of the developed countries, there has been a rise in prisoner rates, often with a 40% growth over the decade.

1. Growth in Europe

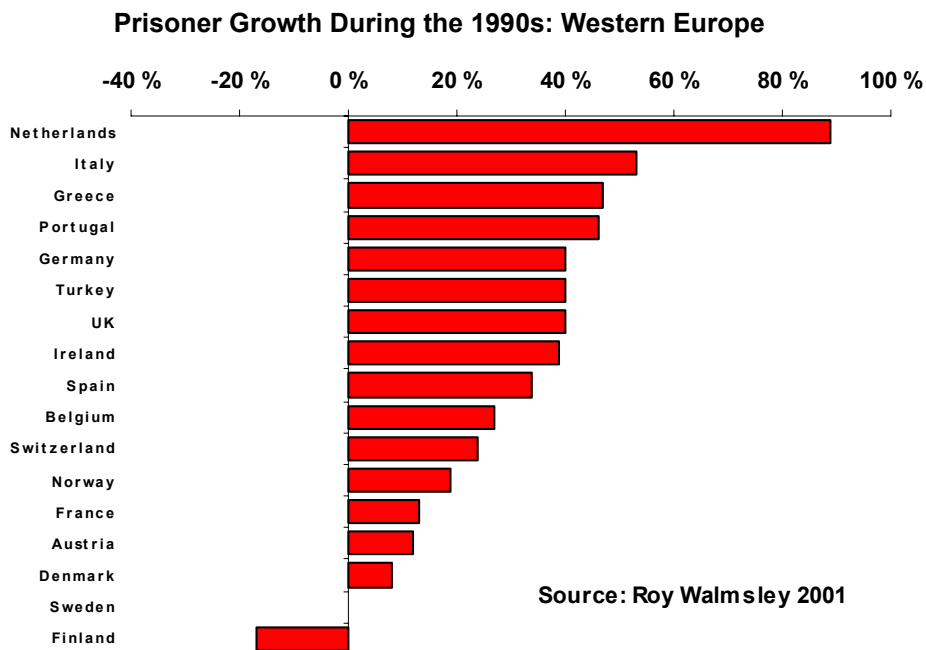


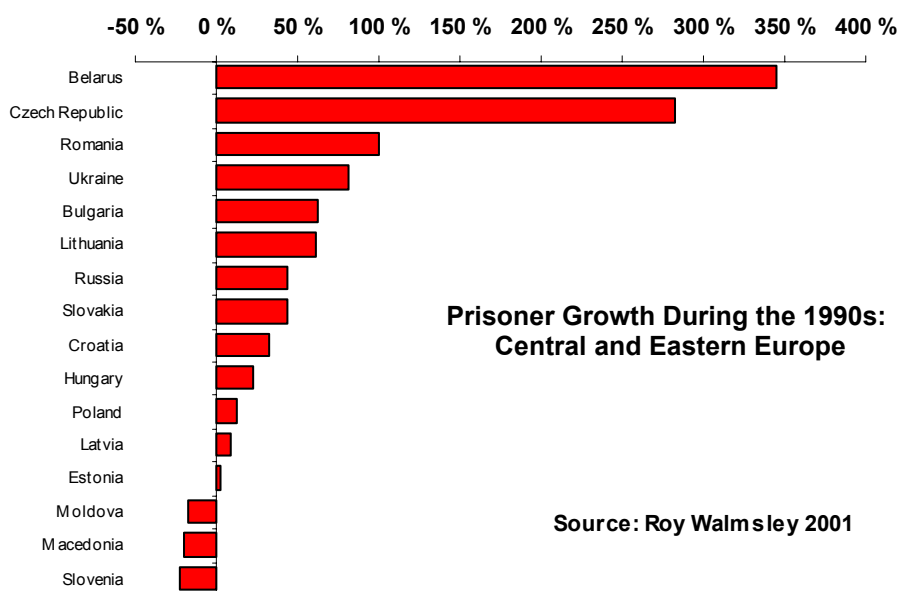
Figure I.4. Western Europe in the 1990s (%)

In Europe the growth has been over 20% almost everywhere during the last decade, and at least 40% in half of the countries. Out of the 33 European countries (leaving aside the very small states)

there has been growth in 28. During the last three years, there has been growth in 24 of the European countries, and growth of over 10% in more than half of these.

Only in two of the 43 countries observed in the 3rd World Prison Population survey (Home Office 166/2002) – Sweden and Finland – has there been a consistent downward trend in the last three years. Finland is the only country that has had a downward trend throughout the decade.

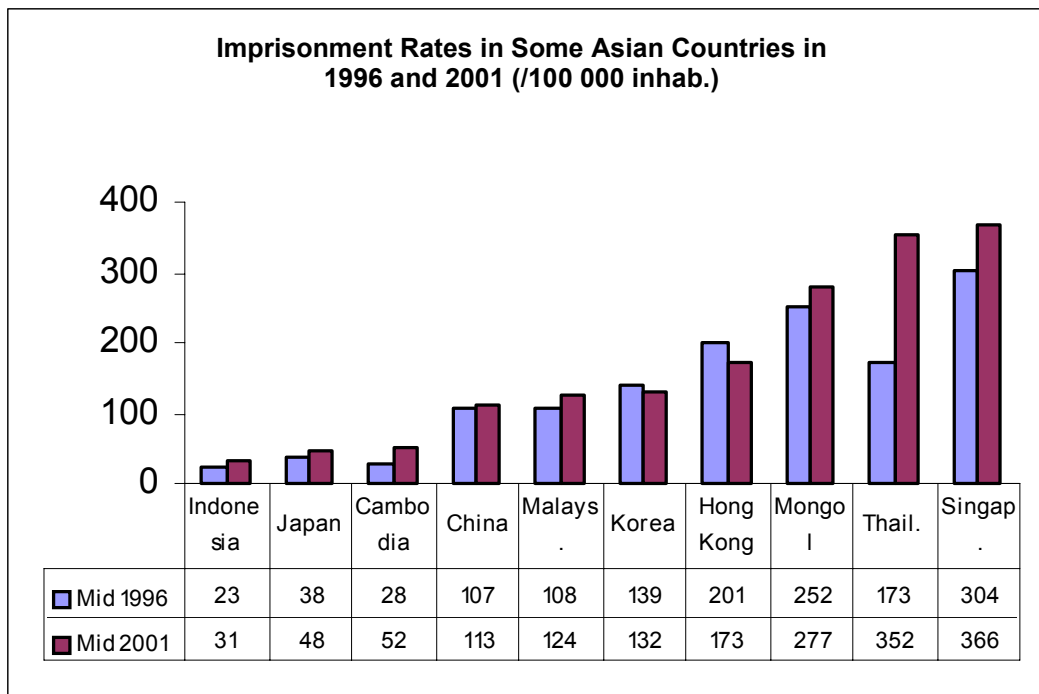
In the Eastern parts of the Europe, the growth has been especially rapid.



**Figure I.5. Central and Eastern Europe in the 1990s (%)**

2. Growth in Asia

Figure I.5. shows the changes in the imprisonment rate per 100,000 residents in some Asian countries from 1996 to 2000.



**Figure I.6. Asia 1996-2000**

The figures account for both convicted and not convicted prisoners. Japan had a relatively low imprisonment rate among the listed countries, showing around 45 per 100,000 in mid 2000. Other countries like China, Korea and Malaysia maintained stable figures at around 100 to 200 per 100,000. Singapore and Thailand recorded relatively large increments in their imprisonment rates, exceeding 300 per 100,000 in mid 2000. In particular, a very rapid increase in the imprisonment rate in Thailand has been quite remarkable.

### C. Reasons for Prison Population Growth: General Overview

Possible explanations for these changes may be found in several sources:

#### 1. Increase in Crime?

One obvious explanation would be the *growth of crime*. However, it is evident that crime rates alone cannot explain the changes in prison population rates. In many countries crime rates, including rates for the more serious crimes, have been stable or even decreasing while prison population has grown steadily. In the US prisoner rates are now five to six times higher than in the mid 1970s, but only 12% of this change can be explained with reference to the growth of crime (Tonry 1999).

