



Rehabilitative Aims and Values in Finnish (and Nordic) Criminal Justice

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From Treatment to ‘Humane Neoclassicism’

Treatment ideology prevailed in the Nordics from the 1930/40s till late 1960s. Its position was strongest in the more affluent Sweden and Denmark, and weakest in Finland, which was recovering from the hardships of the first half of the twentieth century (including a bloody civil war, two wars against Russia, and one against Germany). The heritage of penal welfarism includes differentiated sanctions for distinct groups, the introduction of psychiatric treatment and psychologist services in prisons, and the adoption of conditional sentences and community supervision—all reforms that improved the position and conditions of those sentenced. But this period also introduced indeterminate sentences, the risks of abuse of power, and an overreliance in all kinds of institutions—all features that came to be criticised in the 1960s.

Trust in the rehabilitative potential of criminal justice started to erode in the Nordic countries in the 1960s. Extensive use of confinement and compulsory treatment in healthcare, child welfare, and prisons was criticised for being inhumane, arbitrary, and ineffective (for early critics, see Anttila, 2012). Critical findings on the modest effects of treatment influenced a shift in criminal justice policy priorities from custodial sanctions to

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community alternatives and open care measures. Prisoners' rights and the prison conditions became a target of political action in all these countries. The prison reforms that followed at the end of the 1960s and beginning of the 1970s improved the rights of the inmates, abolished humiliating disciplinary punishments, introduced prison leave, and expanded the system of open facilities. All countries either abolished or severely restricted the use of all indeterminate sentences in the 1970s. This concerned both preventive detention for dangerous recidivists and youth prisons. The progressive, main organising principle in enforcement was replaced by the principle of normality, the requirement that 'the conditions in prison should be set, to the extent this is possible, to correspond to the conditions in society in general' (Finnish Enforcement Decree, 1975: 3). Rehabilitative aspirations became less central but did not disappear altogether. Although conclusions and claims were less radical, it was accepted that imprisonment should not be used *because* of its rehabilitative potential, and that all forms of non-consensual treatment should be abolished: so, any prolonging of confinement on rehabilitative grounds was banned. Nevertheless, when imprisonment was used, time was to be given to reduce the risk of reoffending and to minimise the detrimental of prison life ('Negative individual prevention', Bondeson, 1989). However, initiatives to develop interventions or programmes that would have specific positive effects remained low.

At the ideological level, the justification and rationale for punishment shifted from individual to general prevention. However, the traditional Nordic concept of general prevention differs from that of the English-speaking world. General prevention has been understood in Nordic criminal theory primarily as an indirect mechanism for the reinforcement of basic social norms through moral communication, rather than direct deterrent effects of punishment (Andenaes, 1974). Compliance with norms rests on norm internalisation and experienced legitimacy, not on fear. To achieve this effect criminal justice punishment should be able to convey a 'moral message' (a reproach), but the system should also be experienced as accepted and trusted (for discussion, see Lappi-Seppälä, 2019b: 219–220). The 'ideological vacuum' that followed the fall of the rehabilitative ideal was filled with a rights-based sanction ideology—'Humane Neoclassicism' (as the model of thinking was labelled in Finland). It combined forward-looking pragmatic considerations of indirect general prevention, the humanisation of the sanction system, and the requirements of proportionality, predictability, and equal application of the law. Policy conclusions were in several respects the opposite to those in many other countries. The decline of treatment ideology did not entail a general shift towards harsher penal regimes and

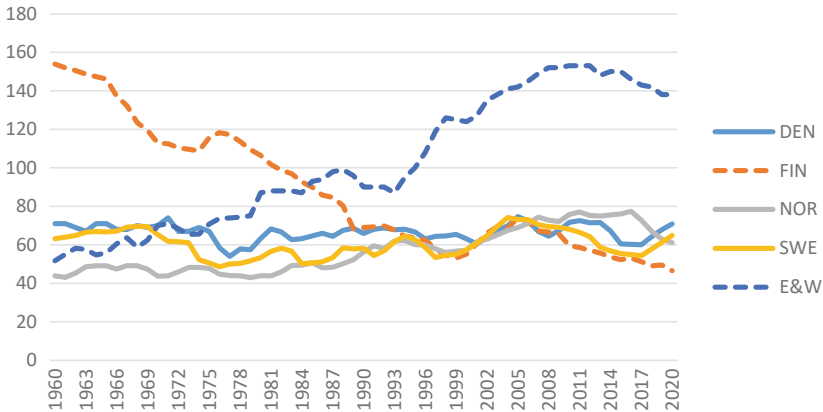


Fig. 1 Prison population rates in Denmark, Finland, Norway, Sweden and England & Wales 1960–2020

prison warehousing. For Denmark, Norway, and Sweden, the period from 1960s onwards represents a period of stable and low incarceration rates, also during a period of steep increase in crime. For Finland, this was the beginning of a long-term reduction of imprisonment from the level of around 150 prisoners/100,000 inhabitants to the general Nordic level of around sixty (Fig. 1).