One type of crime, however, seems to be closely connected to the raising number of prisoners. In many countries the increase in prison population goes together with the number of detected drug offenders. Or, at least, the most rapidly growing category of prisoners are those convicted of drug offences (or drug related crimes). But this is not only a question of criminality. Rather, it is a question of the deliberate changes in governments' drug policies and sentencing practices.

#### 2. Technical Explanation: Increased Use of Prison

An even more obvious explanation is simply the *increased use of prison*: More people have been sentenced to prisons and they have received longer sentences than before and, moreover, the use of parole or conditional release has become more restricted. Examples of changed penal practices can be found almost everywhere.

Most notorious example of this is the US – a country that started the movement towards higher prisoner rates simply by using more and longer custodial sentences from the mid-1970s onwards.

Examples can also be found in Western Europe. The Netherlands had long been renowned for its low prison population rate. In the 1990s, it has had sharper rise than any other West European country, and its prison population has almost doubled. The increase is attributable to a rise in the use of custody and in the length of the sentences imposed. The same development can be seen in Portugal which now has the highest prisoner rate in Western Europe as a result of increased length of sentences. England and Wales holds the second place, partly due to the fact that the use of custodial sentences rose 40% during the 1990s.

### 3. Ideological Explanation: Changes in Sentencing Theory

The next question is *why* the practices have been changed. One answer could be found in the explicit policy orientations and changes in penal theory and crime policy. Since the mid 1970s – when prison population rates first started to rise in the US – the sentencing ideologies have undergone drastic changes. Treatment ideology and criminological correctionalism have been replaced by retributionist notions of just deserts and “common sense” policies based on incapacitation and deterrence. These retributionist philosophies can readily be translated into popular demands for longer, tougher sentences. Such factors do appear to have led to a change in attitudes especially in some parts of Europe and North America.

### 4. Political Explanation: Changes in Political Rhetoric and the Growth of “Punitive Populism”

1. Together with the new sentencing policies incurred other, more profound, policy changes, which marked the *overall politicisation of crime policy*. Criminal policy has more and more become a tool of general politics, a way to transmit “symbolic messages”, a way to “take a stand”, a way to “make strategic choices”. At the same time the language of criminal policy has changed into moral tones and moved towards expressive gestures. Instead of balanced reasoning and the weighting of different strategies, their pros and cons, criminal justice interventions are often determined by a simple political need to “do something”. Too often the rule of thumb seems to be that the higher the level of political authority is, the more simplistic the approaches advocated are.

The results can be seen in programmes and slogans that are compressed into two or three words, along the lines of “three strikes”, “prison works”, “truth in sentencing”, “war on drugs”, “zero - tolerance” and so on. This, in turn, leads to the tendency to offer simple solutions to complex problems and to pander to punitive (or presumably punitive) public opinion with harsh tough-on-crime campaigns. In concrete terms: The crime problem and the fears of the public have more and more been used for political purposes.

*According to Tonry (1999), “The anomaly that public receptivity to proposals for harsh crime and drug policies remained high in the late 1990s even in the face of substantial and long-term drops in crime rates and in drug use” is explained in the US by, first: “conservative politicians found it in their interest to keep voters’ attention focused on an issue about which liberals are reluctant to disagree”; second: “the mass media has learned that crime pays in terms of public fascination with the darker sides of life and that fears vicariously enjoyed in front of the television or the movie screen are generalised to life outside the home”; and third, “in the 1990s people don’t really care about the effectiveness of crime and drug abuse policies” but instead support harsh policies for ‘expressive’ reasons, because at this time they “value the denunciatory qualities of harsh laws”.*

2. In many countries this development is reinforced and supported by *the crime drama created in the mass media* and the *increasingly growing punitive demands of the public*. These two factors are interconnected, as the attitudes of the public are heavily (mis)guided by the sensational and selective way in which the mass media deals with crime and criminals. In fact, all of the three elements, that is populist politicians, mass media and punitive public opinion form a vicious, self-supporting circle where each component reinforces the other.

3. Attitudes can also be influenced in the short-term by *isolated highly publicized dramatic events* such as the 1993 Bulger incident in England (the killing of a young child by two other children). Since this dramatic event the use of custodial sentences rose by 40%, sentence lengths rose by more than 10%, and now seven or eight years later the prison population remains at the level that it reached after this event.

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Similar incidents have also occurred elsewhere, as the 1996 Dutroux case in Belgium (involving kidnapping, paedophilia and murder). The United States has seen an increase in random shootings of young people by strangers. Such events can generate public demands for a more punitive response to certain crimes and offenders, demands which may be accepted by policy makers and courts alike. Even after the focus in the media has moved on to other matters, more punitive policy responses tend to remain in place.

5. Social and Structural Reasons

But the roots of these political changes may be even deeper. Behind these changes are also more profound economic and social uncertainties, first brought to the western world by the 1970s oil crisis, and then again by the economic crises of the 1990s. Rising unemployment figures, together with increasing crime rates fuel these feelings of insecurity (portrayed also in the growing fear of crime).

This leaves less and less room for the feelings of tolerance and solidarity for socially marginalised groups. Punitive policies also reflect deeper changes in our social values. In the western world, the growth of penal populism goes together with the decline of the values of welfare state, replaced by market economy and neo-liberal social policies. If the world of the 1960s was the world of “economic control and social freedom”, the world of the 1990s became the world of “economic freedom and social control”.

*This change is well characterized by David Garland (2001 p.199): “In the middle decades of the last century, the criminal justice system formed part of a broader solidarity project. Its programmatic response to crime was part of the welfare state's programmatic response to poverty and destitution. Criminal justice was shaped by the politics of social democracy, and its ideals were the re-integrative ideals of an inclusive welfare state society. ... But that solidarity project no longer dominates the rhetoric of policy or the logic of decision-making. The high ideals of solidarity have been eclipsed by the more basic imperatives of security, economy, and control. Crime control and criminal justice have come to be disconnected from the broader themes of social justice and social reconstruction. Their social function is now the more reactionary, less ambitious one of re-imposing control on those who fall outside the world of consumerist freedom.”*

Of course these social and structural background reasons vary in different parts of the world, – as also vary the respective social and economic conditions. In Eastern Europe a part of the prison population growth is explainable by the collapse of the communist and socialist regime, followed by a marked rise in criminality at least until 1992/3, as the barriers of the previous repressive regimes were removed. This seems to have been reflected in the increasing use of imprisonment. But the question is *why*, then, the rise continued for the following four or five years when crime rates were generally fairly stable?

Also in Eastern Europe, although the overall crime rates were not rising, the public, the media and the politicians were all alarmed by the changes in the nature of crime, with the emergence of new and previously unheard of forms of criminality, such as transnational organised crime, economic crime and, in some countries, contract killings. This climate of fear led to the increased use of pre-trial detention, subsequent imprisonment, longer terms of imprisonment as well as conditional release being more sparingly allowed (Walmsley 2001).

6. In Conclusion

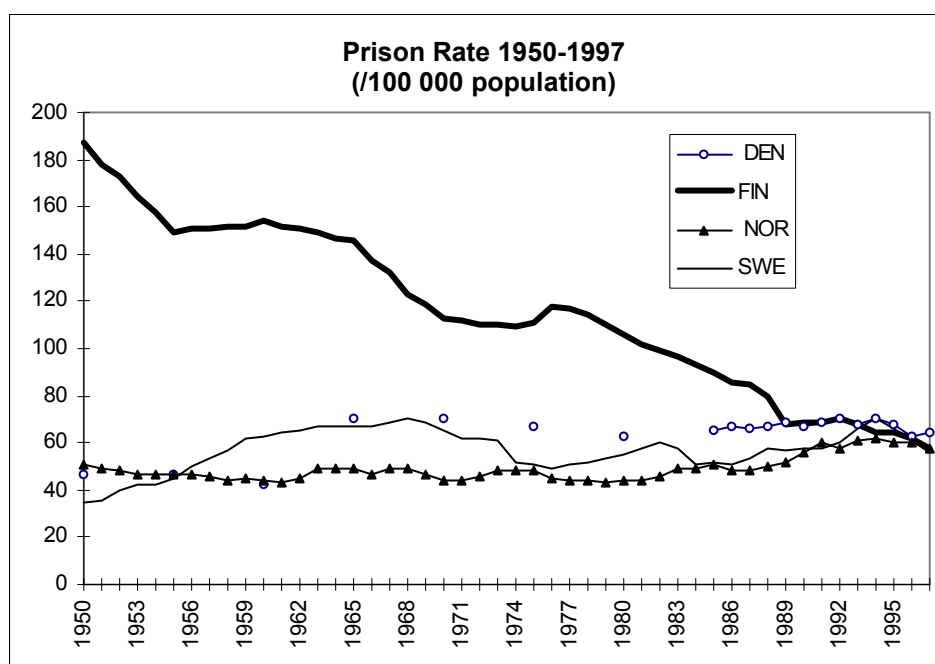
The growth of prisoner rates has explanations at many levels. In *technical* terms this has been the result of more and longer sentences. *Ideologically* the change is connected with new sentencing theories and policies. The adoption of these policies was influenced by the *increased fear of crime* and the *impact of mass media*. Both of these factors also contribute to the *changes in the general political discourse*: Crime policy became more and more politicized, and cool and rational arguments were replaced by expressive and symbolic gestures, directed to calm down the anxieties of the public (and the voters). But, when we look deep enough, these policies did not come “out of nowhere”. They were reflections of the *social, economical and cultural transformations* of the era of “late modernity”, as well as answers to social needs and political pressures (which does not mean that there could not have been other – better – answers).

Basically this all means that the growth in prison population rates in the European and North American countries is mainly policy-driven – not an inevitable result of an increase in crime (see also *Walmsley 2001*). The issue, then, is whether things could have been different, and whether the present state of affairs could be changed? To answer these questions, we should look at those countries that did not follow this general trend. These include, among others, Japan and Finland.

## II. REDUCING THE PRISON POPULATION IN FINLAND

### A. The Change

1. 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. Even during the 1970s and 1980s, when most European countries experienced rising prison population rates, the Finnish one kept going down and by the beginning of the 1990s Finland had reached the Nordic level (figure II.1).



**Figure II.1. Prisoner Rates in Four Scandinavian Countries 1950-1997**  
(Source: *Lappi-Seppälä 2001*)

2. This long-term change - covering almost a half of a century - cannot be explained with reference to one or two simple factors. The change has been affected both by macro level structural factors and ideological changes in penal theory, as well as legal reforms and changing practices of sentencing and of prison enforcement. Also the role of these different background reasons varies over time. This paper discusses some these key factors.<sup>3</sup>

### B. The Ideology

1. In the 1960's, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). In Finland the criticism of the treatment ideology was in a sense merged with another liberal social movement which was directed against our outdated and overly severe Criminal Code and the excessive use of custodial sentences. Not only was there a decline of the rehabilitative ideal, but also a reaction against old repressive policies. The outcome of all this was a

<sup>3</sup> The subject has been dealt with in more detail by the author in *Lappi-Seppälä 1998* and *2001*, see also *Törnudd 1993*.



criminal political ideology — “humane neo-classicism” — which stressed both legal safeguards against coercive care as well as the objective of less repressive measures in general.

2. During this ideological turn, the theoretical aim and the justification of punishment was subjected to re-evaluation. The shift was once again towards *general prevention*. However, it is important to stress that in Scandinavian criminological theory, the mechanism of general prevention has been given a broad interpretation. Instead of direct or simple deterrence, the theory speaks of indirect general prevention or more often the *moral-creating and value-shaping effect* of punishment. And this is something different than obeying the law because of the simple fear of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals. As a result of this process, the norms of criminal law and the values they reflect are internalized; people refrain from illegal behaviour not because such behaviour would be followed by an unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.<sup>4</sup>

This mechanism of indirect general prevention poses some central demands on the penal system. The aim of indirect prevention is best served by sanctions that maintain their moral character. Punishments must be regarded as expressions of the society's disapproval, and they must be directed towards the act (in other words to demonstrate the blameworthiness of the act). Furthermore, it is required that the citizens perceive the system to be reasonably efficient and legitimate. Principles of proportionality and perceived procedural fairness are key factors that influence the willingness of the people to conform to the law (see in more detail *Lappi-Seppälä* 2001 with references).

3. Also the more general aims of criminal policy underwent a process of re-definition (see especially *Törnudd* 1969/1996, 14(15)). Cost-benefit analysis was introduced into criminal political thinking requiring that in making choices between different strategies and means, the probable policy effects and costs should be carefully assessed. One of the practical consequences was that the arsenal of possible means of criminal policy became larger in comparison with the traditional (repression or rehabilitation orientated) penal system. Strategies such as environmental planning and situational crime prevention in controlling crime were discussed in Finland as early as in the late 1960s. Another slogan was: “Good social development policy is the best criminal policy”. One result of this new line of thought was that the *role of punishment came to be seen as relative*. Once the primary means of criminal policy, it came to be regarded as only one option among many.

4. The policy conclusions drawn from these ideological changes can be briefly summarized. In crime prevention, criminal law is only one means among many. These other means are often far more important. This does not mean that we could do without criminal law. It still is of vital importance, but its mechanisms are more subtle and indirect than one usually thinks. All in all, we should not overestimate its potential. We should be realistic with regard to the possibilities of achieving short-term effects in crime control by tinkering with our penal system. And what is most important, we should always weigh the costs and benefits of applied or suggested strategies of criminal policy. And this, indeed, was the test that our earlier prison politics failed to pass. It was difficult to answer convincingly the question of why we should have three to four times more prisoners than our neighbours do.

### C. Law Reforms and Sentencing Policies

Since the early 1970s the main parts of the Finnish criminal legislation have been reformed from these neo-classical “anti-treatment and anti-repressive” starting points. There has been a purposeful movement towards a more lenient system of sanctions, and especially towards a reduction in the use of custodial sentences.<sup>5</sup> Together with legislative reforms one has to stress also the independent role of the