New Trends—New Solutions

The principles that were laid down in the 1970s guided much of the reform work and enforcement practice until the early 1990s after which new trends started to emerge. In the course of the 1990s penal rehabilitation there was a revival of rehabilitation in prisons. New meta-analyses altered the picture of the effectiveness of rehabilitation. After all, treatment did seem to work under certain well-defined conditions. All Nordic countries also revised their prison enforcement practices from the mid-1990s onwards, guided by the Canadian-originated ‘What works’ movement (with which the Nordics also had good personal contacts). Reduction of reoffending was back on the agenda. The use of structured programmes increased, and so were investments in substance abuse programmes in prisons. Enforcement processes, as a whole, became more structured and planned.

As far as treatment orders and new community alternatives are concerned, even during the ‘neoclassical period’, the needs for alcohol and substance treatment in prisons had been acknowledged (but not duly taken care of).

A worsening drug problem increased these pressures, and in 1988, Sweden adopted a new treatment-oriented alternative to imprisonment ('Contract care'). Different treatment-orders were incorporated in the Danish sanction system in the 1990s as part of a conditional sentence or as combinations with other sanctions for specific offence categories, such as drink driving, drug misuse, and sex offending (Kyvsgaard, 2001). Moreover, in 1995 Norway introduced a specific programme for drunk drivers to replace prison sentences ('promilleprogramme'). In addition, sanction systems were complemented with more widely targeted community alternatives; first by community service and then by electronic monitoring. Both alternatives were constructed as substitutes to imprisonment. Their advantages over prison were explained with reference to rehabilitative aims as well as practical cost-related arguments.

Similar changes took place in juvenile justice. Nordic youth justice is a complex system, searching for a balance between criminal justice and child welfare (for history see, Lappi-Seppälä, 2011). Each country has organised this co-operation in its own ways, but in all, child welfare bears the main responsibility. Moreover, in all countries, rehabilitative aims and the best interest of the child are uncontested overriding principles. However, in the 1990s criminal justice started to adopt a more active role by developing new alternatives designed specifically for juveniles. This also meant that rehabilitation gained more prominence in criminal justice. But disagreement also exists, whether this is the optimal way to pursue rehabilitative aims (and the best interest of the child), or whether it would be better to leave the matter in the hands of child welfare (see Lappi-Seppälä, 2016 and critical comments by Pettersson, 2017 and Storgaard, 2009).

The 1980s and 1990s saw the emergence of mediation and restorative justice as the mainstream criminal political ideologies were challenged by critical criminologists and the abolitionist movement; inspired by the writings of Nils Christie and Thomas Mathiesen in Norway and Louk Hulsman in the Netherlands. In the spirit of Christie's article 'Conflict as Property' (Christie, 1977), Norway started an experimentation in mediation in 1981 to return the 'stolen conflicts back to the community and the parties' and Finland followed in 1983. The movement expanded rapidly first in these two countries and later elsewhere in the Nordics. The annual number of mediated cases rose quickly to several thousands in both Norway and Finland. The 'official institutionalization' of mediation took place in the form of enactment of Mediation Acts. First in Norway in 1992, then in Finland and Sweden in 2006, and Denmark in 2010. Due to this institutionalisation, mediation may have been forced to compromise with some of its original abolitionist

ideals. Having a specific law on mediation with legally defined roles and responsibilities for mediators may not have been what Christie, Hulsman and Mathiesen had in their minds in the 1970s. However, basic elements of informality, voluntariness, and community involvement remain the same. Today mediation is offering a widely used alternative way of resolving conflicts and it provides the victim and the individual who has offended against them a genuine possibility for communication. The annual number of referrals to mediation range around 10,000 in Finland, of which little over 7000 get started and 5000 end up to an agreement (which roughly equals the annual number of imposed prison sentence (see Lappi-Seppälä & Storgaard, 2015).

From 1990s onwards, growing international human rights movement and the establishment of the European Court of Human Rights (ECHR) and the European Committee for the Prevention of Torture (CPT) started to influence penal reforms. In Finland, reforms were further influenced by joining the Council of Europe in 1989, the ratification of the ECHR in 1989, and the constitutional reforms carried out in 1995 and 2000. Together, they opened the window of opportunity for the incorporation of human rights as part of fundamental rights in the constitution, and thereby exerted their influence on criminal legislation. The new constitution imposed stricter demands than before on legal regulation in all decisions that dealt with deprivation of liberty. It also obliged the legislator to define the rights and obligations of prisoners in greater detail than before. These requirements were noted in new prison law reform (Prison Act 2006). As stated in the Governmental Bill, the Act 'aims to bring the prison law in accordance with the requirements of the new constitution, to define the obligations of prison authorities in more detail, to increase legal safeguards and transparency in prison administration, to reorganise the imprisonment process to a more structured and planned process and increase investments in rehabilitative programmes and treatment work and thereby also to reduce recidivism' (Gov Prop, 262/2004). Constitutional principles also exerted their influences on other parts of the legislation, including the general part of the Criminal Code in 2004, and the codification of community sanctions under the same code in 2012 (see below).