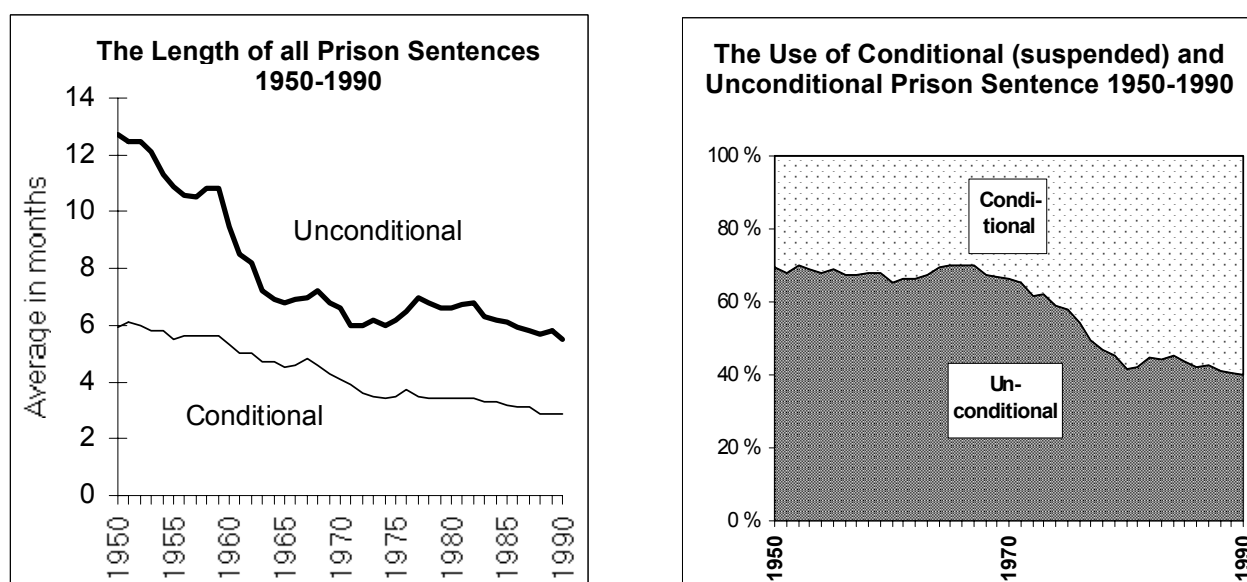
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<sup>4</sup> In a closer analysis, this concept contains several distinct hypothesis which are based on different assumptions on why, how and through what kind of mechanisms various features of the legal system influence social values and compliance with the law. *Andenaes* (1974 p. 113 ff) classifies the influence of criminal law on morality as follows. *Direct influence*: (1) respect for the formal authority (no change in the individual's view of morality), (2) criminal law as a moral eye-opener (a change in moral attitude as a result of personal thinking) and (3) punishment as an authoritative statement (a change in moral attitude as a result of the suggestive influence of laws). *Indirect influence*: (4) punishment's effect in reducing and neutralizing bad examples (the working mechanism is supposed to be simple deterrence) and (5) criminal law as a framework of moral education.

judiciary. In several cases the courts had taken the initiative towards more lenient sentencing levels even before the legislator had reached its decision. The major reforms and sentencing changes can be summarized as follows.

1. General Trends in Sentencing

The Finnish judge has traditionally had quite a limited number of options in sentencing. The three basic alternatives have been unconditional imprisonment, conditional imprisonment and a fine. The *fine* has been the principal punishment throughout the present century. Still, the most effective alternative to imprisonment has been *conditional sentence*. The popularity of this sentencing option has increased steadily. From 1950 to 1990 the number of conditional sentences has increased from some 3,000 to 18,000 sentences per year. The growth was especially rapid between 1970 and 1980. A closer look at the sentencing patterns of the courts would reveal two consecutive changes between 1950 and 1990. Both are illustrated in figure II.2.



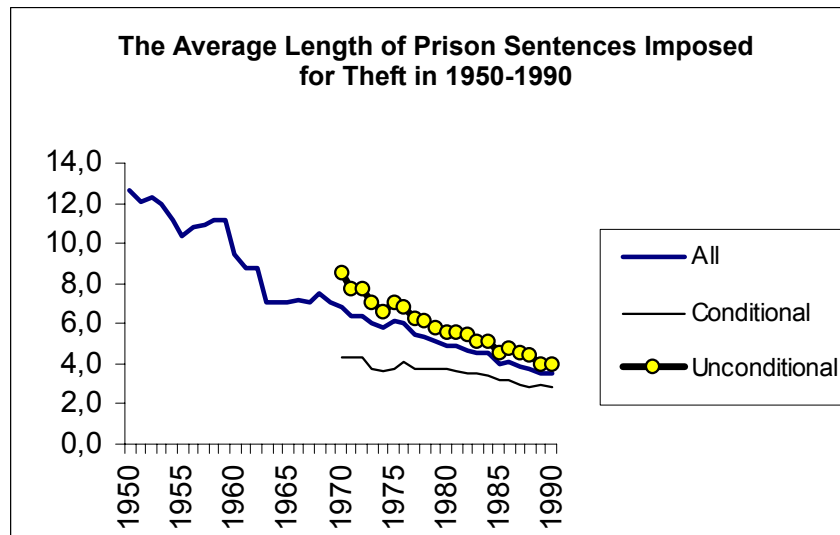
**Figure II.2. The Length of Sentences of Imprisonment Imposed by the Courts and the Choice Between Conditional and Unconditional Sentences, 1950 to 1990**

Between 1950 and 1965 the average length of unconditional imprisonment fell from 13 months to 7 months (left part). The right part reveals another change. Up to the mid-1960s, two out of three sentences of imprisonment were imposed unconditionally. From the late 1960s onwards the proportion of unconditional sentences fell from 70% (1966) to 42% (1980). These two changes can be explained primarily by changes in sentencing in two distinct crime categories: theft and drunk driving.

2. Penalties for Theft Offences

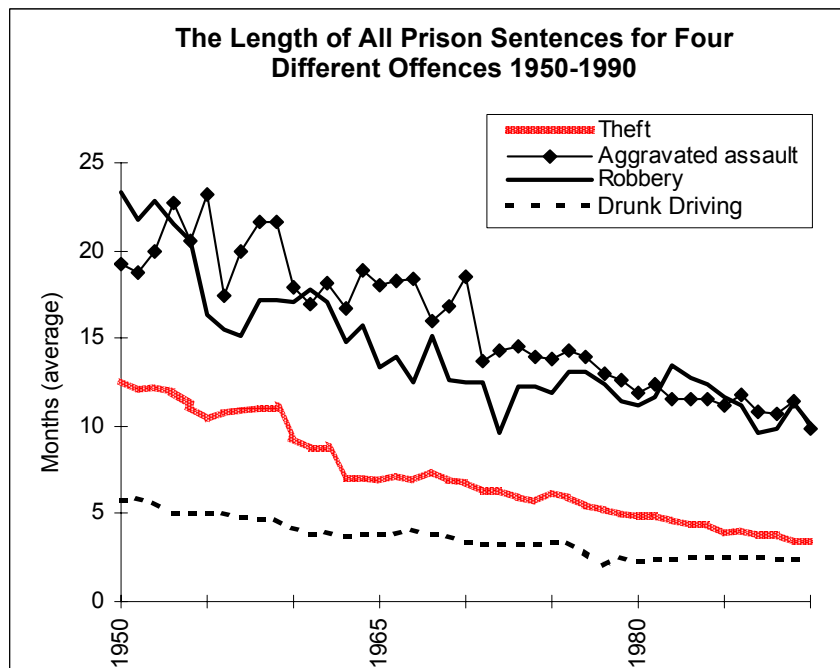
Long custodial sentences imposed for traditional property crimes kept the prison population at its peak level during the early 1950s. During the 1950s the courts had started to mitigate the sentences, but high minimum penalties and rigid offence definitions for aggravated forms imposed strict limits to these efforts. However, in 1972 new definitions and new punishment latitudes for larceny were introduced. Again, in 1991 the latitude for the basic form of theft was reduced. As a result, there was a clear change in sentencing practice. In 1971, 38% of offenders sentenced for larceny received a custodial sentence. Twenty years later, in 1991, this proportion had decreased to 11% (for more detail see *Lappi-Seppälä* 1998 and *Törnudd* 1993). Figure II.3. below illustrates the length of prison sentences in 1950-1990 in the case of theft.

<sup>5</sup> A more complete list of the legislative reforms that have been carried out in Finland since 1967 can be found in *Törnudd* 1993 and *Lappi-Seppälä* 1998.



**Figure II.3. The Average Length of Sentences of Imprisonment for Theft, 1950 to 1991**

The changes are rather dramatic. For example in 1950 the average length of all sentences of imprisonment imposed for theft was 12 months. In 1971 the sentence was still 7.4 months, but in 1991 it was only 2.6 months.<sup>6</sup> Similar type of changes can be detected also in other crime categories (see figure II.4).