Changes in organisational frameworks followed. The expansion of community alternatives changed gradually along with the work profile of probation service from social work towards sentence enforcement. Furthermore, defining rehabilitative action as part of punishment had organisational consequences. According to the new Constitution, functions that consist of 'substantial exercise of public power' such as enforcement of penalties, should be taken care of by state officials. This led subsequently to organisational changes in Finland. Probation work was removed from a semi-official

Probation Association to the Ministry of Justice and the Prison Service and Probation Service were united under the Criminal Sanctions Agency (CSA). Part of the earlier supportive and social work functions of the previous Probation Association were removed under a new Probation Foundation. Along with constitutional arguments, economic consideration played their part as well. One united organisation was cheaper to run than two separate ones. A further wish of the Government was that 'the role of community sanctions as part of the sanction system could be strengthened' (GovProp, 22/2009).

Normative Framework: Aims and Values in Finnish Sentencing and Enforcement

The classical question of 'The Aim of Punishment' receives different answers depending on whether criminalisation, sentencing, or enforcement are under consideration. Decisions on criminalisation are based on (politically decided) needs to protect important societal and individual interests, and the assumed theoretical mechanisms, in turn, rest on direct and indirect effects of general prevention. A definition of criminalisation based on rehabilitative needs would be bizarre. Sentencing is governed by a mixture of principles that combine both retributive and consequentialist (utilitarian) arguments. While all Nordic countries give the principle of proportionality the key organising role in sentencing, at the level of sentencing the extension of community sanctions has put rehabilitative arguments back on the table or more precisely, arguments that speak in favour of community alternatives and against the use of custodial sanctions. Sentencing provisions are built on the logic that the main function of the proportionality principle is to specify the upper limits of punishments. It is much less restrictive concerning punishments and less severe than the offence might, at a *prima facie* level, deserve. The question for the courts is, whether these rehabilitative and practical benefits are weighty enough to justify the replacement of a prison sentence by a community sanction.¹

Enforcement principles are newly formulated in the 2006 Prison Act and the 2012 Act of the Enforcement of Community Sanctions. The reform of Prison Act (PA) can be characterised primarily as a *Rule of Law* reform. The CSA, in turn, builds much on the Council of Europe resolution on community sanctions and measures (Rec 1, 2010). Both laws define enforcement aims and principles in similar tones with emphasis on both rights-based and rehabilitative arguments. As condensed in the value statement of the Finnish Prison and Probation Service:

The central value of the CSA is the respect for human dignity and justness. We believe in the potential for individual change and growth. Commitment to the values in practice: Basic rights and liberties as well as human rights are protected; Treatment is humane, appropriate and equal; all activities are lawful and comply with justice and fairness; Enforcement is carried out so that it supports the sentenced persons' individual growth and development as well as their intention to lead a life without crime. (Criminal Sanctions Agency, 2020)

According to the Prison Act the aim of enforcement of imprisonment is 'to increase capacity for a crime-free lifestyle by promoting life-capacity and integration into society'—in other words social rehabilitation (PA 1:2). The aim of community sanctions is defined as 'to support the convicted person in promoting social coping and increase the capacity to live a crime-free life' (CSA 1:2 §). Provision on 'Social rehabilitation' (PA 10:5), further, states that 'Prisoners shall be provided with support in social rehabilitation, in maintenance of contacts with their close relatives and other close persons, and in attendance to matters relating to their accommodation, work, subsistence, social benefits and social services'.²

The term 'social coping' reflects a clear desistance orientation, pronounced explicitly in the preparatory works of Community Sanctions Act:

A more recent criminological study highlights that desistance and ceasing a criminal career is a more complex psychosocial process attached to the course of life than assumed. It is not straightforwardly causal in such a way that we can see that the exit has taken place at the point of time as a result of the combined effect of certain individual factors. ... It may take years to break away from the criminal lifestyle, its identity, and social networks, while the offender is constantly trying to build an identity that is in line with normal life. (GovProp, 215/2012)

The law also recognises realities and the limits of the rehabilitative powers of prison by a separate provision of harm minimisation. The code links the avoidance of harmful effects of prison life and maintaining health and social functionality in the same paragraph: 'The ability of a prisoner to maintain his health and functional ability shall be supported. The goal is to prevent any detriment resulting from the loss of liberty' (PA 1:3). Efforts in maintaining health include equal health care services for the prisoners (as compared to the rest of the population). Harms may be minimised by providing psychosocial support and treatment, but also by upholding prisoners' contacts with the outside world (prison leaves etc.).

The famous maxim of Alexander Paterson that people are sent to prison as punishment, not for punishment is enshrined in the Finnish Prison Act

as, ‘The content of imprisonment shall be loss or restriction of liberty’ and not to impose extra hardship on prisoners due to reasons related to the ‘aims of punishment’ (PA 1:3.1): the loss of liberty, as such, is enough. This claim is underlined with the additional notion of *minimum intervention*: ‘The enforcement of imprisonment may not restrict the rights or circumstances of a prisoner in any other manner than that provided in the law or necessary due to the punishment itself’ (PA 1:3.1).

The Normality Principle can be conceived of as logical consequence of the same starting point: ‘The conditions in a prison shall be arranged, to the extent possible, so that they correspond to the living conditions prevailing in society’ (PA 1:3). In concrete terms, the principle calls for the abolition of certain practices followed in prison life only (for example, the use of prison clothes). It also affects the ways in which work, education, and training is arranged in prisons, and even the way prisons are built. However, the principle also expresses the normative demand that prisoners maintain their full rights as citizens and deserve to be treated with similar respect as any other member of the society (see also Engbo, 2017; Zyl van Smith & Snacken, 2009). For example, all Nordic countries have enshrined in law that prisoners have the same right to education as other citizens, not to mention the right to vote (on education see Nordic Prison Education, 2005).

In accordance with the unviability of human dignity, prisoners ‘shall be treated fairly and with respect for their human dignity’ and ‘the authorities in charge of the enforcement of imprisonment shall ensure that, during the imprisonment, no person will unjustifiably violate the personal integrity of the prisoner’ (FPL 1:3.2). Similarly concerning community sanctions: ‘A person sentenced to community sanctions must be treated fairly and with respect for his or her human dignity’ (CSA 1:4). The law further requires that ‘authority must be used appropriately and impartially as in a spirit of compromise’ and maintained ‘primarily through advice, requests and orders’ (PA 1:6). Guidelines for sentence planning stress a positive instead of a fault-finding orientation as well as collaborative aspects. The point of the assessment, for example, is ‘to support and help the prisoners forward. It is not only pointing out defects, but it must also show strengths...The aim is to reach a common view with the prisoners even if it would require long repeated discussions’ (Guidelines for Assessment, 2010). Guidelines for enforcing electronic monitoring, in turn, stress the importance of discretion and sensitivity and the need to carry out the control elements in a manner that does not draw attention to the clients in their living environment (GovProp, 215/2012).

Programmes and Enforcement Practices

Prison and probation work consist of enforcement work (such as sentence planning, assessments, and guarding), client work, and programme work. Borders are not always clear. Work in more concrete terms may consist of debt and economic counselling, education and work activities, family work and work with volunteer supporters, courses on employment, creative activities and physical education as well as group activities to enhance life management skills. Post-release work in the community includes professional tutoring, housing support, service guidance and social work with intoxicant abusers, work with the clients' families, and with other meaningful people close to the client. Much of the work is also concentrated on practical issues, such as taking care of some basic tasks of everyday life, such as getting an ID card, bank account, travel card, a continuation of debt, and economic counselling.

Programmes can be divided according to aims and methods into motivational and impact (effectiveness) programmes. Motivation programmes aim to increase and maintain motivation to change and encourage participants to take further action on their life situation. They are usually short-term and implemented in either individual or group form. Impact programmes aim to influence the underlying thinking and behavioural patterns. They are intensive and long-lasting and aimed at clients with a medium to high risk of recidivism. As a rule, impact programmes are group-based and consciously utilise the group's experientiality and group dynamics. Depending on the targeted problem programmes can further be divided into (1) general programmes (such as 'Five Discussions on Change', see below), (2) offense-focused programmes for perpetrators of a specific crime (e.g. STOP programme for those convicted of sex offences) and (3) substance abuse rehabilitation programmes. Of these, substance abuse programmes have the longest history in Finnish prisons. An overwhelming majority of the prisoners have substance abuse problems. Investments in substance rehabilitation also increased during the 1990s. Current programmes are based either on cognitive behavioural therapy or community treatment. Despite increased supply of substance rehabilitation, supply of services and needs do not meet. According to a recent study, around 60% of released prisoners need substance abuse interventions. However, of these only one out of five actually received or participated in such treatment in prison (see Obstbaum, 2017).

The influence of What Works movement is visible in the adoption of accredited cognitive behavioural courses after the mid-1990s (including Cognitive Skills courses, programmes focused on sex offending, Anger Management, and Cognitive Self Change). From the 2000s onwards,

programmes with a clearer desistance focus appeared, both in prison and community settings. These include, for example, ‘Five Discussions on Change’—a general motivation programme implemented since 2006. The aim of the programme is to strengthen the client’s internal motivation and promote decision-making in connection with possible change. The programme comprises of at least five discussions (plus the initial meeting). The discussions are based on a semi-structured manual and on the customer’s own workbook. The creation of internal motivation is guided by four principles: (1) To strengthen a person’s experience of the mismatch between the current and desired situation, (2) address resistance to change, (3) strengthen the customer’s faith in his or her own ability to implement change, and (4) show empathy, especially through reflective listening (for description, see Tolonen, 2016).