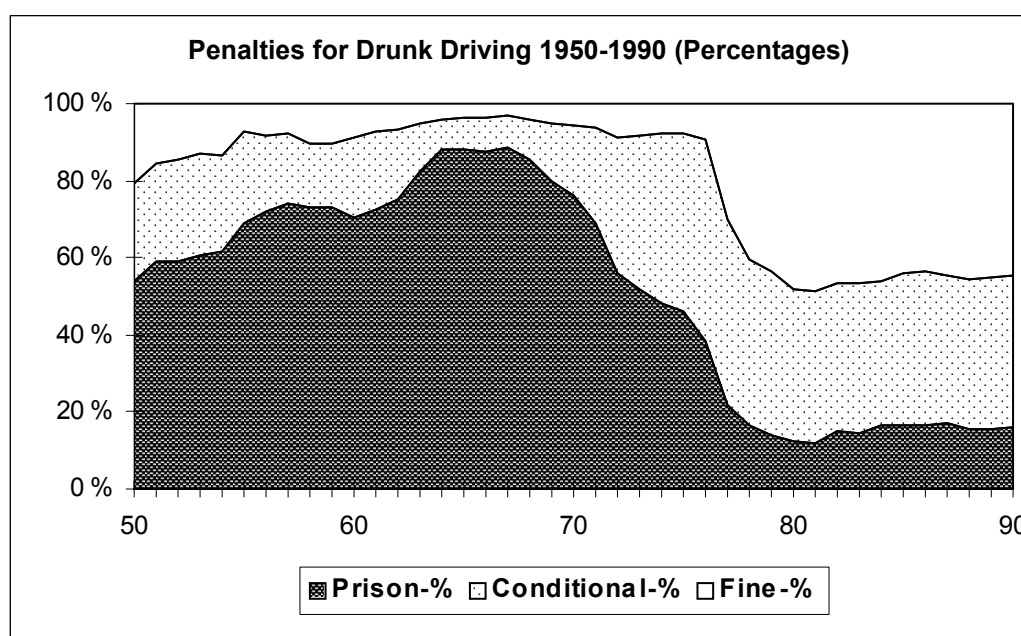
**Figure II.4. The Average Length of Sentences of Imprisonment for Four Different Offences 1950 to 1990**

<sup>6</sup> Of course, one has to take into account that in the long run the typical forms of theft have changed. Crimes against individual victims and households have been replaced in part by, for example, petty shoplifting.

### 3. Drunk Driving

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

On the same occasion, three other bills were passed in order to increase the use of conditional sentences and fines in general (and particularly in the case of drunk driving). The *reform of the conditional sentence act* created the opportunity for combining a fine with a conditional sentence. The *reform of the day-fine system* raised the amount of day-fines, thus encouraging the court to use fines also in more serious cases. The most important 1977 reform from the point of view of the principle was, however, the *enactment of general sentencing rules*. These provisions in Chapter 6 of the Criminal Code gave the courts general guidance in meting out punishments for all offences. They also provided a framework for a further debate concerning the proper sentencing level. The first target of such a debate was drunk driving. These discussions were, in fact, run by the judges, with only organisational help from the Ministry of Justice. These efforts to change sentencing practice regarding drunk driving proved to be a success, as figure II.5. below verifies.



**Figure II.5. Sanctions for Drunk Driving, 1950 to 1990 (Percentages)**

In 1971, 70% of drunk drivers received an unconditional sentence. Ten years later, in 1981, this proportion had dropped to 12%. Since the reform in 1977, the normal punishment for aggravated drunk driving has been conditional imprisonment together with an unconditional supplementary fine, while “ordinary” drunk driving cases (BAC under 0.12%) are dealt with by fines.

The sentencing reforms of the 1970s have turned out to be a success in terms of criminal policy. One reason is that these reforms constituted a coherent and consistent entity with clear aims and systematic strategy. The case of drunk driving serves as a good example. The legislator first created the opportunity for combining a fine with a conditional sentence, then raised the amount of day-fines. After passing a bill on drunk driving, new provisions on sentencing were also enacted, and these provided the

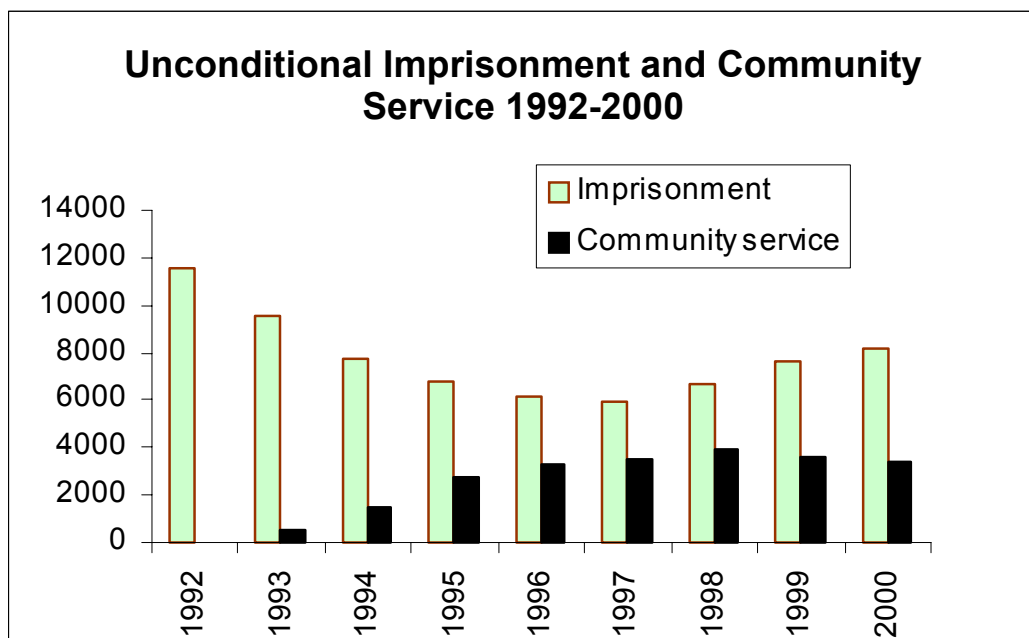
framework for discussions on the sentencing levels and normal punishment. In a way, all these reforms were a part of one well planned “big package”.

#### 4. New Sentencing Alternatives: Community Service

The basic structure of the sentencing system has remained relatively stable during the last decades. The only major amendment in this structure has been the introduction of community service. This took place first on an experimental basis in 1991. In 1994 the system was extended to cover the entire country and community service became a permanent part of the Finnish system of sanctions.

Community service is imposed instead of unconditional imprisonment for up to 8 months. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a *two-step procedure* was adopted. First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. *If* the result is unconditional imprisonment, *then* the court may commute the sentence into community service under the following conditions. First, the convicted person must consent to the sanction. Second, the offender must also be capable of carrying out the community service order. Third, recidivism and prior convictions may prevent the use of this sanction. The duration of community service varies between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment. Community service does not contain any extra supervision aimed, for example, at controlling the offender's behaviour in general. The supervision is strictly confined to his or her working obligations.

The legislator's idea was, thus, that community service should be used only in those cases where the offender would otherwise have received an unconditional sentence of imprisonment. As figure II.6. shows, this aim was well achieved.