Targeted programmes for younger inmates (below the age of 30) include the Work Out Project (WOP). Its primary objective lies in improving the social skills of the young inmates through systematic and target-orientated work, both during the prison term and after release. The plan covers both the prison term and the post-release phase. Work with inmates during the prison term focuses on holistic rehabilitation and the reinforcement of functional abilities. The goal is to support the client to find new contents for life and reinforce the experience of meaningful life.

Finnish legislation has adopted a broad view of rehabilitative aims and effects. Reducing reoffending may remain the ultimate goal, but the intermediate steps matter, as well. As formulated in the preparatory works of the Community Sanctions Act:

Exiting crime is not a simple over-night change, but a long-term process in which the gradually strengthening components of individual capabilities and social resources have different roles in different times. Therefore, the effectiveness of rehabilitation work cannot be measured solely by short-term reoffending figures. The process may have already started, but the results are not yet visible in reconviction rates. Instead, they may appear in strengthened relationships and friendship networks, reduced substance use, increased motivation to study, increased admonition to working life, and so on. ... When considering the social impact of the various sanctions, it should be noted that the changes said are important, not only for future criminal behaviour, but also for other reasons of well-being. They are valuable in terms of the quality of life itself. (GovProp, 215/2014)

In relation to individual-level effects the legislation refers to *broader social effects* (broader ‘social rehabilitation’) and the possibility that organising

community service work in volunteer and municipal originations, working together, and being in a daily contact with those convicted of a crime will also change the image of an 'offender' among the public (GovProp, 215/2014).

Measurements of reoffending effects of in prison programmes have produced partly positive but some weak results. Cognitive Skills courses seemed to reduce recidivism only marginally; programmes for those convicted of sex offences have produced stronger, but not statistically significant results (see Tyni, 2015). More favourable results have been obtained from motivation programmes directed towards substance rehabilitation. A follow-up of the 'Five Discussions on Change' provided positive results measured by changes in audit scores as well as by harms caused by drinking (see Tolonen, 2018). In general, there is more evidence of changes in motivation and thinking habits, but less of actual reoffending (as regards in prison programmes). For community alternatives, the situation looks somewhat different (see Endnote 6).

Open Prisons and the Normality Principle

Enforcement or the prison sentence starts with assessment, sentence planning, and placement in prison. Sentence plans are prepared for all prisoners to direct interventions and programmes and to create predictability to the process. A specific Risk and Need assessment is conducted for about 10% of prisoners. Also, release phases and post-release phases are guided by separate release and supervision plans. They will include information about the contact meetings, plans related to housing, work, education, studies, finances, programmes, and tasks. These preparations are made in co-operation with the Probation Service and the social service and employment authorities. This networking aims to ensure that the rehabilitation started in prison and continuing after release is the core part of the planned process. Still, aftercare forms the critical phase in the Finnish enforcement process. Many released prisoners lack proper housing. The housing services within the probation system were also weakened after the 'Unification of prison- and probation services' (see above). Enforcement takes place either in closed or open prison. No general security classification is in use, while some prisons have small security units for high-risk violent individuals.

The defining feature in Finnish—and Nordic—prisons lies in the concept of the open prison. Open prisons raised extensive international interest after World War II as a solution for the post-war overcrowding problems. The concept had also been tested extensively in Finland already before the war

(also due to serious overcrowding in the country). Finland, Denmark, and Sweden enacted laws on open enforcement from different starting points, but eventually with comparable results. Arrangements that were first offered as practical and economical solutions for post-war overcrowding, developed in the course of time into a central device to realise the principle of normality in enforcement. Today, over 35% of all Finnish prisoners and almost half of prisoners serving a sentence are placed in open institutions. The rates are slightly lower in Denmark and Norway, and lower in Sweden and Iceland. Trends in the use of open prison since 2000 are visible in Fig. 2.

For many commentators, the open prison represents one of the key elements in the ‘Nordic Penal Exceptionalism’ and the more inclusive penal policies (see Pratt & Eriksson, 2013). Open prisons are in practice ‘prisons without walls’: the prisoner is obliged to stay in the prison area, but there are no guards or fences. Open prison may consist of a separate open ward in closed prison, or as a separate open prison. Placement in open prison can take place either directly from the start or after closed prison. Direct placement is applied usually for first timers with typically short sentences. The serving of longer sentences starts, as a rule, in closed prison, but the prisoner may later be transferred to open settings following the sentence plan. In 2020, there were 17 open prisons or open units in Finland, and around the same number of closed prisons. The size of open units varies between 13 and 120 with an average of 57 prisoners. Salaries paid for work are substantially higher in open prisons. All open institutions are drug free, and all inmates are required to make a controlled commitment not to use any intoxicants. A prisoner who

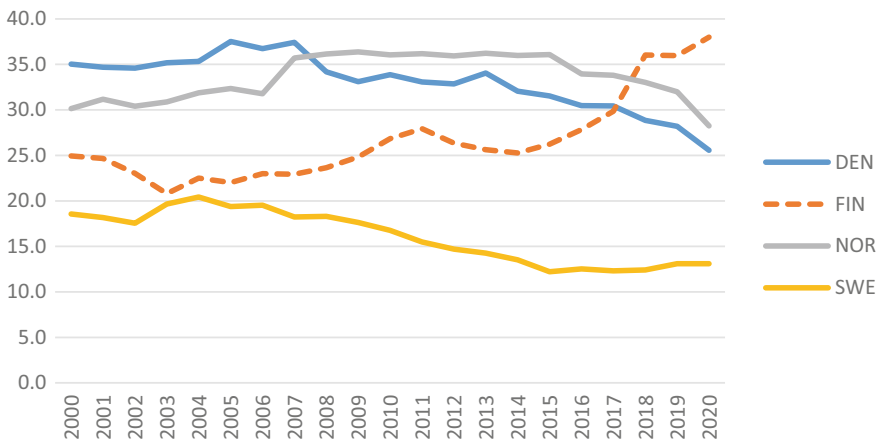


Fig. 2 The share of prisoners in open prisons 2000–2020 (% of all prisoners including remand)

does not comply with the rules of open prisons (i.e. who escapes, refuses to participate in activities or intoxicant abstinence controls) may be transferred to a closed prison.

Occasional reoffending studies from Sweden (Bondeson, 1974/1989; Pettersson, 2017) detected substantially higher prisonisation and reoffending rates after closed prisons in comparison to open regimes. A recent Finnish analysis found that open prisons' investment in promoting family contact seems to affect desistance optimism positively and provide useful means for reintegration. Open prisons seem to encourage prisoners actively to plan and prepare for their release, aiding them in job seeking, training, and education, and thereby seem to 'affect pre-release expectations positively, even if many social and structural challenges in reintegration prevail' (Villman, 2021). Nationwide 'quality-measurements' in Finnish prisons confirm higher satisfaction in open prisons regarding programme functionality, contacts with the outside world, respect, staff relations, health services, living conditions, general well-being, safety, or fairness. In short, open prisons seem to perform morally better [see Linderborg et al., 2015; similar results have been produced also in a Dutch survey (Eshter et al., 2021)]. Comparisons between open and closed enforcement in Norway and England and Wales confirm that open environments (contrary to some critics) provide a less painful environment with more freedom, less anxieties, and less frustration (Mjåland et al., 2021).

Open enforcement brings lesser prisonisation, lower costs and better prospects for social rehabilitation, and even lower reconviction rates. It provides more meaningful work and better salaries and work compensation for the inmates, a more relaxed atmosphere and better staff–inmate relations, better contacts with the outside world, all reducing the harmful and prisonisation effects resulting from the loss of liberty. In financial terms open prisons are cheaper to build and run. The price tag on open prison is about two-thirds of that compared to closed prison. But what matters most is to what extent enforcement practices meet the demands of decent and legitimate use of criminal law. In this respect, open enforcement, which expresses trust and confidence in the prisoner's own sense of responsibility, reflects a more civilised and enlightened view of 'offenders' as individuals capable of reform and capable of taking responsibility of their actions.

Prisons as a Last Resort: Community Service and Electronic Monitoring as Substitutes to Imprisonment

The introduction of new community alternatives took place under the flag of alternatives to prison. First proposals and plans of community service were drafted in the late 1970s, experimentations started in the 1980s, and nationwide practices followed in the 1990s. Community service was presented as a more constructive and less stigmatising alternative to imprisonment which would allow the individual to maintain his/her contacts with the outside world, and to create positive contacts with work life. Further arguments related to the need of developing functional ‘intermediate’ penalties, an additional step in the staircase of sanctions to slow down the move towards the most severe sanction, imprisonment. Occasionally, proponents stressed the symbolic reparative and restorative dimensions of a sanction which eventually would give the individual a concrete possibility to ‘pay back’ to society the damages and losses caused by the crime. Technically, community service is adopted either as an independent sanction (Finland and Norway), as a condition attached to conditional imprisonment (Denmark and Sweden) or as a form of enforcement of prison sentence (Iceland). Legislative solutions were guided by efforts to avoid of net-widening. Thus, in Finland, community service can be imposed for a consenting person and only as a ‘commuted penalty’ after he or she has first been sentenced to an unconditional prison sentence (of at most eight months (for technical details, see Lappi-Seppälä, 2019a, 2019b: 28–34).

First applications of electronic monitoring took place in Sweden in the mid-90s as a replacement of short prison sentence by the decisions of enforcement agencies. In the early 2000s, a ‘Back-Door version’ version was adapted in the form of EM-release. Other Nordic countries followed in the mid-2000s by adopting both Back-Door and Front-Door versions, albeit the technical details differ. As of today, all Nordic countries allow prison sentences below six months to be served under an electronically monitored supervision order, and all countries allow the possibility for pre-release on electronic monitoring at most six months before regular parole. In Denmark, Norway, Sweden, and Iceland, these decisions are taken by the prison administration. In Finland Front-Door EM is defined as a separate sanction (‘Monitoring Sentence’), imposed by the courts (for details, see Andersen & Telle, 2022; Lappi-Seppälä, 2019a: 34–43).