**Figure II.6. Imprisonment and Community Service in the Finnish Court Practice**

Along with the increase in the number of community service orders, the number of unconditional sentences of imprisonment has decreased. In 1998, the average daily number of offenders serving a community service order was about 1200 and the corresponding prison rate was 2800. It is therefore reasonable to argue that, within a short period of time, community service has proved to be an

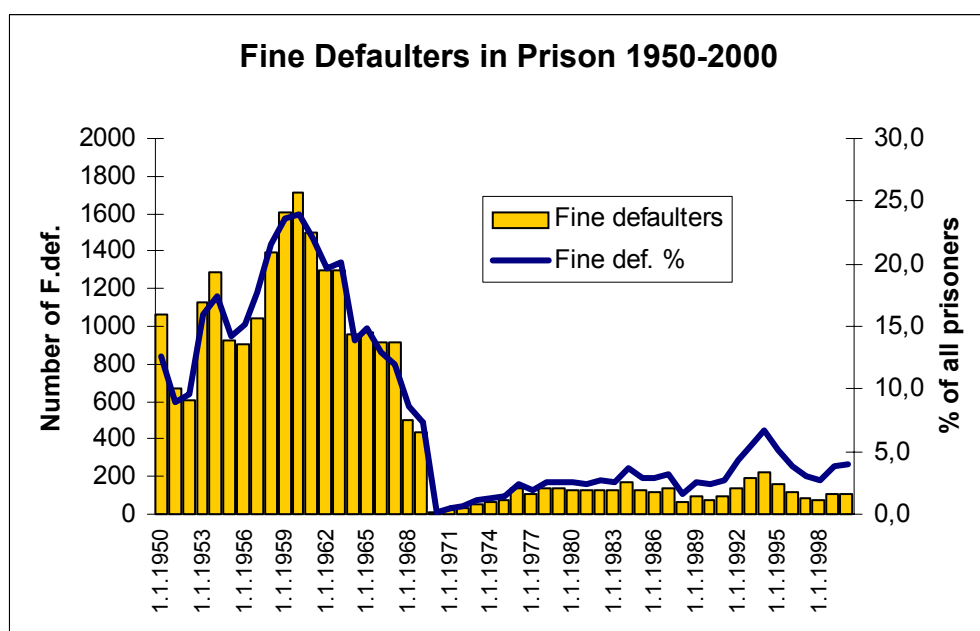
important alternative to imprisonment. As the figure shows, the use of community service seems to have reached its peak in 1998-1999.

5. Specific Prisoners Groups

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

(i) *Fine defaulters*

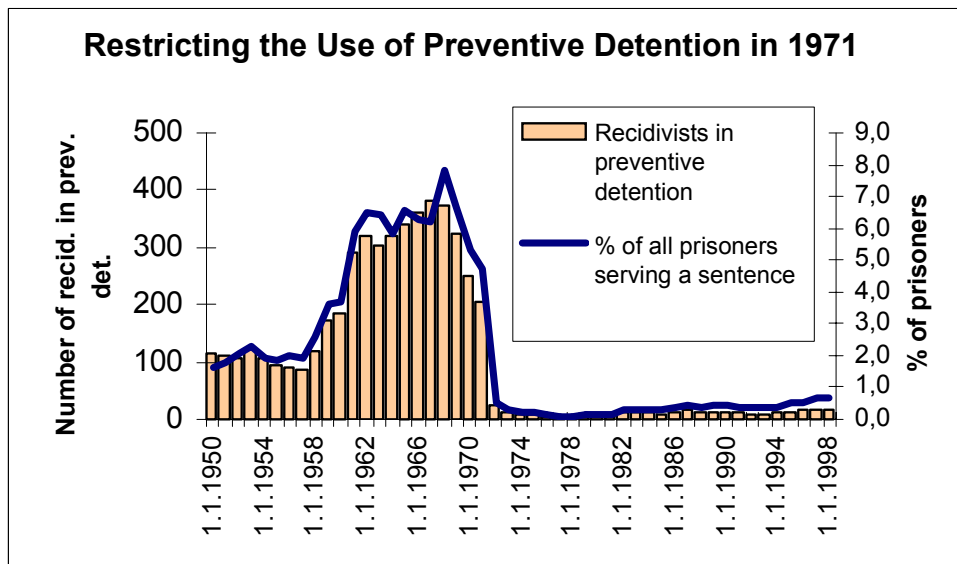
In the 1950s and 1960s fine defaulters constituted a substantial part of the Finnish prison population (sometimes exceeding 25% of the total prison population). In the late 1960s the number of default prisoners was reduced through two consecutive law reforms: By decriminalising public drunkenness (which led to fewer default sentences since public drunkenness was one of the major offences leading to a default fine) and by raising the amount of day-fines and decreasing the number of day-fines (which led to shorter default sentences, on the day-fine system, see below part II chapter II.A.2).



**Figure II.7. The Number of Fine Defaulters in Prison 1950-2000**

(ii) *Preventive detention*

The Finnish criminal justice system includes a provision for holding chronic recidivists in preventive detention after the completion of the sentence, if both the sentencing court and a special court so decide. During the 1960s, the large majority of detainees had been found guilty of repeat property crimes. On the basis of an amendment passed in 1971, the option of preventive detention was restricted only to dangerous violent offenders. The number of persons held in detention as recidivists dropped by 90% in one year, from 206 to 24. Since then, the annual average has been between 10 and 20 prisoners.



**Figure II.8. Restricting the Number of Prisoners in Preventive Detention**

(iii) *Juveniles*

There is no special juvenile criminal system in Finland, in the sense that this concept is understood in the Continental legal systems: there are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. However, offenders aged 15 to 17 receive a mitigated sentence. In addition, the conditions for waiver of sanctions (for example non-prosecution) are much less restrictive for young offenders. Young offenders under the age of 21 who are sentenced to imprisonment are usually released on parole after 1/3 of the sentence has been served, instead of the normal 1/2. Despite the lack of specific measures for juveniles, there has also been a deliberate policy against the use of imprisonment for the youngest age groups. This has been done mainly by relying on the traditional alternatives. The willingness of the courts to impose custodial sentences on young offenders has decreased throughout the 1970s and the 80s. In addition, the Conditional Sentence Act was amended in 1989 by including a provision which allows the use of unconditional sentences for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on the practice (figure II.9.). At the moment there are about one hundred prisoners between the ages of 18 and 20 and less than ten in the 15 to 17 age group, while as recently as the 1960s the numbers were ten times higher.



**Figure II.9. The Number of Young Prisoners (15-17 years, Annual Average)**

6. Parole

The system of parole (early release) has also proved to be a very powerful tool in controlling prisoner rates. Any changes in the basic structure of this system will have visible effects on prison figures. In Finland all prisoners except those few serving their sentence in preventive detention or serving a life sentence will be released on parole. At the moment, the minimum time to be served before the prisoner is eligible for parole is 14 days. A series of reforms has brought it down to this. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months, and finally in 1989 from three months to 14 days.