Community service occupied a substantial role as an alternative to custody first in Finland during the early 1990s. Measured by court statistics the

number of prison sentence fell in 1991–1995 from 11,000 to 6000 and the number of community service orders increased from zero to 4000. In Sweden, the application of community service increased from 500 in 1998 to 3000 in 1999, and the number of imposed prison sentences fell from 14,500 to 12,500. In Denmark, imposed community service orders increased in 1998–2001 from 850 to 3500, while the number of imposed prison sentences fell from 14,000 to 10,000. Current use of electronic monitoring is best analysed with enforcement data. Front-door and back-door options are used different extent in these countries, but the total volume of EM clients at any given day (stock statistics) roughly on the same level (but lowest in Sweden and highest in Norway, see Table 1).

Measured by the number of people placed under EM each year (flow statistics), differences are bigger. In Norway, the number of started EM supervision orders (65.3/pop) almost equals to that of started prison sentences (70.3/pop). In other countries, the number of people entering electronic monitoring equals 25–40% of the number of prisoners admitted annually to prisons. This implies substantial ‘replacement-effect’ for Front-Door EM, as was for community service.³ This becomes visible in trend comparisons (see Fig. 3).

The increasing number of new community service and EM supervision orders is reflected in the concomitant declining numbers of entries to prisons (with the exception of Norway in early 2000). However, as shown in Fig. 1, the daily number of prisoners (stock) has remained more or less stable. Community alternatives decrease the number of entries and new prison sentences), but the overall number of prisoners serving a sentence is also affected by the length of impose sentences (and of course, in the number

Table 1 Imprisonment, community service and electronic monitoring in a statistical comparison. Enforcement statistics 2020

	Stock (daily average)/100,000 pop				Flow (entries during the year)/100,000 pop			
	In prison	In CSO	In EM	In prison + CSO + EM	To prison	To CSO	To EM	Tp prison + CSO + EM
2020								
Denmark	73.3	33.4	4.2	110.9	70.3	60.8	30.0	161.1
Finland	46.5	22.0	4.8	73.3	50.1	31.7	18.4	100.1
Iceland	41.7	53.3	4.4	99.4	43.9	69.8	11.3	125.0
Norway	56.2	18.8	6.7	81.6	70.3	30.4	65.3	165.9
Sweden	68.6	15.5	3.3	87.4	86.8	36.5	21.5	144.8

Source Compiled from Kristoffersen (2022)

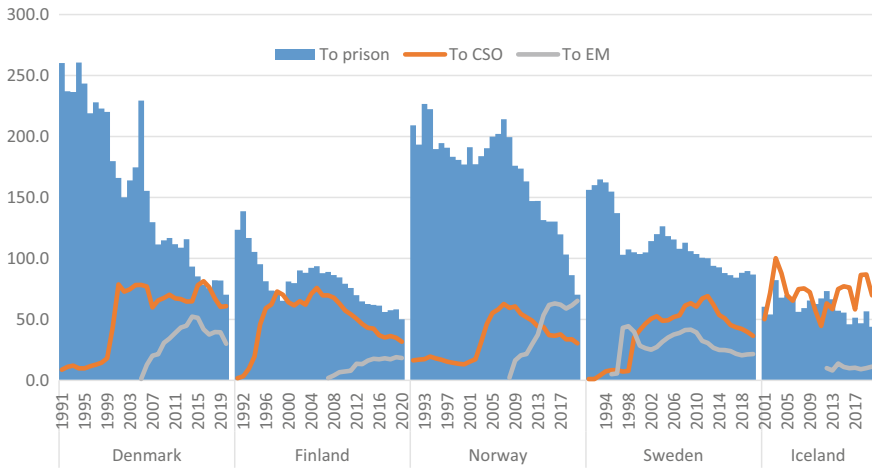


Fig. 3 Entries to prison, community service and electronic monitoring/pop 1991–2020

of offences). For these reasons, it is not possible to read out the clear ‘netto-effect’ of new community alternatives, without going to details in the other sentencing patterns.⁴ But the evidence is clear enough to conclude that without new alternatives the annual number of persons sent to prison would be substantially higher than it is to today.

Reoffending rates for community service and electronic monitoring have been studied since the 1990s. Controlled reoffending analyses of community service from Denmark and Finland indicate around 10–15% decrease in reoffending rates (compared to prisons). Matched comparisons from Denmark, Sweden, and Norway display around 5–25% lower reconvictions rates in the EM group.⁵

The essential element in Nordic EM programmes is not the supervision technique, but the contents. Nordic EM includes an activity obligation. It can take the form of work, supportive social services, and programme work. Evaluation also reveals positive outcomes in terms of social and human effects, including positive contact to work life, better self-control over substance abuse, better preservation of family ties. A Danish study, based on comparisons with similar groups (before and after the law was passed) showed significant decreases (by 7%) in the social-welfare dependency rates after EM release compared to regular early release (Andersen & Andersen, 2014). The completion rates from upper secondary education were significantly higher (increase by 18%-points) among programme participants three years post release. Also, divorce rates were lower in the EM groups, a factor closely related to reoffending risk (Larsen, 2017).