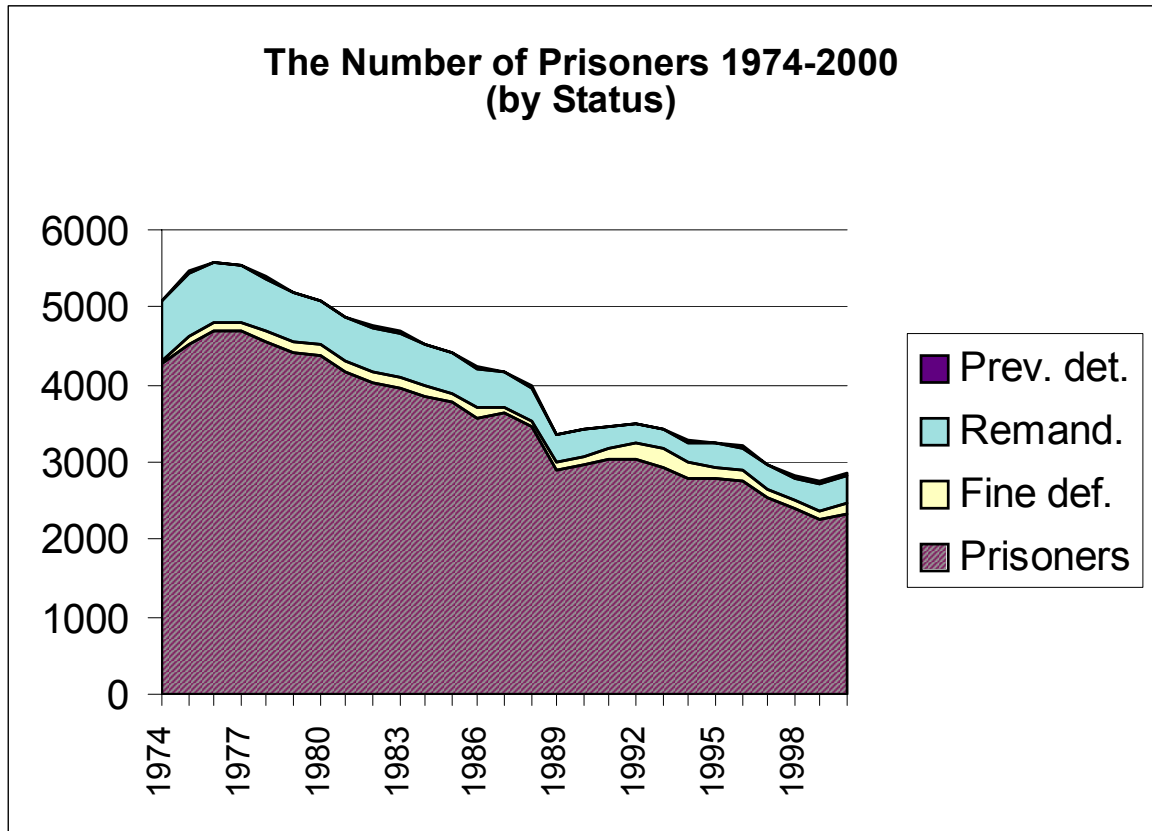
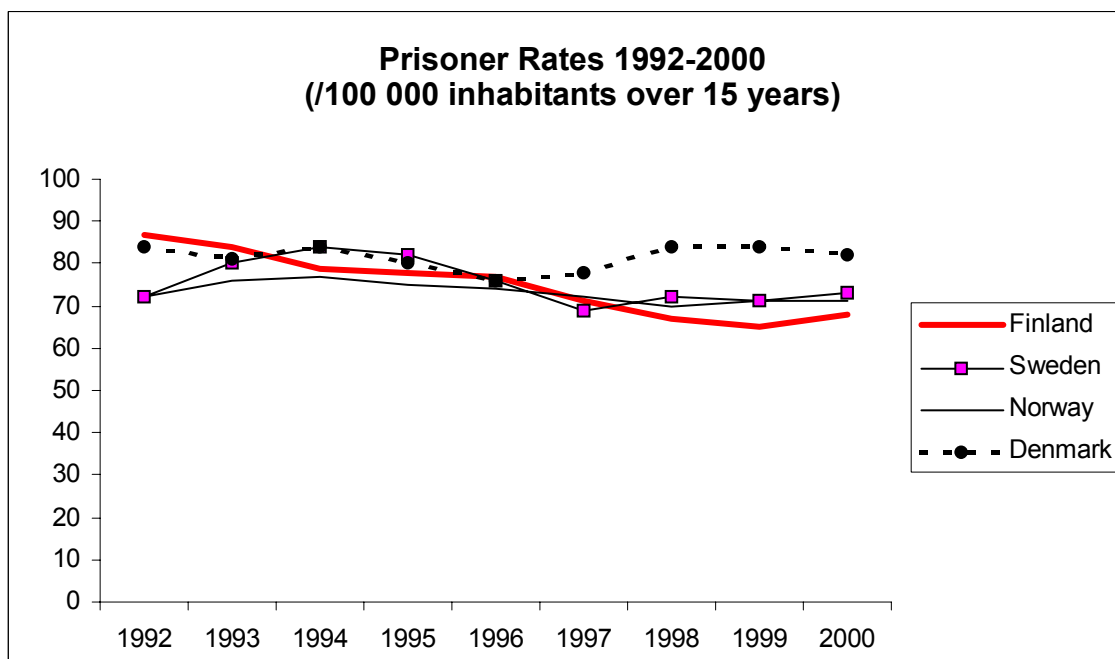


Figure II.10. The Number of Prisoners 1974-2000 (by Status)

#### 7. Sentencing Practice and Prison Rates in the 1990s

During the 1990s, the court practice has been quite stable (leaving aside changes caused by the community service order). The overall level of sanctions and the relative use of basic sentencing alternatives have remained at the same level. Of all criminal cases brought before the court, a clear majority result in fines (60%) or a conditional sentence (20%). About 10% are sentenced to imprisonment (usually between 3-6 months) and some 6-7% to community service. In less than 2% of the cases the court waives further sanctions. Non-prosecution is not included in these figures. In Finland non-prosecution has traditionally had a relatively restricted role. However, in the early 1990s the conditions for non-prosecution were relaxed. As a result, the use of non-prosecution was doubled (this also reduced the use of the waiver of the sentence in the court level, as seen in table 1).

Figure II.11 gives a more detailed picture of the prison rates in 1992-2000 in four Nordic countries (note: /100 000 inhabitants over 15 years of age).

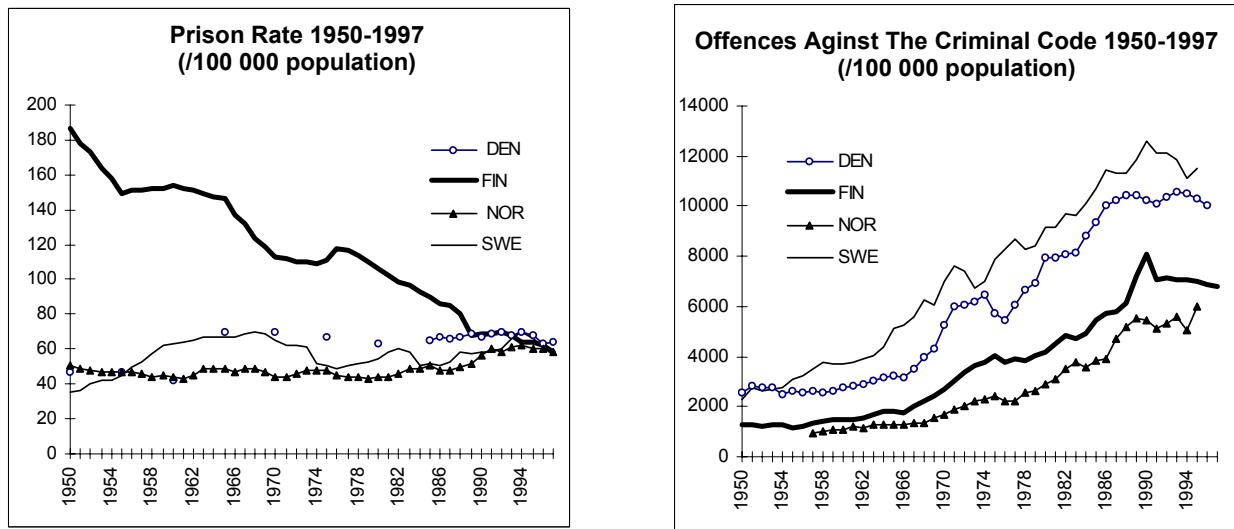


**Figure II.11. Prison Rates in Four Nordic Countries in 1992-2000**

In Finland the prison rate was at its lowest in 1999. Since the year 1999 the number of prisoners has grown over 20% (mainly due to the increase in sentences imposed for drug offences and foreign remand prisoners).

### III. PRISON RATES AND CRIME RATES

A fundamental change in the use of imprisonment naturally leads to the question about the effects on crime rates. Time and time again, research confirms the fact that the use of imprisonment is relatively unrelated to the number of crimes committed or reported. There are, of course, several well-known methodological difficulties in comparing crime rates with prison rates. However, the possibility of comparing countries which share strong social and structural similarities but have a very different penal history gives an exceptional perspective to the matter. In fact, the Nordic experiences provide an interesting opportunity to test how drastic changes in the penal practices in one country have been reflected in the crime rates, as compared to countries which have kept their penal system more or less stable. Figure III.1 provides information on prisoner rates and reported crime in Finland, Sweden, Denmark and Norway from 1950 to 1997.



**Figure III.1. Prison Rates and Crime Rates 1950-1997 (Source: Lappi-Seppälä 2001)**

A simple comparison between the Nordic countries reveals a striking difference in the use of imprisonment, as well as a striking similarity in the trends in recorded criminality. The fact that Finland has heavily reduced its prisoner rate has not disturbed the symmetry of Nordic crime rates. The figures also confirm, once again, the general criminological conclusion that crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.

#### IV. DISCUSSION

1. The decrease in the Finnish prison population has been the result of a conscious, long term and systematic criminal policy.<sup>7</sup> The legislative reforms turned to this direction already during the mid-1960s. Even before that, during the 1950s, the courts had began to reduce their sentences. In many cases the legislator was strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before the legislator had changed the law. Still, the critical question remains: What made all this possible, and what made it possible to carry out these law reforms? Describing the techniques used was easy. Explaining why they were adopted and accepted is harder.<sup>8</sup>

2. A part of the answer could be found in the structure of our political culture. The Finnish criminologist Patrik Törnudd has stressed the importance of the *political will and consensus* to bring down the prisoner rate. As he summarises, “those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s internationally high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.” (Törnudd 1993 p. 12). This conviction was shared also by civil servants, the judiciary and prison authorities and, what was equally important, also by politicians.<sup>9</sup>

Another and closely related way for characterizing the Finnish criminal policy would be to describe it as *exceptionally expert-oriented*: Reforms have been prepared and conducted by a relatively small

<sup>7</sup> A short presentation cannot capture all the factors that have influenced this development. For example, one should not forget structural and demographic factors: The aging of the large birth cohorts born after the war (cf. Aho 1997) have also contributed to the reduction of the prison population.

<sup>8</sup> In order to put things in perspective, it should be stressed that instead of a massive move towards decarceration one could also describe the change merely as a “normalisation” of prison rates: a move from a level that was totally absurd to a level that can be considered to be a fair Nordic level - albeit ten times lower than the present U.S. level.

<sup>9</sup> At least to the extent that they did not oppose the reform proposals prepared by the Ministry of Justice.

group of experts whose opinions on criminal policy, at least on the basic points, has followed similar lines. The impact of these professionals was, furthermore, reinforced by *close personal and professional contacts* with senior politicians and with academic researchers.<sup>10</sup> Consequently, and unlike in many other countries, crime control has never been a central political issue in election campaigns in Finland. At least the “heavyweight” politicians have not relied on populist policies, such as “three strikes” and “truth in sentencing”.

3. This takes us to another element in the Finnish criminal policy composition – *the role of the media*. In Finland the media have retained quite a sober and reasonable attitude towards issues of criminal policy. The Finns have largely been saved from low-level populism. But things may be changing. The emergence of a rival in the tabloid paper market over a decade ago, as well as the increase in TV channels and the resulting intensified competition for viewers have brought crime reports onto Finnish TV as well.

4. “*Attitudinal readiness*” among the judiciary can also be identified as one relevant factor over the last decades. It would, indeed, be a misinterpretation to conclude that what happened in Finland during the last decades was just a skilful manoeuvre of a small group of experts. Collaboration with and assistance from the judiciary was clearly a necessary prerequisite for the change to happen. As noted above, in many cases the legislator received the essential support of the judiciary. Of course, the fact that criminology and criminal policy are taught in the university law schools to lawyers – those who will later implement the laws – is also a part of the larger picture. The majority of the Finnish local court judges and prosecutors are relatively young, having received their university degrees during the 1970s and the 1980s in the spirit of liberal criminal policy. In addition, different training courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in cooperation with the universities – have also had an impact on sentencing and prosecutorial practices.

5. Also the *crime scene* matters. The fact that Finland has been - and still is - a peaceful and safe society with a low level of crime has made it easier to adopt liberal policies in crime control. Even so, it may be argued that this factor has a rather restricted explanatory force. In fact, over a period of approximately 20 years, and especially during the 1960’s, Finland experienced severe social and structural changes while developing from a rural/agricultural economy into an industrial urban welfare state. This rapid development had its impact on our crime rate. There was a steep increase in recorded crime from the mid-1960’s to the mid-1970’s, and again during the 1980’s. However, this did not prevent the prisoner numbers from falling (and neither is there any reason to conclude that this fall had any significant effect on the growth of crime, as discussed above).

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The Finnish criminal policy may well be characterized as both rational and humane. Whether this will be the case also in the future, is open to question. The growing international aspect of crime and crime control, the increased pressure to harmonise criminal law within the European Union, as well as the general tendency to politicise criminal policy, all this includes a greater risk of increased repression also in Finland.

Unfortunately, increasing signs of the populist punitive approach can be seen also in the Finnish debate. Our prison rates may well have now “hit the bottom”, and we may anticipate an increase in the prisoner numbers in the future. In fact, the number of prison sentences, as well as the number of prisoners has increased over 20% between 1999-2002 (but still is among the lowest in the EU). Counter-measures – to be discussed in the following two chapters – are needed to resist these tendencies, also in Finland.

<sup>10</sup> Several Finnish Ministers of Justice during the 1970’s and 1980’s have had direct contact with research work; indeed, one of them, *Inkeri Anttila*, was a professor of criminal law and the director of the National Research Institute of Legal Policy at the time of her appointment as Minister.

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**APPENDIX: Prisoner Trends in the 1990s**

Growth during the 1990s

<u>Western Europe</u>		<u>Central and Eastern Europe</u>	
Netherlands	89%	Belarus	345%
Italy	53%	Czech Republic	282% (since 1991)
Greece	47%	Romania	100% (since 1991)
Portugal	46%	Ukraine	81% (since 1991)
Germany	40%	Bulgaria	62% (since 1991)
Turkey	40%	Lithuania	61%
UK	40%	Russia	44%
Ireland	39%	Slovakia	44% (since 1991)
Spain	34%	Croatia	32%
Belgium	27%	Hungary	23% (since 1991)
Switzerland	24%	Poland	13% (since 1991)
Norway	19%	Latvia	9%
France	13%	Estonia	3%
Austria	12%	Moldova	-17%
Denmark	8%	Macedonia (FYROM)	-20% (since 1991)
Sweden	0%	Slovenia	-23%
Finland	-17%		

<u>Americas</u>		<u>Other regions</u>		
Argentina	83%	(since 1992)	Australia	51%
Brazil	70%	(since 1992)	New Zealand	38%
Colombia	70%	(since 1992)	South Africa	33%
U.S.A.	62%		Japan	9%
Mexico	60%	(since 1992)		
Canada	13%			

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<u>Africa</u>	Ghana	35% rise	(1996 to 1999)
	Benin	26% rise	(1999 to 2000)
	Tanzania	20% rise	(1998 to 1999)
	South Africa	14% rise	(1997 to 1999)
<u>Americas</u>	Costa Rica	55% rise	(1996 to 1999)
	Mexico	35% rise	(1996 to 1999)
	Dominican Republic	28% rise	(1997 to 1999)
	Brazil	16% rise	(1997 to 1999)
	United States	12% rise	(1997 to 2000)
<u>Asia</u>	Thailand	57% rise	(1997 to 2000)
	Cambodia	32% rise	(1997 to 1999)
	Sri Lanka	32% rise	(1997 to 1999)
	Indonesia	28% rise	(1997 to 2000)
	Japan	14% rise	(1997 to 2000)
<u>Europe</u>	Slovenia	51% rise	(1997 to 2000)
	Greece	44% rise	(1997 to 2000)
	Macedonia (FYROM)	44% rise	(1997 to 2000)
	Poland	25% rise	(1999 to 2000)
	Croatia	24% rise	(1997 to 2000)
	Ireland	22% rise	(1997 to 2000)
	Turkey	21% rise	(1997 to 2000)
<u>Oceania</u>	Australia	17% rise	(1997 to 2000)
	Guam (US)	109% rise	(1997 to 1999)

Sources Roy *Walmsley*; World Prison Population List, World Prison Brief, Council of Europe Annual Penal Statistics, United Nations Latin American Institute (ILANUD), information from various countries' prison administrations and statistics departments.