Concluding Remarks

Penal policies in the Nordics echo the global mega-trends of the latter half of the twentieth century, however, shaped by local socio-economic and political conditions. Thus, trends with the same labels do not necessarily have the same contents, nor do they need to share the same value commitments. Retribution, Just Deserts, and Deterrence in the U.S. (or in the U.K.) have little—if anything—to do with General Prevention and Proportionate Sentencing in the Nordics. The ‘Fall of the Rehabilitative Ideal’ started in the Nordics around mid-1960s, as criticism of coercive care and due to the lack of legal safeguards, not due to ‘Nothing Works’. The replacing ideology—humane neoclassicism—was most influential in Finland, where earlier individual preventive traditions had been weakest. Still, the values expressed through this ideology—legal safeguards, proportionality, predictability, and equality in the enforcement of the law—were shared across all Nordic countries. And so was the general policy priority to reduce the use of imprisonment through depenalisations, decriminalisation, diversion and by both new and traditional alternatives to imprisonment. While there have, since then, been shifts towards more punitive policies and increased risk-thinking, changes have been much more modest than in many other jurisdictions.

The revival of the rehabilitative ideal has not taken us back to the 60s and to the unrealistic hopes of treatment effectiveness and manipulative practices. Expectations are more realistic and to some extent in prison programmes manage to reduce reoffending, but this is no proof of prison’s relative effectiveness. New rehabilitation does not justify imprisonment, but it does justify efforts to do something and more during the enforcement period. This was the point stressed already by the critics of treatment ideology in the 1960s.⁶ Neither has new data cancelled the critical results of imprisonment. Rather, they confirm the conclusion that enforcement in community settings with focus on support and social rehabilitation, brings better results in terms of reoffending.

In addition, the concept of rehabilitation (‘Individual Prevention’) has undergone transformations in the direction already proposed by the early critics (see also Burke et al., 2019; McNeill 2012). Legal safeguards and normative constraints have retained their importance. In fact, international human rights movement (and constitutional reform in Finland) have lifted fundamental rights to the centre. In rehabilitation theory and practice, there is (should be) more respect for autonomy and agency. Rehabilitative aspirations have moved towards the social; from ‘Cure’ to ‘Social Coping’ and

attention has been shifted from the 'end-result' to the process. This has also brought along a more nuanced view of effects. Even in the absence of direct reoffending results, one may find changes in factors associated with social marginalisation, employment, housing, social relations, substance abuse, and mental and physical health. These effects usually deal with factors which will—eventually—also affect crime and recidivism. But enhancing the dimensions of good and meaningful life is a valuable thing in itself—irrespective of direct crime prevention effects.

Notes

1. 'Asymmetric limitation of discretion' (see Törnudd, 1996 and for detail, see Lappi-Seppälä, 2019a, 2019b: 123–124).
2. Recent Anglophone discussion has expanded the concept of 'rehabilitation' by separating personal-, social-, legal-, and moral dimensions in rehabilitation (see Burke et al., 2019; McNeill, 2012). This also widens the discussion towards topics that have traditionally discussed in the Nordic criminal justice theory under slightly different labels. Social rehabilitation, as used in the Finnish law corresponds 'personal rehabilitation' in the conceptual framework of Burke et al. The dimensions of 'judicial/legal rehabilitation' ('processes or practices which work to restore the civil or human rights of people under penal control') are encompassed by the Human rights- and normative standards governing sentencing and enforcement. Dimensions related to 'moral rehabilitation' ('reparation, paying back, or making good') are part of the mediation project in the Nordics (and to some extent also community service). 'Social rehabilitation' in the form of 'informal social recognition and acceptance of the returning citizen' (Burke et al., 2019: 14) is hard to enhance through the means of criminal justice. However, the way the enforcement of community service has been arranged, seeks also to affect the views of the public about 'offenders as just regular members of the community' (see above).
3. There remains the theoretical possibility that courts have imposed more prison sentences anticipating that part of them would anyway be commuted to EM (or to CSO in Finland). Sentencing statistics, however, does not support this conclusion.
4. There is clear evidence of increased sentence severity in sexual and violent offenses in all Nordic countries (especially in Sweden and Norway). So, while the number of enforced prison sentences has declined, the length of sentences has increased.
5. For sources (see Andersen & Telle, 2022; Lappi-Seppälä, 2019a, 2019b: 43–47). Later analyses from Norway (Andersen & Telle, 2022) shows a 15% reduction in 1–2 year recidivism rates.

6. As formulated by Greve and Snare: '(t) there is probably not any recent criminologist who has coupled treatment options to the purpose of incarceration as such'. But as the authors also conclude '... it is remarkable that studies by and large no longer focus on prison culture, prisonisation etc., i.e. on the negative side of imprisonment' (Greve & Snare, 2009: 330).

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